Legislative Assembly of Alberta

Title: **Tuesday, November 15, 2005** **8:00 p.m.**
Date: 05/11/15
[The Deputy Speaker in the chair]

The Deputy Speaker: Please be seated.

head: **Government Bills and Orders**
Committee of the Whole

[Mr. Marz in the chair]

Bill 15
Workers' Compensation Amendment Act, 2005

The Chair: I'd like to call the Committee of the Whole to order. The committee has under consideration amendment A1. Are there any comments, questions offered on A1? The hon. Member for Edmonton-Manning.

Mr. Backs: Thank you, Mr. Chairman. I must compliment the mover of the bill for seeking amendments to deal with the deficiencies found by many when the bill was introduced in the spring. To bring forth two pages of amendments to the amending bill are significant changes, and they do improve the bill substantially, but I still do not think they go far enough on certain issues and do not fully speak to some of the problems raised concerning this legislation in the spring.

First, I will take note of the process here. I did meet with WCB representatives and interest groups concerning this legislation during the summer. Many of the concerns spoken to in this Legislature in the spring were raised again as well as other deficiencies in the present WCB legislation that have either been problematic for a long, long time or have never been acted upon. Chief among those not acted upon is the problem of long-standing contentious claims.

Getting to look at the final form of this amending legislation has been a challenge. I asked the minister to meet and go over it quite some time ago, and a meeting was never granted. We did, however, get a meeting or a short briefing by a WCB representative last week, but the first time we have actually seen the proposed amendments was after, I believe, 3:30 this afternoon. Some of the amendments we expected to see and supported are not in this amendment package. I am told that the amendments providing presumptive coverage for firefighters for heart attacks within 24 hours of an emergency response will come forward as stand-alone legislation in a few days. If that does not happen, the message that it has been withdrawn or will not be going forward will, I'm sure, go out to every firefighter in this province. That provision is properly included in the act and must go forward.

Other clauses, such as section (10), that I was led to believe would be included are not. I had hoped that the legislation would not allow the WCB to withhold necessary medical prescriptions or medically necessary treatments, and I do not see that here in these amendments.

Worst of all today, I find, is the process. To get something like 15 amendments on an amending bill, that's already seven pages long as it was presented in the spring, to amend a very complicated piece of legislation that is 90 pages long and to have an hour or two to dissect that prior to debate is bizarre at best. This can be done much better.

One of the real problems that we do see, I think, is the problem, although it's an advance and although it's an improvement, of the change from subrogation to divested action in section 22.1. Although it's significant, it still does not go far enough. The proposed amending provision in 3.1 has the wording:

> If the Board determines that it is not in the best interests of the Accident Fund or the workers' compensation system to bring an action under section 22, the Board may divest itself of the action and assign it in writing to the claimant, in which event the claimant may bring the action.

This wording continues to give the hammer, so to speak, to the board. The board chooses; the board retains the power to choose. This is not a true choice factor here unless I'm somehow reading this wrong. So this is one question. If I am reading this wrong, I will ask the mover: is it the will of the government and the understanding of the mover that this section does in fact give the power of choice to someone who is dealing with a compensable WCB claim that can be dealt with as an automobile insurance claim to choose which way he or she wants to go? That was one of the key factors: choice.

The interests of workers and the interests of employers, I see, are still not being dealt with fully by the proposed amendments and by the proposed changes. I can't see that the real issues affecting subrogation, for example, have been dealt with. Some of the issues are important and must be dealt with. The immunity from lawsuits to the WCB boards of directors is a good and proper thing. The changing of subrogation to vesting in civil actions against third parties as it does stand is a good way to move although it does not go far enough. The change in the reporting relationship of the medical panels office of the WCB is a major improvement.

The many matters that are dealt with in this bill I think needed much further consultation, and that in itself was one of the great issues that was raised in the spring: the fact that we did not have the time to get it out to interested parties, to interested workers, to interested businesses, to interested Albertans. That we have not done that, again, I think weakens the potential legislation that could have come forward.

The importance of the Workers' Compensation act cannot be understated in the operation of our economy. What it does is it provides the protection for businesses from the hundreds of thousands of claims. I believe the WCB had something like a hundred and some thousand claims last year. To have those potentially go before the courts or some other process would stifle our economy and would hurt the way that our economy works and that in fact our businesses and corporations are run. It would not work very well at all. It does, however, in that operation take away the right of those workers to sue, and it does take away that clear opportunity that we have in every other financial and contractual dealing that we have in our society. It is very, very different.

In so doing, it gives the WCB, the Workers' Compensation Board, which is actually not very accountable because it is removed from government, great power over the lives of many individuals in our society. We have thousands, indeed perhaps tens of thousands of long-standing contentious claims that still do need to be dealt with. We do have a problem, even though I think it's improved quite a bit, and I think there should be some kudos given to the present management over at the WCB for improving the situation that we, in fact, do see at the WCB in terms of its dealing with many of the problems of confidence that it has in general society. But I believe that that general confidence has still not been gained perfectly and correctly in that there are a lot of people who are very, very skeptical about what the WCB is and how it works and how it operates in our province. The skepticism is not good for the operation of our economy.

8:10

The particular issue of subrogation or vesting or the transfer of

those particular rights when somebody gets in an auto accident, although it doesn't affect a huge, huge number of cases, affects a significant number of people and their lives and the families of those around them.

I believe this legislation can be improved still. I do commend the mover for bringing forth these amendments and that this was delayed to the fall to improve it, but I do think that, in fact, it can be improved more still.

Thank you, Mr. Chairman.

The Chair: Hon. members, before we recognize the next speaker, could I have unanimous consent to revert to Introduction of Guests?

[Unanimous consent granted]

head: **Introduction of Guests**

The Chair: The hon. Member for Edmonton-McClung.

Mr. Elsalhy: Thank you, Mr. Chair. I am extremely pleased to rise and welcome five of my young constituents who are sitting in the public gallery. They're here to observe democracy in action, and they're members of a team that I call the Young McClung. I'd ask them to stand and receive the traditional warm welcome of the Assembly.

head: **Government Bills and Orders**
Committee of the Whole

Bill 15
Workers' Compensation Amendment Act, 2005
(continued)

The Chair: The hon. Member for Edmonton-Beverly-Clareview.

Mr. Martin: Thank you, Mr. Chairman. I, too, would like to commend the member. While I would agree that this is certainly not perfect, it's much better than what came to the Legislature. I think he was probably a little surprised at the reaction on the opposite side because I know he was told that it was a housekeeping bill, and I know that it wasn't just the member that was told that. I have an article from the *Journal* back at that time where the WCB spokeswoman, Lorraine Lynch-Geisler, said that Bill 15 is a housekeeping matter. So I'm sure that was the message. I hope you sent the message back to them strongly and clearly that they'd put you in a very difficult spot, I believe, by telling you it was housekeeping when you're a new member coming in. To the member's credit he stopped the process and at least got some changes, I think, that are desirable.

I would like to first of all, Mr. Chairman, talk about the consultation again. Many of the changes are good, but the consultation still has not occurred to the degree that it should. We talked to the Alberta Federation of Labour. They weren't aware of the amendments. As the Member for Edmonton-Manning said: you know, we just got them here today. In our quick perusal and in some conversation we had with your office, we had some idea ahead, but I think that with a major bill with the WCB, probably the WCB should have sat down with a lot more of the people ahead of time.

In saying that, Mr. Chairman, the problem is – and I think I'd say it to the member – that the WCB is not held in high regard in this province among workers. Every time we raise something about the WCB, you can expect to get a number of phone calls to your office. There's a great deal of, I would say, distrust of anything that the WCB brings about, and that makes it harder in the Legislature to bring in legislation, whether it's good or bad, because people just don't believe what the WCB is telling them. I think the point I'd make is that the member has had some experience in dealing with the WCB and was told it was a housekeeping bill. I think the member would agree that it was not a housekeeping bill; it was a fairly major bill.

It just is true that the WCB is not held in high regard by many workers. In fact, I've never had a worker come up to me and say: gee, we really appreciate the work the WCB is doing. On the contrary. I think we're still into the culture of denial that was identified by retired Judge Samuel Friedman in his review committee of the Workers' Compensation Board appeal system. What he meant is that most workers, in particular a majority of injured workers, do not trust the Workers' Compensation Board. That makes it, as I say, difficult when we're dealing with legislation here. It is clear, that if there's any story about – in fact, I can't think of a story that brings in more phone calls to our office than one about the WCB. I think it's true of other members. Immediately there is a phone call.

Appeals. I know it's a different part of it, the Appeals Commission. We were told that we're going to try to get it down to 90 days. I've had clients that on the Appeals Commission have been there 14 months. So there's just this, as I say, utter lack of trust in the WCB, and I think it's reflected when we try to bring a bill here in the Legislature.

Mr. Chairman, in saying that, trying to look at the legislation, I think that, generally, there are some positive changes from what we were dealing with to begin with. I'm not a lawyer. Subjugation, divesting – you know, I think that divesting, according to the legal people we've talked to, is better in terms that at least it does allow the WCB to divest the right of action to a worker. The way it was before, they had no choice. Now, I know that there are a lot of people that believe their case is going ahead and that they've got all the right ingredients to make it in the court case. The board is at least allowing them to do that, I guess, with their own resources, and that, I believe, is a step in the right direction. It's not preventing them from independent actions.

Similarly, there are proposed amendments to sections 22(4) and 22(5), which will hopefully make the legal process more cooperative and allow the worker to have some say in selecting legal counsel, both of which are, I believe, a step in the right direction.

Mr. Chairman, we're also happy to see new provisions to protect employees from intimidation or coercion on the part of the employer when action against a third party is being pursued. Now, this is still a very difficult thing to do because you almost have to show an impediment, and a lot of workers would be afraid to deal with an angry employer. Now, in saying that, I'm not sure how you can change that legislation. That's just human nature.

The changes to the medical panels also appear to be improvements, and we're particularly happy to see the explicit removal of retroactivity in section 22(2). When we saw this bill, it appeared to be an attempt to do an end run around the Gutierrez court decision. By removing any possibility of retroactivity, we know that workers can have an idea of what to expect without having that worry that settled cases may be reopened. That was probably the most odious and offensive part of the previous bill.

In saying all this, Mr. Chairman, as I say, the changes that have been brought in are certainly – certainly – an improvement from the original bill, but there are still some problems. The major ones that I see – and I have a couple of questions here, particularly on 22(9) and 22(10). These are the sections where workers could be effectively forced to participate in an action that they do not support. Now, I do understand that the language has been softened, but the fact remains that workers can be forced to participate in this action.

8:20

I'm happy to see that overpayments will not be created, but the difference – I think the changes are between withholding payments and suspending them – is a moot point because you're just not getting the payments until the worker complies. So that seems to be marginal at best.

Now, my understanding about the prescriptions and that is that that would continue under this new bill's prescriptions and surgery. I'd like to ask the member just to clarify that that's the case.

Mr. Chairman, I believe that this whole section should be removed. I do not believe that a worker, against their own will, should be forced into an action against their employer if they don't want to be there. I think that's contrary to, you know, even civil society: you're going to do this regardless because Big Brother is going to do it for you. I don't understand why we need to proceed with that. I really would like to have the member, as he's done before, take this particular section back.

Being the ever helpful person that I am, I have a subamendment to the amendment that I would like to bring in. All I'm doing is "striking out subsection (10)." I think if we could look at that and say that that's unacceptable in a democratic society, that a person be forced into something that they don't want to do, then this bill could probably be one that could be supported. So, Mr. Chairman, I'd like to pass out this amendment.

Thank you.

The Chair: Okay. We're going to wait until this is distributed. Then you'll speak on the subamendment. We will be referring to the subamendment as SA1.

Would the Member for Edmonton-Beverly-Clareview like to proceed on subamendment 1?

Mr. Martin: Yes. Thank you, Mr. Chairman. I think it's pretty self-explanatory. Section (10) is the one that I was just talking about. It says that "if a claimant does not comply with subsection (9)," the board can literally force him to do it by withholding compensation. Admittedly, it is an improvement from the past, as I said, where they could actually backspace and try to collect what they call overpayments. My understanding is that they can still continue with prescriptions and surgery, but I find it unacceptable where we say that we will suspend payments of compensation if a worker does not participate in an action that they don't want to participate in against their employer for whatever reason. It may be fear. It may be that they think that their employer is a good guy or whatever. It seems to me that that's a little overkill, that we'd force a person to do something they don't want to do. I'm asking that they take a look at that and just remove, as I said, that whole subsection (10).

Thank you.

The Chair: Does anyone else wish to participate in the debate on subamendment 1? The hon. Member for Edmonton-Manning.

Mr. Backs: Thank you, Mr. Chairman. Actually, we were working on a similar amendment and having some difficulty getting it forward. Finally, I'm pleased to see this amendment here. There's a lot to say for striking out subsection (10) because that is one of the more offensive areas of this legislation. Although it has been improved, to strike it out would be a good move, and I think that that's worthy of support.

Thank you.

The Chair: The hon. Member for Calgary-Varsity.

Mr. Chase: Thank you very much. I, too, support this amendment. When a person is forced to go on WCB, they're at the most vulnerable time. They've been injured either mentally or physically, and the suggestion that the WCB is going to hold their arm behind their back and twist it by denying them the medications that they require as part of their recovery seems inhumane and intolerable. We have processes that should not involve this type of arm-twisting. How down-and-out do you have to be before you're going to be beaten into further submission?

I would suggest that this is a very good amendment. We should be supporting the workers, not twisting them further.

The Chair: The hon. Member for Edmonton-McClung.

Mr. Elsalhy: Thank you, Mr. Chair. I, too, would support this amendment because initially I had difficulty understanding that vague reference made to an injured worker failing to co-operate with the board.

The definition of "failure to co-operate." What constitutes failure to co-operate? Who decides what failure is, the parameters, the criteria, and whether, in fact, this decision might be changing from one person to the next or from one adjudicator to the next? We want to have the assurance that all decisions are based on objective and solid criteria and that they don't change with the person adjudicating the case or the person sitting across pleading their case.

So I, too, would support this amendment to strike subsection (10). Thank you.

The Chair: The hon. Member for Calgary-Egmont.

Mr. Herard: Thank you very much, Mr. Chairman. I don't support striking out subsection (10). I think it's a bit unfortunate that we're dealing with this particular amendment in this particular form because I'm sure that the members opposite are probably aware that there was another package of intended amendments to the bill that were deemed to be outside the scope of the bill and therefore have to come back as a separate bill, which we fully intend to do. Part of that was dealing with the question of medication, for example, that the hon. member mentioned. Part of it was dealing, of course, with the heart attacks and so on with firemen, and the other part was an important part, to move the medical panels away from the WCB and give them independence.

I think one has to remember that when you receive compensation from the Workers' Compensation Board in a case where a third party may in fact be liable, you have to be able to proceed to recover those costs. In the event that an employee was not co-operative in that effort, it means that the process probably becomes a lot more costly because, as you know, issues that go to court, first of all, take a long time, but if there's an issue of co-operation and things have to be rescheduled and so on, it becomes even more costly.

So while I agree that items such as medications and so on should not be withheld, I think that there needs to be a way of making sure that these actions that are intended to recover costs from a third party, not from the injured worker but from a third party – there has to be a mechanism to allow those things to proceed in an orderly way.

8:30

The WCB has indicated that it's quite prepared to let the Lieutenant Governor in Council make regulations with respect to that because it was an issue that this side of the House was also concerned with in terms of making sure that we do not just simply accept the fact that they say: well, it's our policy; therefore, trust us.

So one of the things that we were talking about was to ensure that the Lieutenant Governor in Council can actually create regulations to make sure that the policy does in fact get applied. For that reason, I think that we ought to leave section (10) as it is, and when the second bill by necessity comes through, then I think the hon. members will be happy with what is proposed.

Thank you.

The Chair: The hon. Minister of Economic Development.

Mr. Dunford: Just to speak on SA1. The hon. Member for Edmonton-Beverly-Clareview, who is bringing forward the amendment, talked earlier in his comments before presenting the amendment about the lack of trust that workers have in the WCB. I believe that the bringing forward of this amendment and from what I've heard on the part of the opposition members in support of the subamendment tells me that there's a lot of work to be done in this House in getting people to recognize the tremendous changes and reforms that have been made in the workers' compensation system in Alberta.

There is no question that 10 years ago, in the early and mid-90s, there was a crisis of confidence in the Workers' Compensation Board system. It seemed like there wasn't a day that went by when it wouldn't come up in question period. It didn't matter whether it was opposition MLAs or government MLAs. No one trusted the workers' compensation system. It had been allowed to get into an unfunded liability system the way that others have across this country.

A lot of work was done. Reference was made to Judge Friedman, and there were other subcommittees. Task forces that were put together came forward with recommendations, and a tremendous regeneration, I'll call it, of workers' compensation happened then in this province, but it takes a while for the culture to actually change. It's a lot like coffee shop talk where you sit and you listen time after time after time to old and outdated stories that no longer apply to the new situation.

I think that at some point in time members of this Assembly are going to have to understand that it is going to be incumbent on them as political leaders in this province, as leaders within their own constituency to actually start looking at what is there, promoting what is good, but continue, of course, then, to advocate for and to change what needs to be changed. But this crisis of confidence that we are seeing displayed in the House tonight really is not warranted.

The system has evolved now to I believe a genuine concern of getting a worker back to work as soon as possible, and what that means primarily is that the medical protocol is determined as soon as possible and that medical protocol is actually followed. You would be surprised – and it's been my experience – at how many individuals simply refuse to follow the medical protocols.

There has to be in a workers' compensation system a genuine commitment on the part of the medical profession, on the part of the employer, and on the part of the worker. With the Workers' Compensation Board overlooking all of this, there has to be a genuine commitment to get back to work as quickly as possible, and this should be a nonpartisan issue. The simple fact of the matter is that the longer a worker is separated from their employment, whether it be through unemployment or whether it be through workers' comp or some other kind of situation, the harder it is for them to ever get back.

It seems to me that when we have to weigh a balance here of getting the person back to work or, you know, continuing to collect money from a system based on some individual right, I think we have to take what is in my view the interest of the worker, and that is the medical opinion. At some point we have to put our faith, or at least recognize the decision-making, in the hands of the medical profession. If we don't do that, we go back to the system we had 10 years ago where we have nonexperts with coffee shop attitudes trying to determine what is a workers' compensation system.

This situation in Alberta has been turned around by any measure that you want to make in terms of our system in Alberta versus any other jurisdiction. This system in the last 10 years has turned itself around, and now is the time I think for us to not only recognize that but to give a stamp of approval to that. With that situation, I would urge all members, despite the well-meaning intentions of the mover of SA1 and the supporters of SA1, to actually defeat SA1 and approve the amendment that's here in front of us tonight.

The Chair: The hon. Member for Calgary-Foothills.

Mr. Webber: Thank you, Mr. Chairman. I, too, do not support this amendment. In section 22(10) the remedy provision, where a claimant refuses to co-operate in the pursuit of a third-party action, is now restricted to temporary suspension of wage replacement benefits during the period of noncompliance. Suspension does not affect WCB-provided health care benefits. It does not include benefits such as prescription drugs or surgery. The ability of the WCB to declare an overpayment for benefits paid has been removed. Co-operation is important so that the WCB can successfully recover funds for the accident fund. It does not subsidize private insurers for failing to seek recovery.

Again, the WCB has invested money into this injured worker through benefits paid and wages paid. They must recover their money somehow, and they need the co-operation of the injured worker in order to pursue the third party. This amendment that the hon. member has put forward will eliminate that. So, Mr. Chairman, I do not support this amendment.

The Chair: The hon. Member for Edmonton-Manning.

8:40

Mr. Backs: Thank you, Mr. Chairman. I must thank the Member for Lethbridge-West for his comments and say that our thoughts from this side of the House are with you, sir, that your health will have no difficulties in the future, and I hope that that will go well for you.

The issue of the WCB and that it is something that is solved, something that is fully fixed, something that the public should be fully supportive of, and that it's the perfect system is not, in my view, the view of many workers who are dealing with it, and those workers are the customers. Although customer service has improved, it is not there yet.

The WCB is not a social program. It's not something to be cut or to put more funds into, do all those types of things. It's not a corporation to be run at a profit, although it certainly has increased its surplus to incredible proportions in the last year. It should be run well. It should not be run at a loss. That's absolutely for sure. We should be clear that it is an insurance program that gives workers the confidence that when they go to work in many of the difficult jobs that we have in the oil fields, in industrial construction, on the pipelines, and many of the things that are being done to build Alberta, they have that protection to fall back on, some support for themselves and their families when they in fact do get a debilitating injury or something that will put them out of work for their lives.

Many of them that do come to my office and many other MLAs' offices are really put off time and again by being told that even though they might have been a railroad engineer or a journeyman

crane operator or any of a number of highly skilled, highly trained jobs – and many of them had been at the top of their trades, their careers, or whatever. They were in something that demanded some physical capacity, and when they were hurt, they ran into difficulty and were told that they had to go back to work as – a common one is a greeter at Wal-Mart or working at McDonald's, something that did not in any way deal with retraining them to do something that was at their former status in society or making them in any way to their former skills, contributing to society to the degree that they thought that they were in the past, and that has brought disrepute in itself to the workmen's compensation insurance system. Very clearly the reality is that it's not there yet.

The moves in this bill to deal with the medical panels I think are a great improvement. There still is a strong feeling that a lot of the actual hiring or whatever you want to call the contracting of those medical doctors that are involved with the WCB should be with a totally independent group that looks to the welfare of the workers. I accept that the minister has strong views on this, but I do not accept that the system is there yet.

Thank you, Mr. Chairman.

The Chair: The hon. Member for Edmonton-Beverly-Clareview.

Mr. Martin: Thank you, Mr. Chairman. Just a couple of remarks again about, first of all, the subamendment. The point that I'm trying to make about this particular subamendment – and I don't think it would happen very often – is that there may be a legitimate reason why a worker does not want to be involved in a court case against their employer. There's no appeal mechanism. There's nothing. It's either do it or not, and I think that that's just too dictatorial. It gives too much power to the WCB. As I say, it's probably not going to happen all that many times, but I don't see why we need to have a sledgehammer to knock in a tack, and that's really what I see this doing. At least if there's some other way to do it, some appeal mechanism or whatever – but that's a lot of power. You have to go to court against your employer. We're telling you that. Period. Point blank. It seems to me that that doesn't give that particular worker much option. As I said, I doubt that it would happen that much. Most often the court case is going to go ahead. I don't see why we can't remove that section and move on with it, but I understand the results of the vote here. I think it's pretty clear.

I also would like to say that I know that the previous Minister of Economic Development did some good work, and I know that there is an attempt to fix WCB. But I would say to the Minister of Economic Development – and we talked to people that have been involved, some of whom he would know – that if there was an improvement, it's going the other way now. It has to do not so much, I don't think, with what was put in it; it's a culture that they're talking about there. I know that we can't fix the culture here, but that is happening.

Immediately after, you know, the recommendations that were made in the past, there was, I think, some improvement. At least, people that were around that know more about it than me said that there was. But those same people now – and I know that the minister would know some of them – are saying: it's sliding. They're talking about a culture over there that's a culture of denial again, as it was. I'm not sure that you can fix that always by legislation. When you're dealing with a culture, as the minister said, that happens, but I think he would be surprised at the dissatisfaction that is creeping back, dealing with WCB.

I've always said that a lot of the legislation this member has brought forward – and I gave him credit – is good. It's certainly an improvement from the previous act. I appreciate the fact that this member did listen and came back and made a lot of recommendations. I was just trying to say that I still don't understand why it seems to me to be punitive. Maybe I'm missing something. I know that it's cost and all the rest of it. I honestly don't think it would happen, but if you had a legitimate reason that you didn't want to proceed in a court action – I guess any reason that a person feels is legitimate, at least for them. Maybe they'd lose their job down the way. Maybe they're afraid. There may be all sorts of reasons why they don't want to do it. But we're basically saying: "You have to. You have to no matter what happens to you down the way with your employer."

I think there's got to be a better way to deal with this. As I said, I doubt that it would happen that often where that would be the case, but I think it's a serious enough matter that we should look at it. If we're not prepared to take out section (10), then maybe there's an appeal procedure or something that could make this a little more palatable for a worker that didn't want to involve themself in this regard. I'll leave that with the member.

That was my understanding, too, that they could still collect prescription drugs and surgery and that . That's why I wanted that confirmation. That certainly is a step in the right direction. I'm glad you got rid of the so-called overpayments. That was a step in the right direction.

Thank you, Mr. Chair.

The Chair: The hon. Member for Calgary-Egmont.

Mr. Herard: Thank you very much, Mr. Chairman. I want to start by paying tribute to the former minister of labour, now the Minister of Economic Development. I can understand why he feels strongly about this because he was the guy who had the intestinal fortitude to take on a couple of reviews of the WCB. I know that he believes very strongly in the recommendations that were made.

Let me share with you information that you probably don't know, and that is that since the last election I've been chairing a committee that is looking at how the WCB is implementing those 59 recommendations. I have to agree with the member opposite when he says that it's not perfect. It isn't. In fact, there are a couple of areas that are still seriously flawed. But I can also tell you that the WCB, in the last 11 months or 10 months that we've been working on this, has in fact agreed to take certain actions and certain steps, which they're currently piloting, from what I understand, with quite good success.

8:50

There were two main areas. One was that the first level of review was supposed to be an alternate disputes resolution process. Instead, the WCB implemented an alternate decision review process. Well, if the decision is made, you know, you're into an appeal. That's not mediation. We had intended a mediation step in the recommendations originally. So the WCB has agreed that maybe they missed the boat there and, in fact, are now implementing an alternate disputes resolution process instead of a decision review process. They've been doing it now for a couple of months, and the early reports I'm getting are that the satisfaction level amongst injured workers is quite phenomenal with respect to that.

The second major problem area was that only 25 per cent of the medical facts were ever being agreed to by the treating physician, so in 75 per cent of the cases there may have been some disputes with respect to the medical facts. Now, in policy the WCB says: well, we want to ensure that we agree with the treating physician on the extent of the injury and the course of treatment, the treatment plan. But if you could only contact 25 per cent of them, you're going to have an awful lot of cases that have problems.

Consequently, what has been done – and that will be the subject of a report that I will be releasing early in the new year – is that there's now a fee that's been approved by the Alberta Medical Association for a doctor to return the WCB's call. What was happening was that the doctors weren't returning their calls, so now there's a fee associated with that. Is that going to solve all the problems? Probably not. But chances are that if you get paid, say, $30 for 15 minutes, and if it goes longer than 15 minutes, there's another $30, that's as much as seeing another patient. So I would think it's going to help.

I just wanted to share that with you because things are getting better, and they're going to get a lot better. Thank you.

The Chair: Before I recognize the Member for Calgary-Varsity, I'd just like to remind all members that we are debating subamendment 1, not the bill. It's a very short amendment. So on SA1, the hon. Member for Calgary-Varsity.

Mr. Chase: Thank you. I do very much appreciate the clarification by the Member for Calgary-Foothills indicating that medications would not be suspended during this process, and I do appreciate the Member for Calgary-Egmont clarifying where the progress is being made with the WCB. I thank the minister from Lethbridge-West for having taken the WCB to the point where it now is because I agree with him that progress has been made. He has been a large part of that process, and I very much appreciate that.

The problem still exists with section (10) in that it presupposes that the worker is doing some form of malingering, that they have to be used in almost a guinea pig fashion to get back at the employer who through some neglect caused this accident to occur and therefore should be liable for the compensation rather than through the Workers' Compensation Board. I believe that you can seek the truth through the employer by investigating the circumstance without putting that unnecessary pressure on the injured employee, sort of putting them between, you know, a rock and a hard place. I don't think this is the way to go about accomplishing getting that money returned.

The Member for Calgary-Egmont suggested that the whole point of this was to try and get restitution from the third party, but as I've pointed out, I don't think you have to use the worker as a lever to get back this third-party compensation.

Mr. Herard: On this amendment because I think there's a fundamental misunderstanding unless I'm totally out of it. We keep hearing that this puts pressure on a worker to sue his employer. The employer is never the third party. This only happens when you have a car accident, for example, where one driver isn't covered by WCB and the other one is. It's the third party you're seeking, so you're trying to get the cost of the action out of that driver's insurance company. It's got nothing to do with the employer. You know, the WCB act prohibits suing an employer, so what are we talking about? Unless I'm totally out of it, the employer is not involved here. It's a third party, and it's usually an insurance company to which an insured party paid a premium for coverage, and now the WCB is trying to recover from that. So this has got nothing to do with putting pressure on an employee.

The Chair: Are you ready for the question on this?

Mr. Martin: Well, the fact remains: if that was the case, why do we need it in the act? If an employee is not being affected, why would we put it in then? Obviously, the employee is being affected. They're being coerced to involved themselves. This would only come in if the employee didn't want to go forward, right? If that's the case, why do we need it? Clearly, it's to coerce an employee to become involved in a process that they may not want to. That's what it says in section (10), and that's the reality. If that wasn't the reality, we wouldn't need it, seems to me, Mr. Chairman.

[Motion on subamendment SA1 lost]

The Chair: Now we are back to debating amendment A1. The hon. Member for Calgary-Varsity.

Mr. Chase: Thank you very much. I want to state right from the very beginning that through our office, experience with WCB case managers has been very pleasant and productive. The unfortunate part about it is that we have had to intervene, and our intervention itself shows that there is a problem within the WCB claimant process.

It was mentioned earlier by the Member for Edmonton-Beverly-Clareview and echoed by other members that WCB claims and the casework associated with them is one of the most time-consuming parts of our constituency office duties. My area is basically a middle-class area, and it would not necessarily have the same number of injuries as potentially a blue-collar factory type of area. Having said that, the people that come to my office have been basically, through the WCB process, presumed guilty until they can prove themselves innocent.

I want to refer without mentioning names to specific circumstances. By the time that constituents turn to us for assistance, they are at the end of their rope and feel that they have nowhere else to turn and no one else to assist them. We're the gatekeeper. We had a constituent who came to us as one last effort recently, who had attempted suicide the previous week because he felt his situation was hopeless. This may seem extreme, but if it were just that one individual and just that one contemplation or attempted suicide, then this would sound like extremism. The process identified in here is one of a variation of occurrences that happened to citizens that we have encountered who were trying to navigate the WCB system, perhaps at the most vulnerable time of their life.

9:00

It was mentioned in earlier discussions that the longer we keep people from getting back to work, the less likelihood we have of getting them back to a productive situation. But quite often there is a combination of both physical and mental injuries that does require that kind of time and that kind of healing, and that support must be there while that healing is taking place. There are very few people who would prefer to sit at home and collect WCB premiums rather than lead active and productive lives and get back to where they were before that loss of livelihood occurred.

What we need to do, and hopefully within amendments such as have been proposed, is to make this a user-friendly, easily accessible circumstance. The WCB needs to take on a stronger role as an advocate for the worker and allow a process whereby they don't have to go through hurdle after hurdle to demonstrate their need for support.

Injured workers are often not physically and/or mentally able to be strong advocates for themselves and often are in fear of repercussions to themselves in the event that they can engage in strong advocacy for themselves. In other words, they're afraid to fight the system for fear that they're going to be cut off or have their payments suspended or that they're going to be worse off by speaking up than having the small amount of compensation that they're receiving. Until the worker has gone through the various levels of appeal within the WCB, the MLA's office is not easily available directly to assist the worker.

A particular concern involves the mental and psychological injuries. The emotional stress of having to wade through the bureaucratic hoops in trying to prove a disability has had severe negative consequences for constituents that we have been involved with. While acknowledging the importance of verifying disabilities, there should be some sort of process that prevents undue and unreasonable repeated requests for medical interviews and reports. In cases where the WCB has requested the worker to attend and receive a report from specified medical practitioners, there should be a strict limit as to the number of times the WCB can request reports from different physicians, medical experts of their choosing.

In one particular case a worker with a well-documented case of posttraumatic stress syndrome who had been seeing the same treating psychologist on a weekly basis for three years attended for an examination for the WCB with a psychologist. The psychologist's report was reviewed by another psychologist some three months later, who concurred with the latest assessment. Three months further on the file was reviewed by yet another professional, a psychiatrist who had never met the worker and who concluded that based on the information he had available, the worker should have yet another consultation with yet another psychiatrist because he did not indicate clear confirmation of the posttraumatic syndrome symptoms and the reasons for his inability to work. He then advised that a social history should be also considered within the context of work-related difficulties. So what we're doing is just beating up people, and we're not recognizing the stress that they're undergoing as they try to get back to where they once were.

I look forward to the discussions that we'll be having, that the Member for Calgary-North Hill brought out, with regard to the firemen. It's these front-line workers who give their all, who constantly put themselves in the face of danger for the benefit of others, that are the most likely to sustain the injuries, that are most likely to be susceptible to posttraumatic syndrome. Whether it's the policeman who responds to a call only to find out that there's a domestic dispute history but that they weren't apprised of that situation, or whether it's an EMS worker going out on a call not knowing exactly what it is that they're going to face: there is a tremendous amount of stress on these individuals.

In the case of the discussions that will be coming up, we're talking about a 24-hour limit to the potential cause of heart attacks. I hope that through a government member or maybe through a private member's bill or something that we'll bring forth, that we'll deal with the effects of posttraumatic stress syndrome because at this point we're still hearing comments like, "It's just in their head," and that devalues the individual who has served us so valiantly up until the point of them no longer being able to conduct their business.

I do thank every member for participating in this Committee of the Whole experience, which is to refine the procedures to get them to the point where we can hand it off to the WCB knowing that we're going to be one step closer to having achieved resolution. Again I thank the Member for Lethbridge-West, who has brought us so far into this process. I thank the Member for Calgary-North Hill, who has allowed firefighters to be recognized for their cancer and the various cancers which have been directly work related. I look forward to the further discussion of the 24-hour heart effect on emergency workers, in this case being represented by firemen.

Thank you very much.

The Chair: Hon. members, might we revert to Introduction of Guests?

[Unanimous consent granted]

head: **Introduction of Guests**
(reversion)

The Chair: The hon. Member for Lac La Biche-St. Paul.

Mr. Danyluk: Thank you very much, Mr. Chairman. It is indeed an honour to introduce to you and through you to the rest of the Assembly some guests from the county of St. Paul that are attending the AAMDC convention. They have joined us this evening to watch the proceedings of their government at work. I'd like to first of all introduce the deputy reeve, Mr. Glen Ockerman, councillors Alphonse Corbiere, Maxine Fodness, Tom Kurek, and Cliff Martin. I would also like to introduce Kim Heyman, who is the CEO for the county of St. Paul. If I could ask you to stand.

Thank you very much.

head: **Government Bills and Orders**
Committee of the Whole

Bill 15
Workers' Compensation Amendment Act, 2005
(continued)

The Chair: Back to the debate on amendment A1. The hon. Member for Edmonton-McClung.

Mr. Elsalhy: Thank you, Mr. Chair, for this opportunity to participate in the discussion on the Workers' Compensation Amendment Act, 2005, Bill 15. Let me start by saying that although I personally found this piece of legislation and its amendments not easy to read and interpret, to say the least, I have confidence in the abilities and wisdom of my colleague from Edmonton-Manning, who indicated that in general and overall things don't look as bad as when these amendments were introduced initially in the spring of 2005.

Why is this whole business with the WCB important? Why do people worry whenever the Workers' Compensation Board is mentioned? Do some people have issues or concerns with the WCB? I think the answer here is that, yes, people do, possibly because there is a lack of communication with injured workers or those who represent them or act on their behalf, or there could be a bit of mistrust as well.

At this point I need to be clear and emphasize that by far most workers and employees at the WCB are caring and empathetic. We experience this first-hand at the Edmonton-McClung constituency office and second-hand through recounting by constituents and acquaintances. Maybe very few of these employees are bad or incompetent, or possibly their hands are tied by restrictive legislation. The overarching argument that I would then make is that the motivation behind any attempt to amend the WCB Act should stem from the need, desire, and direction to make life easier for our injured workers and to expedite claim resolution and favourable settlement.

9:10

With the huge number of outstanding long-term contentious claims, which I understand are in excess of 50,000, and the lack of clarity, where people don't know how long the process takes or what are the time limits involved, we have to realize, of course – and here I am remembering the words of one of my constituents – that an injury affects not only the injured worker himself or herself but also his or her family, the employer, whether directly or indirectly, the insurance company or companies, the health care system, and may have workplace health and safety or legal implications, implications that may extend beyond the immediate parties.

The Workers' Compensation Board plays a very important role,

a societal safety valve if I can describe it as such, because if we don't look after our injured workers, if we abandon them, just as if we would abandon our responsibility to the disadvantaged, the handicapped, or the working poor, this would signal a threatening and detrimental shift in policy. Society is built on the care it affords those who need that care. It is a pillar of society that should not only be preserved but, in fact, should be strengthened and empowered. While we cannot mandate empathy or legislate care, we can at least raise the bar and offer our injured all the support they deserve.

There have been various consultative processes to reach these amendments, but in my humble opinion a full, independent public inquiry would not be a bad idea to examine ways to improve the Workers' Compensation Board's performance and improve the relationship between the board and the injured. The injured are not only partners in their own decisions; they are actually directors of how things should enfold as it is their lives we're affecting and the lives of their families and their communities.

As I said on the subamendment, I have difficulty understanding the vague reference made to an injured worker's failing to co-operate with the board. I still have the same concern now after we've discussed the subamendment. What constitutes failure to co-operate, and who decides? How can we make sure that the determination is objective and follows solid criteria and parameters?

Also, I have this other concern, with regard to the Appeals Commission. The Appeals Commission should be at arm's length, and it should be independent and not funded by the Workers' Compensation Board. We are trying to alleviate any suspicion or any worry of conflict of interest, so to keep them at arm's length would be advisable.

However, again to summarize, I don't disagree with the amendments. I think they do improve upon what was introduced in the spring sitting, and I would support any measure intended to make life easier for the injured workers. I'm also aware of further amendments that are in the works by my hon. colleague from Edmonton-Manning, the Official Opposition critic for Human Resources and Employment, which will further make this bill worker friendly and add to the efficiency and timeliness of favourable claim resolution.

I may also go as far as advocating for the inclusion of an injured workers bill of rights or a summary of entitlements, that he or she should be considered to be telling the truth until proven otherwise, that we must afford these injured workers every bit of respect and co-operation to rehabilitate them, reintegrate them into the workforce, or at least allow them to lead their lives with dignity and the assurance that society is looking after them and caring for them.

We appreciate what the Workers' Compensation Board is doing, and we hope it could be improved. Thank you, Mr. Chair.

The Chair: The hon. Member for Calgary-Mountain View.

Dr. Swann: Thank you, Mr. Chairman. It's my pleasure to respond to this important bill, Bill 15, the Workers' Compensation Amendment Act, 2005. I want to also commend both the minister, Lethbridge-West, and the hon. Member for Calgary-North Hill for doing the work on this important legislation. Clearly, we're all here because we care about workers and their rights. This act is supposed to be protecting workers, not only their workplace health-and-safety issues that get addressed through this process but actually the compensation that goes along with unexpected and, hopefully, preventable injuries.

Let me say that as a physician and now as an MLA I bring a certain bias to this, and it's been reflected in some of the comments and recommendations for further amendments. While I see some serious improvements to the WCB, what again I tend to see in my office both as a practitioner before and as an MLA now are the weaknesses and the failures of the system to really, I guess, in a respectful way, in an honourable way deal with the individual and his disability, which may include, as has been said, both physical and mental dimensions.

Many of these are complex cases, and what often happens is a disagreement between the community physician and the WCB physician, and the immediate concern arises: who is acting in the interests of the worker? Of course, the perception from the outside and often by the worker is that the WCB physician is paid by the WCB and carries a bias that is difficult to argue, especially if it's at odds with the community physician. So we certainly have some distance to go in trying to create a more equitable system and a perception of no conflict of interest, and I think that that does need to be addressed.

The issue of having to prove degree of pain and degree of disability is always a difficult one. I don't say that there's an easy solution to that, but I do think that we have to have an independent appeal process if this is ever going to be anything credible within the public medical community and within the workers' community themselves.

Again, I'm pleased to see the amendments that have been made. These were some that were recommended in discussions by the Alberta Liberal Party in the spring session. I think they represent real progress.

As has been mentioned, I really wonder, again, about the objectivity of defining noncompliance. Who's doing it and under what circumstances, and what is a fair appeal process when there is a difference between what the worker defines as compliance and what the board defines as noncompliance? I think we need to do some work there. We're dealing with very emotional and serious financial issues here, and there's a lot at stake for everyone in the process. If it's not seen to be objective and experienced to be respectful by the worker, we end up with very prolonged and difficult issues.

I do support very much the inclusion of the 24-hour postmyocardial infarction support for all emergency workers, and I see that that's being included in these amendments.

Ms Blakeman: That's a separate one, right? It's coming.

Dr. Swann: That's going to be coming. Thank you. Yeah.

I think that definitely should be there along with the provision for firefighters to be included in terms of their cancer concerns.

Ms Blakeman: Also separate.

Dr. Swann: That's also separate.

I like the change from subrogation to vested interest. I think it's much more clear, much less onerous in terms of the power shift that appears to be happening when we talk about subrogation. I think it's more clear and honest about where the vested interest actually lies and why there may be a difference between the way the worker perceives an action and the way the compensation board perceives an action.

I would again like to emphasize the importance of this work and to encourage this process to go further and to address some of the outstanding concerns that I continue to see in the office, where there is considerable bitterness, considerable failure to address mental as well as physical issues, and therefore we are all paying the price for that. I think it is possible to develop a system that has more objectivity, more of a sense of a distant appeal process that can be

respected by both the medical community and by the workers themselves.

I think that this is a significant improvement, and I personally will support the changes that have been suggested. Thank you, Mr. Chairman.

9:20

The Chair: The hon. Member for Edmonton-Beverly-Clareview.

Mr. Martin: Thank you, Mr. Chairman. As I mentioned before, certainly this is a vast, vast improvement, and I again give credit to the member for stopping the process and bringing it back. This is much more palatable for everybody. I thought we could make it better, but certainly this is an improvement.

I want to say that I'm not sure how you deal with this in a general sense. The bill, I think, is worthy of support compared to where it was, but I think we're hiding our head in the sand if we don't think that there are still some serious problems there. Again, you're dealing with culture. I'm not always sure that you can have legislation that can control all of this, but there is that culture of denial that is creeping back, that somehow workers are trying to take advantage. That's how we start operating there.

I think it's especially true in the Appeals Commission. I think that the Member for Lethbridge-West would remember that one of things that was recommended was a tribunal to review longstanding contentious claims. The Assembly passed this legislation, and it's still not really there. At the time, the Appeals Commission were talking about having these things solved within 90 days. We're seeing case after case – as I said, a recent one, for a constituent of mine it was 14 months before it went through the Appeals Commission. You know the old saying: justice delayed is justice denied. So there are major problems within the WCB, especially in that part of it. Now, I know that that's not part of this member's having to deal with that, particularly in this bill.

I think we learned one thing, again from that culture of denial, when the WCB said that this original bill was just minor housekeeping. Well, it was much more than that, as the member realized very quickly in terms of the debate. That was the message that they were giving to the public. Well, again, that sets a tone from the WCB that they were trying to slide something through here quickly that gave them more power than they needed. That's sort of what I'm talking about, this culture of denial on what's happening there at the WCB.

It's a serious matter, and I'm not sure that all the legislation in the world can change all of that. There are probably some changes we have to make, but I really think that we have to look at what the culture is in the WCB. I think it's a serious matter, and I think it's getting worse. The people that operate and have to deal with the WCB on an ongoing basis tell me that it is getting worse, Mr. Chairman. So that's a separate problem.

Again, the bill is much more palatable than it was back in the spring. Thank you, Mr. Chair.

[Motion on amendment A1 carried]

The Chair: The hon. Member for Edmonton-Manning.

Mr. Backs: Mr. Chair, I've presented an amendment to the Chair, to the table. It is an amendment to Bill 15, Workers' Compensation act, 2005: to be amended in section 3 in the proposed section 22 by "striking out subsection (6)." I've given the required signed copy – it's gone to Parliamentary Counsel – and I've given the 90 copies. I'd ask if those could be distributed.

Thank you.

The Chair: We'll refer to this amendment as amendment A2. We'll just wait a moment while they're being distributed.

Hon. member, do you wish to proceed?

Mr. Backs: Thank you, Mr. Chairman. This section is essentially – I'll just read it. It's on page 3 of the Bill 15 amendment.

> No decision made or required to be made by the Board under this section shall be construed as placing the Board in a conflict of interest in respect of a decision made or required to be made by the Board under any other section of this Act, nor shall the pursuit of an action under this section by the Board be construed as placing the Board in a fiduciary relationship with the claimant.

I think that that should be struck from the amending act, Bill 15.

The section is essentially a notwithstanding clause for the WCB. It allows them to not be found in a conflict of interest in any action or decision that they are in fact required to make. This subsection allows for the WCB to never be found that they are in conflict of interest, regardless of the decisions that they have made. Further, they are not perceived to have any fiduciary relationship with the claimant in the pursuit of an action under this section. Generally, this subsection absolves the WCB of any wrongdoing in regard to any action they take in relation to their actions.

The amendment proposed here would see this section struck as it is absolutely beneficial to the WCB and not balanced, not in the interest of the claimant. There is no balance between the rights of both parties, and that is unacceptable. This gives the WCB blanket immunity from any actions taken under this section, while the claimant is placed under numerous conditions that they must abide by in order to have their claim settled. It should be struck. It's a kind of a have-your cake-and-eat-it-too sort of thing, and I'm surprised that this would come out of the WCB. To have this sort of section in there, again, is power tripping. It's giving a huge degree of control to the Workers' Compensation Board to take care of conflicts of interest.

For example, if a worker was to get into a car accident and he was paid and going to work and then found to have an injury, and he made a claim to the WCB, and the WCB found that he was, in fact, not eligible for compensation, the WCB still could take that forward and deal with it with insurance, especially with some of the ways that the vesting clauses still work, and not be deemed to be in a conflict of interest if they took a different position than they originally took when they denied the claim.

For this type of conflict of interest to be in the laws of our province is questionable, and I would urge that this Assembly strike it from this bill and accept this amendment. Thank you.

The Chair: Anyone else wish to participate in A2? The hon. Member for Edmonton-Centre.

Ms Blakeman: Thanks very much, Mr. Chairman. Yeah, this one flagged for me when I was reading through the bill because it did strike me as a get-out-of-jail-free card here. It does read to me as, essentially, a notwithstanding clause. It's trying to say that anything that the board does exempts them from being viewed as being in a conflict of interest situation. Well, that tells me right away that there's an expectation they are in a conflict of interest situation. If that's the case, in my opinion it shouldn't be allowed to proceed. You shouldn't have a situation where a body or an agency with power over anything should be involved in decision-making from which they can benefit. That's the point of conflict of interest.

9:30

I was pleased to see my colleague bring forward an amendment to delete this section. I didn't see anyone from the government side get

up in response to this, but I hope we do hear from someone because I'd like to hear the justification for why it's in there in the first place. To my reading of it, this does seem a little heavy handed. It does read as a notwithstanding clause to exempt the WCB from responsibility, and I just disagree with that. I think if there's a conflict of interest that's happening, that should be acknowledged, and every effort should be made to reduce the conflict, not to innoculate the organization from having the charges brought against them or the conflict raised and a correction asked for.

I'm glad to see that my colleague from Edmonton-Manning has brought forward amendment A2, and I hope others will follow his guidance and support this amendment. I think it's a worthy amendment.

I'm always a little suspicious when we see large organizations and powerful organizations exempting themselves from things like conflict of interest or lawsuits. But, I mean, there is a standard clause that you see – and I'm pretty sure it's in this bill, actually – that, you know, you can't be sued for doing something that is your job to do. For example, MLAs are protected and ministers are protected from being sued when they're making choices and policies that are their job to do. Just because somebody doesn't like it shouldn't put you up for a lawsuit. They're supposed to be genuinely doing their job.

This is talking about a conflict of interest situation where it's two sides of the street. You get to play both sides of the street here, and that always sets up an unlevel playing field. When the WCB has so much on its side and the worker has so little, I don't want to see the WCB being able to protect itself in that manner. I just think it weights it too far.

So I'm in support of this amendment, and I urge everyone else to do the same. Thank you.

The Chair: The hon. Member for Calgary-Foothills.

Mr. Webber: Thank you, Mr. Chair. I am sorry to say that I do not support this amendment that the hon. Member for Edmonton-Manning has put forth. This suggested conflict of interest does not exist for a number of reasons.

Ms Blakeman: Okay. Let's hear 'em.

Mr. Webber: All right. There are two different systems. The damages awarded in the civil action will never be the same as benefits paid under the WCB claim. There are two different systems of recognizing injuries that operate on different principles. For example, the tort system pays general damages for pain and suffering and calculates wage loss based on future earnings. Workers' compensation by law cannot pay general damages and must base its wage loss on retrospective earnings only.

Also, no fault for WCB: application of fault under the tort system. The WCB pays its benefits on a no-fault basis, and the tort system must apply fault to determine the amount payable. In some cases the WCB benefits exceed tort damages because of the application of fault. For example, if fault is assigned as 50 per cent for each party, the damages owed to the worker would be reduced by 50 per cent and may be lower than the costs already paid by WCB on their behalf.

It is also important to note that all settlements and judgments in third-party actions are final, but WCB claims can always be reopened or reconsidered, resulting in additional ongoing costs to the system. Also, the WCB has always pursued third-party actions without limitation to the decisions it has made on the workers' compensation claim. This is because the WCB and the tort systems operate side by side but independently of one another. Each system has separate jurisdictions. The decisions of the WCB and claims adjudication do not bind the court nor do decisions of the court in personal injury actions bind the WCB.

Recently, the Court of Appeal of Alberta expressly declined to find that the WCB is in a conflict of interest in these situations. In fact, the 1996 court case in Lund versus Lauzon, Justice Veit of the Court of Queen's Bench commented on the impact of WCB claims decisions on personal injury lawsuits. She noted that the comments of the WCB's officials on entitlement to Workers' Compensation benefits were of no interest or relevance to the court.

Mr. Chair, I again have to say that I cannot support the hon. member's amendment to the bill. Thank you.

The Chair: The hon. Member for Edmonton-Centre.

Ms Blakeman: Well, thanks. That didn't actually persuade me, so let's try this again. Round two. That court finding that you mentioned is really just the court's decline to find. That's not the same as making a determination one way or another. They just basically said: we won't comment on it. Now, that's usually because it's a jurisdictional issue, so I'm not persuaded by your argument that there is no conflict of interest in this situation. If you've got any other notes there that would help to persuade me or anybody else – gee, you've got an expert over there who might have been listening to this and could help with this one.

If Calgary-Egmont is aware of how this comes into play, I'd be interested in hearing from him or the current Minister of Economic Development, who I'll also recognize is expert, but I'm not persuaded by a court declining to comment on whether there is or is not a conflict of interest as being a good enough reason to see why this is in this bill or why it couldn't be taken out of the bill. It's just not a very good explanation, and it doesn't really cover the grounds of conflict of interest and the purposes behind it and why it would be attempting to innoculate itself or exempt itself from having the conflict of interest laid bare in an attempt to remediate it. Anybody? Oh, good.

The Chair: The hon. Member for Calgary-Egmont.

Mr. Herard: Well, thank you, Mr. Chairman. Albeit for me to even consider myself remotely expert, but as I see this section (6), it says:

> No decision made or required to be made by the Board under this section shall be construed as placing the Board in a conflict of interest in respect of a decision made or required to be made by the Board under any other section of this Act.

The WCB act essentially outlines exactly what it has to do with respect to fulfilling its mandate. The WCB system also has an appeal system that is quasi-judicial, which essentially is almost like saying that it's a level of court. When it gets involved in third-party actions – let's say, for example, that as part of a lawsuit going on, there was an injury that perhaps might have been an old ski injury that got aggravated as a result of this accident. The WCB is under no obligation, as I understand it, to accept the old ski injury, so whatever it does with respect to paying benefits to the injured worker does not create a fiduciary responsibility in this other court case to accept an old ski injury. I think that what this is trying to do is that it's trying to say that the WCB act in and of itself creates all of the responsibilities that the board has with respect to injured workers.

9:40

Now, when you get into third-party liability situations, if it didn't accept a certain part of an injury, for example, as part of the benefits

that it paid to the injured worker, it doesn't mean that it has to now accept them in front of the lawsuit, so it doesn't create fiduciary responsibilities. I think that, really, what the WCB is trying to do is clarify and comply with the judgment in 1996 that my hon. friend mentioned, where the court indicated that it was not really interested in hearing that because in one case you have a tort system and in the other case you have a no-fault system.

The Chair: The hon. Member for Edmonton-Manning.

Mr. Backs: Thank you, Mr. Chairman. The nature of the differences between the WCB system and tort I think in and of themselves make it necessary to not have this section (6) because of the conflict that we see there. The two different systems, as the mover of the bill quite aptly said, are quite different. By the WCB giving themselves this ability to make a determination through whatever rules – from my experience, and I haven't seen exact statistics on it, more often than not the WCB will reduce or deny claims down the road once they've found reasons to do so and do not too often increase those claims for reasons. Indeed, the one-year rule very much mitigates against that.

The problem with them being able to argue two different ways, to argue through two different sides of their mouth on the same issue, on the same injury case and to argue differently and to speak to it in a different way when they actually get into a tort case, into an insurance claim, into a third-party liability claim is something that is arrogant. It goes beyond, I think, anything that we'd accept in almost any of our other laws in this province and in this country. I don't think we should give that power to the WCB.

Thank you, Mr. Chairman.

The Chair: The hon. Member for Calgary-Varsity.

Mr. Chase: Thank you very much, Mr. Chair. I'm not Catholic. I don't believe in infallibility of either individuals or organizations. I believe section 2 provides the employees of the WCB and members of the board of directors with the same type of protection, basically, that we have as members of parliament within the realms of the Legislature.

To provide further infallibility support, as is the case in subsection (6), takes away any kind of leveling of the playing field. It makes the assumption that under the majority of circumstances the WCB in its wisdom and in good faith will always make the right decision. There's no such support within this bill to give the other side of support or the balance for the worker. Therefore, in order to balance the rights of the worker and of the WCB, either add comparable support for legislation for the worker or, as my colleague has suggested in amendment A2, pull out subsection (6). It's not a level playing field. It has to be made that way.

[Motion on amendment A2 lost]

Mr. Backs: I have a further amendment, Mr. Chairman – I guess we'd call that A3 – and that is to amend in section 3 in the proposed section 22(11)(c) by striking out "if the claimant has complied with subsection (9)." The requisite number of copies have been given to the table, and it has been to Parliamentary Counsel and approved. I ask that it be distributed.

Thank you.

The Chair: We'll refer to this amendment as amendment A3, and we'll just pause a moment while the pages are distributing it to the members.

Hon. member, if you're ready to proceed.

Mr. Backs: Thank you, Mr. Chair. I proposed this amendment, and what it does is it takes out the words "if the claimant has complied with subsection (9)," and that deals with (c) on page 5 of the bill and refers back to section (9) on page 4.

By having the claimant have to go through what for some of them is quite onerous and having a legislated onerous number of conditions that the WCB can pull out of a hat to deny that settlement or that amount – and I won't get into arguing the 25 per cent – just to have them say:

> (b) attending at any or all meetings, mediations, arbitrations, examinations for discovery, medical examinations, including independent medical examinations, and the trial of the action,
>
> (c) providing and executing any or all documents required by the Board to bring the action, including endorsing an assignment or release of the action and providing consents to secure information, in the form and manner prescribed by the Board, in favour of the Board,

and (a) "securing and providing any or all information or evidence" – my gosh.

I've talked to a number of these WCB recipients, and they're brain injured. They can't even write their name much less comply with all of these. You know, many of them are workers who have been labourers, and they're not really cognizant, not very much into all of these incredible numbers of systems that are put under section (9). It's an unreasonable burden that is placed on a worker. You know, are we to say that they must all be giving huge amounts of their claims to lawyers or to other individuals to satisfy all these many and onerous and complicated types of processes, that are difficult for them to understand, that I think many of the actual legal experts in the area have to look at twice in order to try and ascertain?

I think that that way of giving this greater power is again something which reflects a certain arrogance and should be struck from the bill because it does not equal the playing field. It makes it much more difficult for the worker to actually make their proper claim.

Thank you, Mr. Chairman.

The Chair: Anyone else on amendment A3?

9:50

Mr. Chase: When I was discussing some of the problems that workers experienced with the WCB, that we're trying to work on removing with A3, it just adds one more in a series of hoops for the injured worker to go through. At some point and, again, in a sense of balance we need to provide the injured worker with the same kind of support that the WCB has in arguing against their case. A worker shouldn't have to go and search out legal counsel on their meagre reduced earnings, depending on what the WCB claims to be an acceptable payment. It's just completely inhumane to put obstacle after obstacle in front of an injured worker and expect them to be able to navigate all the ins and outs and hoops and steps and stages.

We do our best as MLAs in representing the worker, to try and navigate them through what is basically a maze that Skinner would have contrived for his rats. Until we balance the needs of the worker with the restrictions and hoops put forward in front of them by the Workers' Compensation act, we're not providing any type of balance. The system is skewed in favour of the Workers' Compensation Board to deny workers fair compensation, and until we remedy that imbalance, we're doing the workers a disservice.

The Chair: The hon. Member for Edmonton-Beverly-Clareview.

Mr. Martin: Thank you, Mr. Chair. The Member for Edmonton-Manning is correct. I think a lot of people dealing with the WCB, knowing the hoops you have to go through, are under a fair amount

of stress to begin with. If subsection (9) was there, it would say, "shall not adversely affect the conduct of an action and shall co-operate fully with the Board." If a person that's under stress starts to look at this, they figure: "Well, I've got to do this, that, everything. It takes a fair length of time." It just becomes a way where they could actually cut them back, just something else to be stressed out about: boy, maybe I didn't go to that meeting or maybe I missed that examination or whatever. It seems to me that putting all this in is not necessary.

I think that if they'd left it at they just "not adversely affect the conduct" and realize that you're dealing with injured workers, realize that you're dealing with people under a lot of stress, and as long as they're trying to do the right thing, then they should get the money that's owed them, because this could be a very convenient excuse. I'm not saying that they would do it, necessarily, but it could be a very convenient excuse to say: "Well, you didn't co-operate. You didn't go to this meeting back on May 16 or that meeting or whatever. Therefore, you're only going to get, you know – what? – 18 per cent or 16 per cent. We're going to charge you 9 per cent because we didn't feel that you were co-operative enough."

There are people on the board that are sort of acting this way. I know of cases where if the person just rubs them wrong, they're really getting a bad time from some of the WCB people.

I'm not sure that all the MLAs could get through all this and get our full wage if we had to do everything that's put down here in this little (a), (b), and (c). I just find that that's not appropriate. If the person has tried to co-operate, that should be good enough, and they should get their 25 per cent that's owed them, Mr. Chairman. So I would certainly support this amendment.

The Chair: The hon. Member for Calgary-Egmont.

Mr. Herard: Thank you, Mr. Chairman. I don't know that it's useful to talk about the difficulties encountered under claims management and link it to this because what we have here in section (11) is now proceeds of a settlement. In other words, you've been through the whole rigamarole, and now there's a settlement. What this does is it sets out the priority under which the proceeds of a settlement will be disbursed.

When we get to section (c), which is the one that is being sought to be removed by this amendment, it says, "If the claimant has complied with subsection (9), payment of 25% of the remaining amount to the claimant." Now, let's just assume for a minute that the claimant was not helpful and, in fact, by not being helpful, caused the action to become a lot more expensive. Would that claimant still be entitled to 25 per cent? I would guess that probably not. So by virtue of the fact that there are already under section (9) remedies that the WCB can avail itself of in terms of non co-operation, then I think that when you get to section (c), you have to be able to limit what the claimant can recover in the event that the claimant caused a whole lot of extra expense. Now, as it sits right now, this is a guarantee that the claimant will receive a payment of 25 per cent of the remaining amounts to the claimant. This is before the board has even looked at its own costs with respect to dealing with that claim.

Quite frankly, I think that trying to link this to other difficulties that we've talked about, that are being worked on and improved every day, is not all that useful.

The Chair: The hon. Member for Edmonton-McClung.

Mr. Elsalhy: Thank you, Mr. Chair. Very briefly. I hear the arguments on both sides of the floor, and I have this novel idea in my mind that I felt a burning urge to lay in front of you. I'm advocating the acceptance of this A3 amendment. However, if the government sees that they are not in support, that they would reject it, that they still want subsection (9) to be there, and that they would still require the injured worker to go through all these hoops to fulfill their criteria to become helpful, as the hon. member said, or to comply, maybe we should also look at providing them with a facilitator, somebody who can navigate the maze and help them with, you know, what's required and what's needed and all the paper work and all the compliance with these tests and these psychiatric assessments and all that stuff.

If the person has been injured or the person is having difficulty emotionally or financially or cannot be at a certain meeting at one point or another, then maybe that facilitator can act on their behalf. If the board is willing to withhold payment, then maybe they can put the suspended funds to good use by having that facilitator act on behalf of that injured worker. This is an idea that maybe should be considered and should be entertained.

Thank you.

The Chair: The hon. Member for Edmonton-Manning.

Mr. Backs: Thank you, Mr. Chairman. The Member for Calgary-Egmont seems to imply that there must be this punitive system in place, as outlined in section (9), that would apply to the area I'd like struck here in (c). The problem that we have to look at here is that there is so much there. There are so many different things, that I think the real cost would be on the worker and certainly on the worker's time rather than on the board to deal with this very onerous list of many, many things that could just essentially give them the power to deal with many, many claims as they saw fit because they could find almost anything in this list or in the requirements that would come under this list to have power over that claimant and to make them do what they wanted, to be able to snap their fingers just so that he could get any sort of a claim. I think that that is far, far too much and far, far too much power for the board to have in this instance.

Thank you, Mr. Chairman.

The Chair: The hon. Member for Calgary-Varsity.

Mr. Chase: Thank you. This whole business of punitive power makes me think of a court where a person speaks out in their defence and they're held in contempt of court, or a mistake is made and you're ruled out of order. I liken it to a school situation where every kid comes in with a guaranteed 25 per cent, and the first time they appear to be out of line, they're down to 24, and "You're creaking your chair; well, you're now down to 23." So every time something goes against the WCB review board, the person continues to have their percentage of compensation reduced, to the point where the person throws up their hands and says: well, if I don't shut up, I won't get out of here with 17 per cent. This punitive way of dealing with people is not acceptable. There is no support for the person. The board can simply continue to reduce their percentages until the person either gives up in disgust or accepts their reduced claim, and that's not fair.

10:00

The Chair: The hon. Member for Calgary-Egmont.

Mr. Herard: I'm sorry, Mr. Chairman. I just can't let that go by because really the bottom line here is that we're dealing with a third-party action. Okay? We're dealing with all of what has to be done

on both sides in a third-party action. We're not dealing with someone's compensation and "if you don't do this, you get 24 per cent of it or 23 per cent of it." We're talking about a third-party action where the WCB is trying to recover its costs from an insurer. Okay? That has no effect at all on the benefits currently being paid. There may even be a settlement as part of this for future benefits because the condition of the injured worker is such that it's not expected that they will return to work.

So all of those things have to be specified, and all we're dealing with here is third-party actions. That's what section 22 deals with. You know, to do a little of the fearmongering that I was just hearing I don't think is appropriate at all.

The Chair: The hon. Member for Edmonton-Beverly-Clareview.

Mr. Martin: Thank you. Well, Mr. Chair, of course we're dealing with third-party reimbursement; that's irrelevant. What is wrong about it is laying out in (a), (b), and (c) specific little things that anybody could slip on: meetings, mediations, arbitrations, examinations for discovery, medical examinations, independent medicals, the trial of the action. If a person wanted to take that and you miss one little thing in there and all documents and the rest of it, I'm saying that anybody might run into a maze there. That's all we're saying.

They didn't have to put all that in, Mr. Chair. That makes it, you know, almost impossible for anybody to follow through. You may have missed a discovery. You might have made a mistake: you didn't bring this particular document. Then with that amount of power, when you can pick anything there and say, "Well, you're not going to get the 25 per cent" – I'm not saying that it's always going to happen – that's the problem: laying out all these onerous little things that people have to do. That's the punitive part about it.

All they had to do is say, as I understand it, that they would not adversely affect the conduct of an action if you co-operate fully. Leave it at that because the minute you put this in, then there's an excuse not to do it. That's the point; the legislation makes it. It's very onerous for anybody to follow all those things at any given time, Mr. Chairman. That's the point.

Mr. Chase: At the risk of being further implicated as a fearmongerer, I would ask the Member for Calgary-Egmont to explain to me: with this 25 per cent and the third-party effect, in your understanding is there any likelihood that the worker's compensation would be reduced by going after the third party? Are you suggesting that there's no effect to this 25 per cent and that the reduction has no effect on the worker's compensation, that it only has an effect on getting money back from the third party, that it's not going to adversely affect the worker? Can you maybe clarify, please?

Thank you.

The Chair: The hon. Member for Calgary-Egmont.

Mr. Herard: Thank you. If you're dealing with section 22, which is really the process under which the WCB currently has subrogation rights and is now changing that over to vested rights, all of those things are probably normal in a lawsuit. In other words, the hon. Member for Edmonton-Highlands-Norwood, I believe, indicated all of these things that might happen with respect to a lawsuit, but the bottom line is that this is all in the recovery of what the WCB has probably for many years now been paying to an injured worker. You know, these third-party actions may take years to bring before the courts, so the WCB does not concern itself with fault. It pays the benefits. Right? But at some point if there was a third party who was at fault, they have to try and recover that, and that's what section 22 deals with. So there is no link whatsoever between what is recovered here and the injured person's benefits.

The Chair: Edmonton-Centre.

Ms Blakeman: Thanks. Sorry, but I'm going to have to argue with the hon. member because, in fact, the government amendment that just passed, which is amending section (10), is talking about compliance with subsection (9): "The Board may suspend the payment of periodic compensation to the claimant during the period of non-compliance." So, yeah, they can.

You're talking specifically about the amount of the award that the courts may award in this third-party action, and out of that total amount – let's say that it's a thousand bucks – they start hiving it off as is laid out in the bill here. But to say that the behaviour of the worker or of the claimant and whether or not they comply with section (9) doesn't affect their benefits – yes, it does. You just amended the act to make sure that the WCB has the ability to suspend their payments as a retribution for their co-operation or lack of it under section (9). So it is relevant there, not specific to the 25 per cent, but the WCB still has the ability to take punitive action if they wish to or to withhold the regular payment.

The Chair: The hon. Member for Calgary-Egmont.

Mr. Herard: Yeah. Thank you very much, Mr. Chairman. I don't know how we got onto that subject again because what we're dealing with under section (11) is now proceeds of a settlement. The proceeds of the settlement are at a different stage.

Mr. Dunford: It means they complied with it in the first place.

Mr. Herard: Well, they may or they may not have. The hon. minister says that that means they complied. Well, maybe they didn't. But at the same time, the settlement now is being made in a court of law.

What I said – and I didn't want the hon. member to misinterpret that – was that what is awarded at that stage, which is now a settlement, does not have any direct link to the person's benefit.

Section (9). We're not going to debate it again because I think the rules of the House say that we've already voted on that, so I'm not going to go back there. That particular section is long before a settlement occurs, it's long before the court case is in process, so I don't think the two are related at all.

The Chair: The hon. Member for Edmonton-Manning.

Mr. Backs: Thank you, Mr. Chairman. Not to belabour the case, I think it is clear, and I wish the Member for Calgary-Egmont would take a look at the word "if" in that section and try not to just take a partisan viewpoint in this matter and to look at this and really see how onerous applying section (9) to that is. That's all I have to say.

[Motion on amendment A3 lost]

[The clauses of Bill 15 as amended agreed to]

[Title and preamble agreed to]

10:10

The Chair: Shall the bill be reported? Are you agreed?

Hon. Members: Agreed.

The Chair: Opposed? Carried.
The hon. Deputy Government House Leader.

Mr. Zwozdesky: Thank you, Mr. Chairman. I would move that the committee rise and report Bill 15, the Workers' Compensation Amendment Act, 2005.

[Motion carried]

[The Deputy Speaker in the chair]

The Deputy Speaker: The hon. Member for Lac La Biche-St. Paul.

Mr. Danyluk: Thank you very much, Mr. Speaker. The Committee of the Whole has had under consideration a certain bill. The committee reports the following bill with some amendments: Bill 15. I wish to table copies of all amendments considered by the Committee of the Whole on this date for the official records of this Assembly.
Thank you.

The Deputy Speaker: Does the Assembly concur in the report?

Hon. Members: Concur.

The Deputy Speaker: Opposed? That's carried.
The hon. Deputy Government House Leader.

Mr. Zwozdesky: Thank you, Mr. Speaker. I would move that the House now stand adjourned until 1:30 p.m. tomorrow.

[Motion carried; at 10:12 p.m. the Assembly adjourned to Wednesday at 1:30 p.m.]