



Northwest Territories Legislative Assembly

Standing Committee on Accountability and Oversight

Public Meeting on
Auditor General's Report of the
Workers' Compensation Board of the
Northwest Territories and Nunavut

June 29, 2006

Acting Chair: Mr. Bill Braden, MLA

STANDING COMMITTEE ON ACCOUNTABILITY AND OVERSIGHT

Acting Chairman

Mr. Bill Braden, MLA, Great Slave

Members

Mrs. Jane Groenewegen, MLA, Hay River South
Ms. Sandy Lee, MLA, Range Lake
Mr. Robert McLeod, MLA, Inuvik Twin Lakes
Mr. Calvin Pokiak, MLA, Nunakput
Mr. David Ramsay, MLA, Kam Lake
Mr. Robert Villeneuve, MLA, Tu Nedhe

Witnesses

Mr. Roger Simpson, Principal, Office of the Auditor General
Mr. Denny Rodgers, Chair, WCB Governance Council
Mr. Bill Aho, Council Member, WCB Governance Council
Mr. Willard Hagen, Council Member, WCB Governance Council
Ms. Karin McDonald, Council Member, WCB Governance Council
Mr. Steve Petersen, Council Member, WCB Governance Council

Observers

Mr. Keith Peterson, Co-Chair, Standing Committee on Government Operations and
Accountability, Government of Nunavut
Mr. Alex Baldwin, Director of Research Services, Government of Nunavut
Mr. Daniel Stadlweiser, Office of the Auditor General

Committee Staff

Mr. Doug Schauerte, Committee Clerk
Ms. Kelly Payne, Deputy Law Clerk
Ms. Colette Langlois, Director of Research

STANDING COMMITTEE ON ACCOUNTABILITY AND OVERSIGHT
Public Meeting on Auditor General's Report of the
Workers' Compensation Board of the Northwest Territories and Nunavut
June 29, 2006
Committee Room "A"
9:20 a.m.

ACTING CHAIRMAN (Mr. Braden): Welcome, everyone, to the continuation of Accountability and Oversight's review with the Auditor General staff of the report on the Workers' Compensation Board of the NWT and Nunavut. I think what we should do for the record is a quick round of introductions. Mrs. Groenewegen, could I begin with you on the Members' side?

MRS. GROENEWEGEN: Jane Groenewegen, MLA for Hay River South.

MR. VILLENEUVE: Bobby Villeneuve, MLA for Tu Nedhe.

MS. LEE: Good morning, everyone. Sandy Lee, MLA for Range Lake in Yellowknife.

MR. POKIAK: Good morning. Calvin Pokiak, MLA for Nunakput.

MR. MCLEOD: Good morning. Robert McLeod, MLA for Twin Lakes and I feel right at home here.

---Laughter

MR. RAMSAY: David Ramsay, MLA for Kam Lake. I'd like to welcome the chair, Mr. Denny Rodgers, and the Governance Council members that are here with us today. Welcome.

ACTING CHAIRMAN (Mr. Braden): Thank you, committee. My name is Bill Braden, I'm the Member for Great Slave here in Yellowknife and the deputy chair of AOC. With us as well are committee staff. Kelly Payne is the Deputy Law Clerk. Colette Langlois is our director of research. Doug Schauerte is the Deputy Clerk of the Legislative Assembly and clerk to AOC.

I would also ask the, if the members of the, oh, I'm sorry, before I go to Mr. Simpson I want to make a special acknowledgement of the presence of Mr. Keith Peterson, MLA for Cambridge Bay riding and the deputy chair of our counterpart committee in Nunavut, and the Nunavut Assembly's director of research, Mr. Alex Baldwin. They are here at our invitation and acknowledging the shared jurisdiction that our two territories have, our two legislatures have with the Workers' Compensation Boards of the two territories. So welcome, Mr. Peterson, Mr. Baldwin. I would also like to ask Mr. Simpson if he could introduce himself and his colleague here with the Office of the Auditor General.

MR. SIMPSON: Thank you, Mr. Chairman. I think I know everybody anyway, but you know me, I'm Roger Simpson, I'm principal of the Edmonton office of the Auditor General of Canada. To my left is one of my colleagues, Daniel Stadlweiser, who's worked with me I guess for about 12 years now. He's a director in our office and has done a lot of the work on these audits. Thank you, Mr. Chairman.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Simpson. Thank you so much for your work on this initiative and for being with us over these few days. Our witnesses today are Mr. Denny Rodgers, the chair of the Governance Council of the Workers' Compensation Board and, Mr. Rodgers, if I could ask you to take over and introduce the members that you have with you today. Thank you.

MR. RODGERS: Certainly, thank you. Well, as you said, my name is Denny Rodgers. I'm from Inuvik. I'm the chair of the Workers' Compensation Board for the Northwest Territories and Nunavut. I will allow my board members, of course, to introduce themselves.

MR. AHO: Good morning. My name is Bill Aho from Yellowknife. I'm employer rep on the Governance Council for the Workers' Compensation Board.

MS. MCDONALD: Good morning. Karin McDonald. I'm from Inuvik and I am also an employer rep.

MR. PETERSEN: Good morning. I'm Steve Petersen. I'm also from Yellowknife and I'm a labour rep on the Governance Council.

MR. HAGEN: Willard Hagen, I'm the public interest rep. I'm also from Inuvik.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Rodgers, and to your colleagues for joining us here. One of the, I guess an overall approach that we took in designing committee's review was to invite the specific agencies and officers that are addressed in the report. And of course the Governance Council is a very central part of the WCB makeup. So we're pleased to have you here. Mr. Rodgers, did you have any opening remarks or comments that you would like to offer to committee? Our procedure then essentially is to go around the table and offer members time to make some comments and pose three questions to you. And they may be posed, we may also pose questions directly to panel or to council members in accordance with their appointments, whether they are labour or public or employer. So that's basically our procedure for the morning and I'll step back now, Mr. Rodgers, and please go ahead with your comments.

WCB Governance Council Chair's Opening Comments

MR. RODGERS: Thank you. I'll keep them fairly brief. Thank you. First of all, as you had stated, we are a joint board. This is not our complete board. We have two other board members who are in Nunavut. We have our vice-chair, Shona Barkley, who's in Iqaluit, and George Kuksuk is a public interest rep from Arviat. So they weren't call as witnesses. Obviously if they were they would have been here, but that would be our complete board then. So we have two, two, and two.

Again, thank you very much for the opportunity to be here. Thank the committee. I'd also like to extend a thank you to Mr. Simpson and Mr. Stadlweiser for their always professional courtesy when they do their job. It's much appreciated.

I guess on the report, obviously we've read the report. From a GC point of view we think overall it's a good report. The information in there we think is things that we can certainly build on. We know we're not perfect, but certainly a lot of the recommendations in there we had undertaken previously to start developing some of those initiatives or are currently working on them.

So as we go through answering your questions I'm sure we'll speak to that. Again, I guess we are here, willing to take your questions. We are prepared to answer questions on the report. If we get a little, I guess, too far outside of that when it gets into operational we may have to defer, but as you know, we're willing to meet with you any time you request. Other than that, all board members are willing to answer a question.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Rodgers. Committee, then. Who would like to get us started? Ms. Lee.

MS. LEE: Thank you, Mr. Chairman. I'd like to thank Mr. Rodgers and the board members for being here today. I just want to first comment that I think this is a great opportunity for us as the GC and the Members of the Legislature to do some real good work. I think it's an opportunity for us to really work together to make some significant changes in the way the board receives and responds to public concern. I think, and yesterday, and public for me includes the employers, employees, the public at large, experts, medical specialists, everybody who's out there who has a stake on the wellbeing of WCB. I think one of the, for me, important points that the Auditor General stated in her report is the fact that WCB is a public institution and that even though it's not, it's funded by employers, but it's made possible by the virtue of public legislation that makes it possible to collect those fees. And some of the things that the Auditor General's report stated, although it's not, it's quite broad in its evaluations, things like Governance Council not having as much independence from the board as it should, I think that's something that we could work with in terms of GC being more of, what is it? Challenging oversight rule. I think challenging the board, sort of thing. And I don't mean that in, you know, creating a situation where there is any kind of us and them kind of working relationship with the board and the GC. What I see that as is GC, everything that I see in the Auditor General's report points to the GC for a lot larger role than it has been playing. I'm not saying, I mean that in a very positive way.

I think of it as legislature, for example. We are completely separate from government, although we are very related. We have our own staff. We set our own guidelines. And the government we expect, oh, we work with the Cabinet so that they are the ones who set up the broad leadership goals, strategic directions. They take the input from the public. That sort of thing and the same with Cabinet. Cabinet has their own staff and we understand it's the government that does bureaucracy that implements the policies of Cabinet and I think this is the kind of thought that not a lot of people are aware of. I'd like to talk about, I'd like to actually get a response from the board chair and any other

members about what their responses are to some of the findings in the recommendations and we could talk about how we could work together to achieve that sort of enhancing that challenging of the board, kind of. And so that there's that good back and forth and making sure that the board does what the GC directs them to do and that GC is given enough resources and capacity to do the kind of work that results in changes, some of the changes.

Yesterday in the presentation that I took exception to in the board's presentation and that had to do with the fact that the board seems to interpret the work that we're doing is really largely about communication issues. I have to disagree with that. Even its largest sense of communication. Because for me when someone says issues really more with communication, I mean, communication is a big part of the AG report, but for me we need a different way of looking at the role of the WCB in our society and it's, when you're just talking about communication, it's accepting the fact that it's just about better marketing, better advertising of what it is that the board is doing. I have to tell you, we have to go a lot further than that. I think over the years by convention, not by doings or not doings of any board members or anything, I have been here for seven years, I have seen three chairs, four Ministers, three studies. You know? We're talking about the institution that is a lot larger than any individual people here. The long-term claim issues and the lack of ability to change policies, a lack of process set out where employers come in and raise their concerns, that needs more changes than merely communicating about what it is that WCB does. I mean that in a very, you know, and it's not to, I know that the board that came to talk to us, they did it in good faith and they did it with very good intentions, I believe they believe what they believe, but I have to disagree with that. And I want to find a way to work with the GC and us bringing the input into that to say how could we change the way this ship operates and what do we need to accomplish that? We need to agree on how that could happen.

So I think that's my preamble to I'm sure a number of questions that I will be asking as the morning progresses, but I'd like to know from the chair what is his response is. I mean, he's already stated that there are lots of changes being made and such, but do you have any different thought now, following the report, about enhanced role of the GC to accommodate more input from the public on the changes that need to be made, whether it be from employers, employees, community at large, from specialists, or anybody? You know? Is there any room for change there and what are the things that we could work together to accommodate that? Thank you.

ACTING CHAIRMAN (Mr. Braden): Mr. Rodgers, to the notion, to the appetite for change.

MR. RODGERS: Well, I can pretty much run through I guess all the questions and have to answer to that question, but we'll, you know, excellent points. Thank you very much. I mean, I'll start this and I'm sure some other GC members may want to join in, but as a Governance Council we realize there has been -- and I won't speak for past boards, I will only speak for this one -- there has been maybe some misconceptions out there throughout, and I'm making an assumption here which I probably shouldn't do through the House of the Regular MLAs that the tail has been wagging the dog a little

over there. First of all, you know, I want to assure you that that's not the case. We do set policy and we push back very hard on policy and realize that they're ours.

Some examples of what we're doing. We can elaborate. I'm assuming there will be more questions coming on them, but we have hired a governance advisor, Mr. John Dinner (sic). I have handed out something like three handouts of some of the work that he's been doing with us. We have been developing a protocol including skill sets and whatnot for board members, realizing that corporate boards such as this need more than just, I don't like to use the term political appointment, but you have to make sure you put board members on there who have technical training, some governance background, and can do the job. So that's one of the things we're doing. He's also developing a CEO, sorry, a CEO evaluation as well as a chair evaluation process so the board can also evaluate how I'm doing, if I'm being an effective chair. And also we will evaluate ourselves as a board. So those are kind of the technical things we're working on.

Stakeholder input, we have in the last year or so been debating around the board how much do we want to get involved. How far do you want to dip below that 30,000 feet? We certainly don't want to get involved in operations because that's not our role. But we also want to make sure that, as Sandy said, the ship is being steered in the right direction. So what the OAG report does do for us is it firms up what we've been debating, saying we need to get more involved on a personal level from a GC point of view with stakeholders. Some examples of that, we actually have had two stakeholder meetings where we actually go out, invite the stakeholders, and allow them, I'll chair the meeting, a consultation meeting, and you have our consultation policy. GC members will go out to these consultation meetings and allow stakeholders, whether they be employer or labourer or general public, to ask questions of the board themselves to get, you know, to kind of open up, I guess, if there's a perceived veil of secrecy there with the board to make sure that we're out there. So I guess that's another thing that we are trying to do as a board.

Policy, an example, I guess, at our meetings in Iqaluit last week we had a policy come to us about rehab. We had Steve come in there and we felt yes, they consulted with labour associations, construction associations, so on, chambers, so on and so forth, but we felt that more consultation was required. We felt that physiotherapists and so on and so forth that deal with people who are involved in a rehab program to get back to where it should have had some consultation in that process. So we said that's fine, we know our new consultation policy is new, it's a work in progress, but we need this to go back because we want some input from those people as well. So those are the kind of things, I guess, from a GC point of view where we are I guess at. I don't know if that answers some of your questions, but that's kind of where we are with the details.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Rodgers. If I may just a quick question here. You referenced the Leger stakeholders' survey and three documents from Mr. Dinner (sic). This was circulated yesterday by the board. But you referenced the documents by your governance advisor. Are these then public domain? We can offer them to everyone who was here or is this for our information?

MR. RODGERS: I never checked, but I assume.

---Laughter

ACTING CHAIRMAN (Mr. Braden): Is this, this is a public forum here, so if you reference the documents, I just want to ensure their availability.

MR. RODGERS: Not in trouble, am I? No, I think they should be fine.

ACTING CHAIRMAN (Mr. Braden): They are marked confidential. How do you wish us to treat them?

MR. RODGERS: The documents that were prepared by our governance advisor, who we have on contract, and maybe I need legal advice here, but I maybe...

ACTING CHAIRMAN (Mr. Braden): Okay. Perhaps we could follow up on that. In the meantime, we'll respect the confidentiality, but I do like to know that if something is brought before committee in a public venue is it open to the public. Thank you. Sorry for the interjection. Mr. Aho.

MR. AHO: Thank you, Mr. Chairman. I just wanted to make further comment to some of the situations that Denny had brought forward, and in the report there's suggestion that the Governance Council be more involved in making contact with the stakeholders in regards to consultation. It's something that we took to heart. We recently had a consultation in regard to the proposal to build a new office building for the Workers' Compensation Board. We had a past experience in regard to that process and it became very apparent quickly that the consultation that we had done was somewhat short of what was necessary. After having an opportunity to revisit what our needs were as far as accommodations for the Workers' Compensation Board we set up a public meeting and we brought the chair to actually chair the meeting, invited all the stakeholders to a public meeting to offer them an opportunity to see what direction we were headed and offered them an opportunity to make input into that. We had some positive feedback and it's contributed to the process that we're working on.

In regard to policy consultation, we have a board champion in regard to policy, Mr. Steve Petersen has a very large appetite for policy and ensuring that we do have proper consultation in regard to it. And as Denny has mentioned, we have recently reviewed some policies. We felt there was not enough consultation and we've asked administration to go back and do further consultation in regard to them. Steve has agreed to champion a couple of consultations on upcoming policies and he's going to assist administration to ensure that we get the correct people invited to these consultations and make sure that we get what we need.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Aho. Okay. Mr. Petersen.

MR. PETERSEN: We've got a policy coming up on return to work and it's a fairly important policy as far as we're concerned. The GC is going to do focus groups on that to make sure that we get on-the-ground feedback and then the administration and

senior management can use that feedback. But we want to ensure that if we're going to a merit-to-merit system where we're going to be rewarding employers for good behaviour that there are very strong return-to-work protocols and it's enforceable and manageable. So it's an upcoming area. We just came from meetings in St. Andrew's, New Brunswick, where this was hammered into us many, many times that return to work protocols are vital, so we have to make sure that those things are done properly. And I know that in this jurisdiction, consultation, people are consulted to death. It's hard to get various agencies and people on board. So we're hoping that if the GC makes the appeal that might have a little bit more resonance with the people. It's just not another consultation they're going through. So we're really going to try to work hard on those. Not every policy requires this, but certain policies we think have to have extraordinary in-depth involvement by us.

ACTING CHAIRMAN (Mr. Braden): Okay. Thank you. Ms. Lee.

MS. LEE: Yes, thank you. I really feel that this is about the last chance I have, at least within the life of this Assembly, to do something with the issues we're dealing with. And I wouldn't be talking about the things that I'm talking about and asking questions to the board if I did not have the faith in the chair and the board members to do something. And not only out of this report, but on the Act Now report and the clamouring of issues that are being brought forward by the public out there. And I have to tell you that I cannot accept, okay, I will accept what was just said about consultation, but let me tell you this: My experiences with dealing with some of the issues that have been brought up to us, and I will try to be careful that we don't cross the line of talking about sub judiciary issues or anything like that. But let me just say, for ratepayers' issues, for example, on the sub class, consultation, I'd like to know from the employer's representative, what the employer's representative has done in terms of addressing that issue specifically, for example. Because I tell you, I went to the briefing on that. I went to many, many meetings on that, and what do we have? We have an actuary from down south coming and telling us about why the rates are the way they are. Why are the things the way it is? What I'm telling you is, I don't want to just know about why the things are the way it is because the problem is the things the way it is is not working. And these employers were coming and talking to us, talking to the board, talking away, they want something changed. And what we had was an insurance adjuster or actuary telling us, and I sat there, and they told us they could not answer us about why this subclass could move, why some group has to get 25 max increase every year for four years when the WCB is over funded. Just yesterday I got a letter saying maybe next year we may talk about reducing the rate. We could do general consultation, we do that all the time, but I'm talking about dealing with issues.

I want to talk to employee representative. Why is it for 20, 30 years now we have not had changes in a meaningful way to chronic pain conditions or post-traumatic conditions? You know, I don't want to have to ask questions or answer questions on WCB in the House. Okay? All I'm asking for is we work together to find a mechanism where the Governance council will set up a system for these people to go and make presentations and see meaningful changes. With all due respect, that hasn't happened,

that is not happening, I'm not hearing any suggestion that that's going to happen other than the board is going to talk about general issues.

Let me talk to you about the building. With all due respect, you have not learned the first time around because I went to that briefing too. And I'm telling you, the communication strategy and the briefing you gave so far, what do we have at the briefing for the building? We had three architects in their fancy suits giving us overhead presentation on how this building will look like in a one-floor scenario, two-floor scenario, three-floor scenario, assuming, making assumption about what land this will sit on because we don't have the land to build it on. When I asked questions about what are you basing your 25-year growth on, that was not clear. Have you done a cost-benefit analysis from staying and renovating or moving, and there was a \$2 million difference that was way too broad and non-specific to justify a decision either way. When I asked about have you done an investment analysis on what would the impact be on you yourself as the owner of two floors and major anchor of that building moving out, I'm waiting for the right answer, I mean, I'm ready for any information.

What I'm saying is the consultation goes out and says this is what we are doing, this is what it is, and the reason why you don't agree with this is because you don't understand. If you just understood then you'll agree with us. I'm telling you, there's not enough listening going on from WCB and the changes being incorporated because I'm telling you if all these cases that have been outstanding for so many years, I mean, let's not even go to the court decisions. I'm telling you, if we are going to change policies from listening to the public, the choices being made in that regard I wouldn't, it wouldn't be the ones that are being made now.

So what I'm saying is, again, I want to work with you about how to change the way the board responds to some of the major public policy issues. I'm not talking about day-to-day operations. So far I've gone to every briefing and inquired and it's all about the reason why you have a problem. And that's the same with the MLA or injured worker or employer or anybody in the city who wants to have a say on whether the WCB should get a new building or not. It's all been one-way communication. If you just listen to us long enough and if you understood what we were saying you'll agree with us. And that's got to change. That's just got to change.

I'd like to ask the employer and the employer representative and the board about exactly what specific consultation did they do on these specific issues that I'm raising as an example and raising it as an example of what I've seen that just exemplifies the way the board approaches things.

ACTING CHAIRMAN (Mr. Braden): Thank you, Ms. Lee. For, Ms. Lee has outlined a few events that have caused concern and as I think she has said for illustrative purposes we're looking for the attitude, the approach to consultation. One of the things that, if I may, Ms. Lee, we had talked about early on was to not get into debates about specific issues at this point or at this time. That may follow through. We are looking for a broader, more overhead discussion of the way the board works. If I may ask in your responses to not go into detail of specific issues. We're going to grind the clock down in

a big hurry if we do that. We do want to, we do have a number of other areas that we want to cover. I have two other members who would like to speak. So I guess, if I may, to that whole area of consultation and I think a good work that Ms. Lee used was listening. Mr. Rodgers.

MR. RODGERS: Thank you. Well, specific questions, I guess, you're wanting to know what consultation we did on, that we do with employers; what employer reps do specifically on specific issues? Is that the...

ACTING CHAIRMAN (Mr. Braden): Can we go for clarification?

MS. LEE: I think my question is when are we going to, when is the board going to listen?

ACTING CHAIRMAN (Mr. Braden): Okay. Thank you. Let's go from there. Let's go from there, Mr. Rodgers or council members.

MR. RODGERS: Okay. Thank you very much. Ms. Lee, I appreciate your passion over the issue. You touched on a whole bunch of topics there. We are attempting to get out and to consult. I mean, that's what we want to do. We do realize that this is a huge ship. It's not something that we can, you know, and as Willard mentioned to me this morning while having breakfast, we are a really solid corporation with a really poor image problem right now that we need to correct. One of the ways to correct that may be if we did have a building and an open door. If we didn't have a fortress and people could walk in. that's something we talk about as a board, saying we need to do something, we realize when people walk through the door they're not happy. Okay? So we'd like them to walk through the door and be happy as soon as they come in there, not have to get on an elevator and go up a floor and then down a floor and then in here to get someone to guide them to our library because you gotta swipe a card to get in there. We know those things are not good for public image and we want to fix that. So that's part and parcel of what we're doing. Having said that, we would not as a GC go forward with a building without a business case, but I won't get into the details on that again as it's not in the report specifically.

We are attempting -- I'll let Bill speak -- we are attempting to listen. We are trying to. We have a new consultation policy that we are now piloting on different policies to get out there, to get people's input. It's not easy to do. Not everybody wants to sit down and spend their afternoon talking about WCB. And it's unfortunate a lot of times too we do get, you know, we do get our whole, our whole organization may get judged on one or two cases that unfortunately may not have been resolved to the claimant's satisfaction.

Bill, I'll let you speak to consultation.

ACTING CHAIRMAN (Mr. Braden): Mr. Aho, thank you. Go ahead.

MR. AHO: Consultation is an issue that this board, since I've been on the board, that we continually speak about and that we continually look for new avenues in which we can consult. It is a struggle. In a lot of the situations we invite large numbers of people

to come to our consultations. We have public meetings and unfortunately we don't get a lot of uptake and a lot of participation in regards. We're continuing to investigate other means of bringing people to the table to talk to us and discuss with us. We've always, our president has always indicated that he has an open-door policy and is prepared to speak to us or to speak to anybody who comes forward. And as a GC council we've tried to make it public information that we're open to speaking to anybody who has a concern in regard to workers' compensation.

So we do struggle with a fundamental difficulty in that generally speaking workers' compensation is not a glamorous topic for most people to discuss. The associations that we deal with, they tend to be understaffed and they don't have a lot of resources that they can put towards providing input to us. So we're working with them, we're trying to give them every opportunity that we possibly can, and we will continue to do that to investigate every opportunity we can to talk to people.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Aho. Ms. Lee, you have one more at bat here.

MS. LEE: Let me try again. Specific questions. Mr. Chair indicated that businesses don't have all the time in the world to meet. What I'm asking is, let's just use it as a ratepayers sub class 67. They had all the time in the world. They had lots of meetings with the board. There was a lack of process on how these groups could bring forward an issue. I think we need to set a process and I'd like to get the commitment from the president that he would set up a process, GC will look at, well, GC will set up a process where employers that have an issue could come and make a presentation and not just listen, like, I hear everybody saying we go out and consult, people who don't have resources don't, I'm not talking about that. I want, specifically, would you set up a process for an employer and employee to come and state their case and then have their case evaluated and heard and incorporated, and state why it can be incorporated. I have a very specific question for employer rep –

ACTING CHAIRMAN (Mr. Braden): Ms. Lee, you've already have a specific question on the table.

MS. LEE: No, I have to ask specific questions. I'm talking about the employer rep situation. I'm not talking about consultation. I want to know when is the last time or when or did the employer rep meet with sub class 67.

ACTING CHAIRMAN (Mr. Braden): Okay.

MS. LEE: I want to know from...

ACTING CHAIRMAN (Mr. Braden): Ms. Lee, thank you.

MS. LEE: The employee rep when was...

ACTING CHAIRMAN (Mr. Braden): You're question is already...

MS. LEE: The last time that he met...

ACTING CHAIRMAN (Mr. Braden): ...on the table.

MS. LEE: ...on employee issues. I'm asking...

ACTING CHAIRMAN (Mr. Braden): Thank you, Ms. Lee.

MS. LEE: ...specific questions.

ACTING CHAIRMAN (Mr. Braden): Thank you, Ms. Lee. You have a specific question on the table. It's the specific question to the specific issue. And it's getting off the page here. But for illustrative purposes, if you want to go into that, but I think there was a good question there to enable stakeholders to approach through some process when and as issues arise. Mr. Aho is signalling he's ready to handle that one.

MR. AHO: Are you okay with that, Mr. Chair?

MR. RODGERS: Mr. Aho.

MR. AHO: Actually, we do have a process for consultation with the board. We have basically an open-door policy. If someone contacts the board directly, either through a letter through the chair or to any of the board members, at no time that we've received a request to sit with an individual or a corporation have we refused it. We did have an issue with class 76 and in our meeting, when they contacted the chair and asked for a meeting with the board we set up a meeting within a couple of days. It was the first time they contact us, we set up the meeting within a couple of days, and when they came to us, unfortunately, their concern was that they did not know that it was so simple to speak to the board directly. And in regard to communication with them, specifically, and I don't want to get into discussing specific issues, but specifically in regard to class 76, I talk to them about every second day.

ACTING CHAIRMAN (Mr. Braden): All right. Okay. All right then. For transcription purposes, through the chair, please, but I do like to keep dialogue going, so continue. Mr. Petersen and then I'm going to go on to another committee member.

MR. PETERSEN: And in regard to my constituents that I represent, labour, the Federation of Labour or when any other labour group wants access to the board they just request it through the labour reps and we just facilitate it if it's required. And we have met on an informal basis in the past in the past and they've voiced their concerns to the GC. So it is done. It's perhaps not publicized often enough, but we certainly do have an open-door policy and actually really welcome any consultation processes we get involved in.

ACTING CHAIRMAN (Mr. Braden): Okay. Thank you, everyone. That was a good opening round. Are we done with this one? Can we move on? Mr. Rodgers, did you have something specific to add to this?

MR. RODGERS: Not specific. I was going to say that we have very strong representation on our board from both labour and employer groups and I can safely say when I chair the meetings that there is good strong dialogue and any employers or labour reps out there do come through these members and we hear their voice.

ACTING CHAIRMAN (Mr. Braden): Okay. Alright. I have Mr. Ramsay and Mr. Pokiak.

MR. RAMSAY: Thank you, Mr. Chairman. I'd like to thank Mr. Rodgers and the rest of the Governance Council for being with us here today to discuss the Auditor General's report. I'll try to keep my comments brief. I've got a few questions that I'd like to ask as well and I know the chairman had mentioned the overall view of the worker walking through the doors at the WCB and I think that's one of the reasons why Members of the legislature felt it necessary to have the Auditor General come in and complete this performance audit on the WCB was because we are hearing a number of complaints about how employees and claimants are treated. There are a number of questions about the interaction with claimants at the board. And there are a number of recommendations in here that speak specifically to that. I guess where I'd like to start with this, and we talked yesterday with the Auditor General and we also had Mr. Triggs and Mr. Doyle in here and talking about what exactly it means, you know, this presumption in favour of the worker, and that's clearly spelled out in the act, and as the Governance Council I'd like to ask, you know, maybe a short answer from each and every one of you, what does it mean to you, presumption in favour of the worker. How do you ensure that's taken into account when you're developing policies at the Governance Council level? Maybe a brief response from everyone out there. Thank you, Mr. Chairman.

ACTING CHAIRMAN (Mr. Braden): Okay. Thank you, Mr. Ramsay. To the principle or the idea of the presumption of benefit of the doubt. Mr. Rodgers.

MR. RODGERS: Thank you. Well, when the emeritus principles were put into place back in, check my dates here, '70...

UNIDENTIFIED SPEAKER: 1910.

MR. RODGERS: Thank you. Was when it was agreed that employers would fund an insurance program for the workers and in turn for they giving up their right to sue. So when we set policy, when you say presumption in favour of the worker, if there's any ambiguity in the policy and, of course, you don't want to have any ambiguity in the policy, but when you're setting the policy you have to presume that in favour of the worker. I don't know how else really to explain it. Innocent until proven guilty, I guess. I don't know if...(inaudible).

ACTING CHAIRMAN (Mr. Braden): Mr. Ramsay.

MR. RAMSAY: Thank you. I was looking for a reply from each of the Governance Council members that are with us today.

ACTING CHAIRMAN (Mr. Braden): Alright. I see a readiness to take this on. Mr. Petersen, and then we'll go around.

MR. PETERSEN: From a labour point of view, that premise is extremely important. It's a cornerstone of the whole structure as far as I'm concerned. You get into presumption in favour of the worker and medical probabilities and that sort of issue, and that's where I think we have some issues. When we make policies we always make the policy to reflect that. You know, the onus is in favour of the worker. We aren't trying to stack the deck against him. But then when it goes up the system for the appeals process, sometimes maybe that gets clouded. But in our mind, presumption in favour of the work is exactly that, that policy should determine that given facts if it looks as though the worker has been vindicated, then he should get the benefit of the decision. So in our mind, when we make the policies we do reflect that fact that we have, like, for example, mandatory language, you know they shall or may and stuff like that, in order to ensure that people who are dealing with the policies have some direction on how to go forward.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Petersen. To continue on, Ms. McDonald, I saw your hand up.

MS. MCDONALD: I am not very good at public speaking, first of all, but the presumption I would say is that the Governance Council very diligently in order to either set or tweak or revise policy to follow the betterment or the best outcome for the injured worker, the whole business of our organization is to look after these people who have the misfortune to be injured. So it's a hard thing to answer, but we do try and give individual situations to try and assess through consultation with all sorts of medical people and all sorts of experts, while we may not be an expert, we'll or consult with experts on these cases and do the utmost we can to have the worker return to the lifestyle he was afforded prior to his incident.

ACTING CHAIRMAN (Mr. Braden): Thank you, Ms. McDonald. Any other members care to engage on the aspect of benefit of the doubt? Mr. Aho.

MR. AHO: Presumption is a cornerstone for workers' compensation and it is about what we are about, and the worker is given every benefit of the doubt to ensure that they receive what it is that they are entitled to under the system. Further to that there is a responsibility for workers' compensation to ensure that all the evidence is brought forward and all situations are taken a look at to ensure the integrity of the system. From that, decisions are made and they are, when not totally clear, they're made in favour of the worker.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Aho. Mr. Hagen.

MR. HAGEN: Yes, being the new member on the block here, I want to be the one reading, but I've obviously done a lot of reading in the last month since I've been appointed on April 18th. The merit of the principle is that the worker gives up their right to sue for injuries. So right there that tells me if you're giving up that major right, then

the benefit of the decision or doubt has to be slanted in favour of the worker. You know, there's got to be some major benefit if you're giving up your right to sue, especially in this day and age. I mean that seems to be almost in the Constitution now. So to me, that again, that's a cornerstone that is required by law to make all reasonable inferences and presumptions in favour of the worker. It's also in law. So to me that is the cornerstone of what we're about.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Hagen. Mr. Ramsay.

MR. RAMSAY: Thank you, Mr. Chairman. I'm happy with the answers and the responses I've got from the Governance Council, but it leads me to the next set of questions and that is why we're here today. I mean if the presumption is in favour of the worker, why are there so many cases unresolved, why are there so many claims that take years and years to resolve? Why do people go into the Workers' Compensation Board and feel like they've already committed a crime just by walking through the doors, and feel that they're not being treated right? Why are there 35 recommendations in front of us today in the Auditor General's report that identify areas that we need to look at for improvement? Because realistically I think in a perfect world, you wouldn't have the amount of residents here in the Northwest Territories and some now that haven't been able to live here because of the cost of living that are in the South that have been fighting the WCB for years. This presumption in favour of the worker just doesn't seem to hold true all the time, because there are a number of cases that, you know, if you erred on the side of the worker, you wouldn't have had to have built a fortress downtown in Yellowknife that people feel not welcome in and people feel intimidated by. You know, that's where we're at today. I think this is a perfect opportunity, through the report, for us to move forward to make some changes, and I'm really happy that the chairman has spoken with the rest of the Governance Council about trying to make some changes and try to change the image of the WCB. I know some of you weren't here yesterday when I was speaking with the Auditor General or with the board itself, but if you look just in Yellowknife itself, you've got the income support office, you've got the housing office, you've got EI. None of those are fortified like the WCB is and they all deal with the interaction, the client interaction. You know, people are coming there looking for services. It's really unfortunate that people have to go to the length of swearing at employees of the board and threatening employees of the board. To me that signals that something is desperately wrong if that's the case and people are driven to that extreme that they have to threaten people with bodily harm and other things that would make you have to put the gates up and force people to enter into that type of fortress mentality if they walk through the doors at the WCB. So I'm glad to hear that you're going to be looking at that.

I want to, as well, Mr. Chairman, I want to get to the independence of the Governance Council itself and ask you about what specifically, what resources do you have specifically at the Governance Council level that would enable you to respond to the Auditor General's report. Did the responses come directly from the council and what was the process to approve the responses that we see in the report? I know sometimes

you can get influenced by the board and they can give you some answers, but I want to know specifically how these responses were approved at the Governance Council level.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Ramsay. We'll go from there. Mr. Rodgers.

MR. RODGERS: Thank you for the question and the comments and, you know, we are trying to work towards doing something to alleviate that.

To the specific question, the turnaround time on the report; as you know, logistically it's very difficult for us to get together as a board. We get together five weeks a year. We're from all parts of the territories, although more and more we're from Inuvik now which is a good thing.

---Laughter

It's difficult. So I can tell you that responses to the recommendations, the responses to the ones specific to the Governance Council, I wrote them up myself in my little office in Inuvik and e-mailed them in and consulted with my board on them. They were essentially our responses. They were our responses. Mine were sent in I believe before administration's, actually. The board's responses were done by the board. Now, that's the response to the recommendations.

Now that we are now putting our action plan in place to implement all the things that are recommended, of course we will need our administration staff to do some of the research and the work on that. So in answer to your question, the board, these responses came from my office and only my office with my board's input, and the board's responses came from administration. To date.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Rodgers. One more at bat, Mr. Ramsay. Go ahead.

MR. RAMSAY: Thank you, Mr. Chairman. I thank Mr. Rodgers for his response. I'm glad to hear that the responses came directly from him, with some consultation with his board members. The next question I have, and I asked administration this question yesterday and it had to do with an action plan. I know it's only been out for a month now or so, six weeks; but what role is the Governance Council going to have in trying to get the administration to develop an action plan, and how are you going to work with administration in developing an action plan and seeing to it that the recommendations...and where you've agreed to here actually takes place and there are some changes made? I'd like to ask that question as well, Mr. Chairman. Thank you.

ACTING CHAIRMAN (Mr. Braden): Okay, Mr. Ramsay. Mr. Rodgers.

MR. RODGERS: And that's a fair question. Obviously the report is still, as you say, fairly young. We will, in our September meeting, look at the timelines of where we're

going. You'll notice some of the recommendations that were recommended to council, we have already begun work on giving the recommendations about doing the protocol, for example. What we are going to do there, because yesterday I noticed there was a lot of talk and communication and not communicating properly, we will develop a protocol and then we will give it to the Minister to say how does this look, does this look like something we can do. We feel we have more staff capability to do that so it would make sense for us to do it, and that will hopefully give us also an avenue. What we want is an avenue that you can tell us what you want, because we want to know what do you want, what would you like, what are we not doing that you'd like to do, how would you like us to be communicating with you...(inaudible)...you know, we'll speak with you at any time. But realizing that has to be an avenue; I mean everybody is quite busy, we want to set that up. So we will have a timeline in by the fall as to the recommendations. A lot of them we've already started work on and I guess that hopefully will answer the question.

ACTING CHAIRMAN (Mr. Braden): Alright. Thank you, Mr. Ramsay. I'm going to go to Mr. Pokiak.

MR. POKIAK: Thank you, Mr. Chairman. I'd like to thank Mr. Rodgers and the members for appearing here today. In Mr. Rodgers' opening comments, I think we all agree that it's a good report and I think it's something that we can work on. He also mentioned that right now the GC is not perfect but they're looking at improving it, and I think the report will help alleviate some of the problems that we're encountering.

I guess the question I have for maybe each one of the members here is in regard to we all know the Minister appoints the GCs based on their knowledge of certain skills that they have, you know through their resumes. So I think having said that, I'm just wondering in regard to the orientation or training of each member, I'm just wondering whether...First of all I'd like to ask, when you were first appointed can you tell me the dates that you actually had training at that time for orientation in regard to the process? Thank you.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Pokiak. Mr. Rodgers.

MR. RODGERS: Thank you. The dates that were actually...Once we're appointed, the dates we get the orientation?

MR. POKIAK: The dates...(inaudible).

MR. RODGERS: Well, what happens now, we now have a governance advisor. So in the past we would attend a governance session, a training session for board members. The AWCBC, which is our association across Canada, puts those sessions on. But before that, we do have an in-house orientation process. We'll take the new member in, and Willard can probably speak to it better than anyone because he just did it, but we take the members through, we orient them on WCB and so on and so forth on the roles and responsibilities of a GC member.

We realize one of the recommendations in here was that we need more technical training, we don't need to ensure that board members now are appointed or not appointed, they're appointed at a level where they do have some governance experience. That's not for us to say, but we will certainly get involved at whatever level the Minister deems appropriate for us to help that process. We are developing that and one of the information items I gave you from...(inaudible)...kind of sets out where we're going with developing the skill set for board members.

So to answer your question, we have an in-house orientation process, we have an association that we attend once a year and it's a governance training model that shows if you're flying at 30,000 feet how to govern. We feel that while is great for low level, we felt that we wanted to go beyond that. We've hired a governance advisor now to come in a work with us more so and we've had some great suggestions from, for example Willard, at our last meeting that now what we are also going to do from a technical level is each board member will set aside a couple of hours and we'll say we want a two-hour debrief on causation, or a portion of what our operations does. We don't want to go there, we don't want to adjudicate cases and that's not our role, but we certainly should have the background information and know I guess in more detail. So those are some of the other things we are going to do as a GC. I don't know if any GC members would like to speak to that.

ACTING CHAIRMAN (Mr. Braden): I'll go to Mr. Pokiak. This is an area, the whole area of training, was something that committee has expressed a lot of interest in in our own examinations, so this is a good discussion. Mr. Pokiak.

MR. POKIAK: Thank you, Mr. Chairman. Earlier Mr. Hagen indicated that he was just appointed recently, April 18th of this year. So I think the question I'll have is like Mr. Rodgers, the chair, mentioned earlier that they do have orientation that they're getting, but I think I was looking for more specific dates that they can provide us with, provide the committee here. Say when Mr. Rodgers was first appointed last year, I'm sure that's when you have a training of a specific date that it was. So maybe they can provide that sometime. Thank you.

ACTING CHAIRMAN (Mr. Braden): Okay. To the question of specific dates, it's perhaps digging a little deeper than the overall intent of this session here, Mr. Pokiak. But if the council could undertake to provide some of that for us, then we can continue on. Mr. Hagen had indicated an interest in responding. Mr. Hagen.

MR. HAGEN: Thank you. I guess because I've probably been given the in-house orientation the last which was in the month, I was given the heads up before the appointment was made so I think any person who is accepting an appointment, a lot of the responsibility is on the individual. So you go onto the website of the WCB which is filled with information history that you require. You can also go into the 400-plus page act, which I can honestly say it took me a while but I did manage to make it through. I went to sleep a lot of nights, though, before I got where I wanted to be. But there is a lot of information there on the website and I did do an in-house orientation with Mr. Clark

and his very able assistant, Jeannie Johnson, who is, anything you need to know basically about the act she can kind of read it off to you. So I found their efforts in the in-house orientation and just speaking with the members, some of the long-timers like Steve and Bill, sitting down and interacting with them very, very valuable. That's what you have to do to get right to the guts of the matter, I believe. But I find the information readily available on training assessable if you choose to go and get it. Thank you.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Hagen. Mr. Pokiak. Okay, I welcome the comments from Members. Looking at the clock here and the breadth of issues that we still would like to look at, I'm going to ask for brief comments to the comments. Mr. Petersen.

MR. PETERSEN: In regard to specific training, I had the benefit of being on the legislative review panel for a year prior to being appointed to the board. So I had perhaps...I mean I've read the act, we covered all the policies, so I had a really good in-depth knowledge of the board before getting appointed. Since I've been appointed, I've attended three governance sessions, our own Governance Council...(inaudible)...I've also gone to a couple of duty to accommodate coordinations to find out about that issue, and considering going to a return to work conference, as well, to get some more information on that for the upcoming policies. It's very receptive; we just have to let the chair know what we want to take and if they feel it's pertinent to our role as a GC, they're more than receptive to sending us anywhere we want to go for courses. So that's not an issue.

ACTING CHAIRMAN (Mr. Braden): Okay. Thank you. I have Ms. Lee and then Mr. Ramsay on the list here. Perhaps we'll go to Mr. McLeod and give him his first appearance on stage here. Even as chair, once we've gone around, there are a few points that I would like to come in with. Mrs. Groenewegen. Thank you. Mr. McLeod will go ahead and then we're coming up 10:30. Perhaps we'll signal a 10-minute break and carry on from there. Mr. McLeod.

MR. MCLEOD: Thank you very much, Mr. Chair. In the report, it speaks to the council's performance and the need to have an objective assessment. In the council's response, it said that they hired an independent expert governance advisor. That's where I'd like to go, is I'd like to know would it be this person's responsibility to do an assessment on the board? Isn't it something that you'd think the Minister would not initiate, is to do a performance assessment on the board? In no way am I questioning the performance of the board; I'm just going by what I'm seeing in the report. That would be my question. You hire someone to do an assessment. You hire them, so how objective is the assessment going to be and would it not be initiated by the Minister? Thank you, Mr. Chairman.

ACTING CHAIRMAN (Mr. Braden): Okay, Mr. McLeod. To assessments and the board's responsibility to look at self in the mirror, Mr. Rodgers.

MR. RODGERS: That's a good question. Mr. Dinner (sic) is a governance expert. Mr. Dinner (sic) is not going to do any assessment of us per se. What he does is gives us the best practices models that are out there and the tools to do that ourselves and to develop our policy to do that. For example, the Governance Council would be doing my assessment from the board level as to how I chair the meetings. We're also looking at developing protocol, and I think some of that was what I had handed out. Obviously we want the Minister's office to assess us and we'd like feedback from the MLAs and the committee. So what we are looking at is developing 360 models. So he doesn't do the assessment. What he does is he offers us, look, this is what's out there. This is his speciality. This is what other boards are doing, these are the tools you need to be able to get to where you want to be to be able to assess yourself, be critical and realistic, and this is what he's bringing to us. So he will give us some input as to what he...He'll observe our meetings and kind of say these are some of the things I've observed, but he's not there to kind of assess us, he's there to give us the tools to do it.

ACTING CHAIRMAN (Mr. Braden): Okay. Mr. McLeod.

MR. MCLEOD: Thank you, Mr. Chair, and thanks to Denny. So that would be the second part of the council's response to the recommendation that you are currently working on a process to achieve this result and that's the process that you just explained to me.

Another area I want to just touch on real briefly and then I'll finish with that, and I brought this up with the AG yesterday and I asked her if during the review they received any indication that WCB is preparing for the impending pipeline and 12,000 workers. So that's a question I'd like to pose to the Governance Council, is you know obviously if the pipeline goes ahead there's going to be thousands of workers up here. So are you preparing for these workers? Is there any plans in place to increase staff? Maybe a new office in Inuvik might help.

---Laughter

AN HON. MEMBER: Good one.

MR. MCLEOD: Right now you can outvote the other two.

---Laughter

So that would be my question, is WCB preparing for...There's going to be a crush of workers. Thank you.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. McLeod. Good question and I think it was addressed under the context of risk management in the GC's report. Some of these others are global issues. Are they on the radar screen and to what extent? Mr. Rodgers.

MR. RODGERS: Thank you, Mr. Chair. One brief comment as well to the last question just so I can finish it up. Mr. Simpson has been nice enough to give us some advice on 360 models for evaluating ourselves as well. So I just wanted to get that thank you in there to him.

Yes, again great question. We have hired consultants. Right now we are negotiating to set what's called a mega project rate, similar to what they did in PEI when they built the bridge. We know this is a huge project and I guess the concern we have and what we have to make sure we do is we don't leave the employers and workers in the Northwest Territories to pay for anything that could possibly happen on building a pipeline, because you never really know what the cost of a project is in WCB until four or five years down the road. So to answer your question, yes, we are right now negotiating with Imperial Oil in the early stages to develop a mega project rate for that to ensure that we are covering our fiduciary responsibility there as well. The office in Inuvik we'll have to talk a little later about.

---Laughter

ACTING CHAIRMAN (Mr. Braden): Okay. Thank you, Mr. Rodgers. Mr. McLeod. Alright. Are you anxious to get going?

MRS. GROENEWEGEN: (microphone turned off)

ACTING CHAIRMAN (Mr. Braden): Mrs. Groenewegen then.

MRS. GROENEWEGEN: Thank you, Mr. Chairman. I just want to take a little different tact here. We've been kind of getting into the technical details of the operations of the Governance Council. First of all, I'd like to thank the members of the Governance Council for doing this. I mean everyone who sits on this council also has another life, so to me I view this to some extent as you get a stipend but it is community service on a territorial scale. That's how I view it. None of these folks are full time at this job.

Having said that, we can talk about training and orientation and governance experts and people that can come in and talk to you about best practices and I've listened to them at some length. Sandy and I sat on a boards and agencies review so we know about governance. It's like a religion, in this day and age, unto itself. It's a culture. I'm very interested in the measures and getting something done. But what I want to ask the members of the GC, I want to ask them, because they could be doing a lot of different things at a territorial level of interest, sitting on territorial boards and things like that. I want to ask you if you're passionate about the issues of the WCB, not just how all the gears turn within the organization but about the actual issues that the WCB is primarily there to address. It might be a bit of a redundant question because I sit here and look at you and I certainly know Steve's interest and outspokenness and activism on behalf of workers over the years. That's kind of hard to miss if you live here in the North. But I'd just kind of like to get your take on that and how all this discussion contributes. I'm interested in progress. I'm interested in the Governance Council being the best

organization that it can be. And, yes, all these other things we're talking about as it feeds into that, but at the end of the day, the people who are on that council have got to be passionate about the issues that a WCB deals with as an institution and I'd just like you to speak to that. Thank you.

ACTING CHAIRMAN (Mr. Braden): Okay. Thank you, Mrs. Groenewegen. Big, big field there but a very relevant one to why we're here today exploring the things we're exploring. I'm seeing a couple of nods. I'm going to start with Mr. Rodgers, the chair, and then Mr. Aho. Mr. Rodgers.

MR. RODGERS: That's an interesting question, because I was appointed on the board in 2002 and since that time the board has changed completely. No, myself and Steve were on there actually. We were appointed at the same time. When people come up to me and inform me and speak to me about the board and what you're doing there, and gee you guys are...A lot of people see you are a bunch of stuffed suits up there. You guys are up there and administration does the work and you just sit back there, and there's a couple of things they realize. First of all, I don't think anybody sits on this board for the money, for the stipend. I think you're correct there. We're there because it's interesting, it's a challenge and it's something we want to do. The other thing I always say is if they could see the board I have now, because now I know that I have a board here that's capable and committed and got the intelligence to move forward and do a lot of these things. If you just sit down and sit in on one meeting, you'd probably need about 20 minutes and then you'd never have to ask the question whether or not they're passionate about the issues, because we run the gamut when we go to those meetings. I can tell you personally I do it because I enjoy it; it's a challenge. I won't speak for the board members, but I can say as the chair there's a lot of passion there and this board is definitely capable of moving forward.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Rodgers. Mr. Aho.

MR. AHO: Thank you, Mr. Chair. I guess my passion for workers' compensation is a long history. I've been in the construction industry and president of that association for a long, long period of time, and that industry has a continual interaction with workers' compensation boards and one of my roles as president was always dealing with workers' compensation issues that relate to the construction industry. That's where my initial interest in workers' compensation came from.

I had an opportunity to be on the board, or I had an opportunity to put my name forward for the board a number of years ago, but I didn't have the time or the ability because of other commitments with other associations so that I would be able to set aside the time to do it, and it is quite a commitment. There is quite a time commitment to doing what we do. Since I've been on the board I've had a greater opportunity to understand and participate in the workings of the board, and it's been a lot of fun. I guess my commitment to the board I would have to, as witness to it, would have to be probably brother Steve over there, considering the opposite ends of the spectrum that him and I

come from. I think if I were to ask anybody to witness my commitment to this board he would probably be the individual that I would ask to do that.

If I can make...Are we going to have an opportunity to make a comment at some point in this process? It goes back to Mr. Ramsay's question in regard to...Now I forget the term; mental block. Mr. Ramsay.

ACTING CHAIRMAN (Mr. Braden): Accountability?

MR. AHO: No, no, no, not accountability. Presumption. Presumption. The question of presumption. We go back to the question of presumption, or I'd like to if I could briefly just for a moment. Presumption does not mean that every claim that comes to the board is satisfied to the claimant. It's our responsibility to make some make some really, really tough decisions when it comes to workers, and in regard to employers and their rates and that sort of stuff. That's part of our job, and a big part of our job is to say no. Sometimes we have to say no and I hope people understand and appreciate that. We were put there not only to facilitate and to ensure that things are done right, but sometimes we're put there to say no and we have to stand by that.

I do believe the Auditor General's report indicated that workers' compensation is functioning quite well. It's a good machine. And there are definitely situations out there that are not satisfied, but in some situations you run across a situation where as a board you know you have to say no and you do say no, and when you do say no that's not the answer that the individual or the corporation wanted to hear. So it's a tough situation we deal with and I hope you people can appreciate that that's work that we have to do.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Aho. Mr. Petersen.

MR. PETERSEN: Thank you. I appreciate the fact that people are aware of advocacy for workers. I get joked for having WCB as my home page and that sort of stuff. Like that's the kind of person I have when I'm on this board. Also being a labour rep we also get more interaction with workers than my counterparts do, so we're put in a tricky situation. We often have to hand issues off to the workers' advisor office and stuff like that, because I can't intervene at that level anymore. But at the same time, I've very adamant about wearing my hat until we come to consensus. I don't leave a labour hat at the door, I take it right to the table. Then once we come to an agreement however, we speak with one voice. But I've very passionate about raising the issues and I lose more than I win but I have won a few and I've been very happy about being able to do that, and our other board members are very respectful of my voice and they always give me plenty of voice at the table. So I really appreciate and it's an honour to serve on this board, quite frankly.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Petersen. Mrs. Groenewegen.

MRS. GROENEWEGEN: Just a final comment then. So this gives me cause for confidence with respect to the Workers' Compensation Board, because you do have

quite an amazing mandate. It's kind of similar to ours. The sky's the limit really, you know, how much you can advance your agenda. If you've got the resources and the support and the kind of help that you need to do your job, I can appreciate the fact that the board is different members at different times and it's evolving, but I feel confident that the progress is being made in a good direction and we have quite a group of competent people from different perspectives that will ensure that that happens. That's not a question at all; just a comment. Thank you.

ACTING CHAIRMAN (Mr. Braden): Okay. A comment to the comment. I see Mr. Rodgers and Mr. Hagen. Please go ahead, gentlemen, and then I think we'll take a time out here. Thank you, Mr. Rodgers.

MR. RODGERS: Thank you, Mr. Chair. Thank you very much for that comment; much appreciated by myself and I'm sure the board. I appreciate it is a huge ship; I mean a super tanker. I guess the analogy takes 22 miles to go five degrees. So we think we're on the right track. We ask you, we know you get constituents who aren't happy with us, you know. As Bill said, we know sometimes we have to say no and that's not nice, but we are moving a ship. I can feel with confidence with this group. Bear with us and we will; we are moving a ship and we are going in the right direction. Again, I challenge anybody to sit in one of our meetings for half an hour and you can see that and you can feel it. Thank you.

ACTING CHAIRMAN (Mr. Braden): Alright. Mr. Hagen.

MR. HAGEN: In answer to questions of also why you would sit on the Workers' Compensation Board, I was born and raised in the NWT and I can remember very well the workers' rights over half a century ago, how changes have evolved. I can remember working for the territorial government for \$1.25 an hour, so things have changed. I think a lot of the measure of how the territory has changed and evolved can be a reflection of the Workers' Compensation Board and how it's treated its workers while they're in their time of need. I agree totally with the Auditor General's report, from being a new member on the outside looking in still, and with Sandy Lee that there's problems. There's absolutely no doubt about that. I don't think this session here is supposed to be a feel good session. There has to be major changes and I agree totally with the Auditor General's report. He's a man that's been in the North for years and years, well respected all the way to the Arctic Ocean and when he says those problems are there, those problems are there and probably more because he didn't do a complete audit of the Workers' Compensation Board. There has to be major changes and that starts from the top. I think it has to be done together. There has to be more input from the legislators who can legislate the existence that they choose to. And that's just a fact. So it has to evolve again and it has been stagnant on these changes. I think you have a board, a Governance Council here who's willing to help make the changes, but I don't know whether we can do it alone without a lot of feedback.

ACTING CHAIRMAN (Mr. Braden): Okay. Folks, let's try for a 10-minute break. I wanted to...We have a large scope, a number of issues to get into. This is an important

first round and committee may invite the council back at a later date to pick things up, but I do want to make sure we have the opportunity to cover the field if we can. Is there availability and interest in continuing through lunch if we need to? Are you available? What does committee say?

MRS. GROENEWEGEN: (microphone turned off)

ACTING CHAIRMAN (Mr. Braden): Not for Jane, and Sandy has a commitment.

---Interjection

ACTING CHAIRMAN (Mr. Braden): Well, we can continue through, it's do we have the topics and the range? Lunch?

---Interjection

ACTING CHAIRMAN (Mr. Braden): Yes, well there will be the four of us here.

MS. LEE: Go through lunch.

ACTING CHAIRMAN (Mr. Braden): Okay. We'll plan on going through lunch then and we'll have something brought up. Okay.

---SHORT RECESS

ACTING CHAIRMAN (Mr. Braden): Thank you, everybody. We'll resume with Ms. Lee on the list and then Mr. Ramsay again. Ms. Lee.

MS. LEE: Thank you, Mr. Chairman. I promise I will try to be more brief than I was before. I think that we all understand that we have a really great opportunity as GC and MLAs. I think we do accept, for example, like the auditors before stated, that we need to get GC involved in more policy development, policy formulation. I am hearing about all that is being done. Even accepting that, we have a lot more room to go. I can say by convention and practice for many years, I do believe very strongly and I don't mean like the tail wagging the dog, which is a very negative connotation to me. What I am saying is I think Ministers' roles have been diminished. I don't think that has been exercised as fully as they should be. The Governance Council work has not been diminished. I am not speaking about the board we have before us. I am talking from years. I believe that a lot of technical work has been overemphasized in a way. Yesterday, the medical advisor himself stated that his role is strictly advisory. But if you talk to anybody who works with files, that's not the understanding. There's a lot more weight given to the medical advisor role than even he says he has the right to.

What I am saying is this is an historical opportunity for Members and the GC to work on how we change that. How do we enhance that? Having said that, I gave some examples about different issues that came up and I continue to still hear that we

consult, we consult and we consult. That's the input process. I want to talk about the output process now. I was at the ratepayers' meeting and the communication between the board and the stakeholders was not conducive. I don't mean the board chairs and the staff that were there. I didn't see an environment where...I want to hear what you have to say but not a lot about what the input will be. I want to be in a situation where I am not raising these questions. I think it's the Governance Council who should be answering to public input. I am interested in what mechanism that we are going to work on because workers coming in and changing...The Auditor General's report says the board does a good job following the policies that they have. That's fine. This is financially sound footing, but what do we do when we need to change, recognize these diseases and conditions?

Talking about the rate pay structure, we have to have a process so that you don't get phone calls from MLAs or have a whole bunch of public who's not happy. Mr. Chair, I want to know if I could ask the chair of the board to make a commitment as to making a proposal to MLAs as to how you see your policy development work happening. The board chair already stated they have already met five times. You have other lives and other jobs. I think you need more resources to make that more effective. So I would like to know if he could commit to bringing to us a proposal.

ACTING CHAIRMAN (Mr. Braden): Thank you, Ms. Lee. To policy development and resources, Mr. Rodgers.

MR. RODGERS: Thank you. First I will just touch on what we do do and then I can touch on some of the things that we are talking about. We have what's called a comprehensive policy review plan, which I am not sure if that was presented by administration or not, which means every three years all our policies will be turned over and brought to the table, some changes may be stylistic or grammatical, some changes may be more to do with emerging trends and so on. We do do that as a GC policy. We do have a policy review plan that we have every meeting that we look at and say where are we now in our policies. We did discuss this in Iqaluit and say maybe we would like them to go a little quicker. We want to reveal more than that. We haven't decided yet, but we talked about adding an extra day on each meeting so we can specifically focus on more policies and get even more policies to our table and maybe speed that process up and have separate meetings on those. So that's something we are doing.

Regarding the commitment to MLAs, there was a recommendation in there about a liaison position. That is something we are discussing as well as a GC. Part of implementing to developing a protocol to communicate with the Minister's office and committees as well, and Regular MLAs. Part of that process we are seriously considering a liaison position. We are at the early stages of that process right now. We are discussing it. It is a recommendation and one that we take serious. We envision that person in carrying out the protocol, whatever we develop, the communications, guidelines, whatever you want to call them, to be able to seek input from MLAs as well as to where they would like to see us going.

Ms. Lee, I know you mentioned the actual sit-down with subclass 76. Were you at the sit-down when they actually came and spoke with the GC? We had six of them represented there. We actually brought them into our boardroom in the building and I chaired the meeting. We had both our employer reps there and spoke to them as a GC, with just us in the room and the MLAs attended that one. We would do that anytime if it's a legitimate issue, but you have to realize too that when we are setting rates, as you put it, there is a process to do that. There is a whole collective liability issue; there is a way to do it that workers' compensation systems all over the country do. That's a process.

ACTING CHAIRMAN (Mr. Braden): To this very specific issue, subclass 76 and the events surrounding that, it is a layer and a level of detail that is not the intent of this morning or the purpose of the best use of our time. I am going to ask both committee members and witnesses, can we please park that one? We do have limited time and broader and bigger issues to the purpose of the day today. Ms. Lee.

MS. LEE: I don't mean to challenge you, but what's the rule?

ACTING CHAIRMAN (Mr. Braden): It is a specific operational event and we're here to look at bigger and broader issues. I am not saying that it cannot be raised at some other time, but today with all the folks who are here today, I don't think it serves the purpose. Ms. Lee.

MS. LEE: Okay. He wants to speak.

ACTING CHAIRMAN (Mr. Braden): Mr. Petersen, if you please, not the specific issue of the subclass.

MR. PETERSEN: No, it's just about our reaction to policies. If it's brought to our attention that there is a deficiency in the policy or the policy doesn't seem to be encompassing enough, we change it. We just changed two policies last meeting. They bring them to us. We evaluate whether or not it's justified and we make the adjustments. So we are very reactive when things come to our table and we discuss them. So when it comes to policies, we can and we do take very serious concerns and we alter them if it's required.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Petersen. Ms. Lee.

MS. LEE: I don't know if I am going to be ruled out of order if I ask him what those policy changes were. I am desperately trying to have us and you be accountable to the public we serve. I am not talking about a communication plan. I am not talking about a protocol. I think that is one thing that needs to be done, but that is a band-aid if you think of that as a solution. It's not about liaison because that means there is a communication problem between MLAs and the GC and board. I don't agree with that. I think we are talking about substantive changes. I am talking about accountability. I want to be out of business in dealing with WCB issues. I don't think they need to come to the

Legislative Assembly. What we have to work on is a mechanism, a process people can buy into. I don't want to hear, when you call, we'll meet. What is the accountability on the output? How can we increase the resources of the board? Can we talk about setting up a process? I am not talking about protocol; I am not talking about communication strategy. How can workers with long-term outstanding issues and a lot of them are going to court, which they aren't supposed to...Employers, I am telling you, I don't want to get specific, but they could have 10,000 meetings. They don't feel that anybody is accountable to them. That's specific. But because we don't have a process, we don't have a mechanism whereby the Governance Council could incorporate the opinions from the outside world and have it looked at in a way that people can accept and understand in terms of process and that the Governance Council can go and account to them about what happened. Somebody in this process has to be accountable about how the board policies, how its operations, policy directions are reflective and it's evolving and is listening to the public it serves and we don't have that. Please do not say it's a communication strategy thing.

ACTING CHAIRMAN (Mr. Braden): You scoped that one out very well, I think. Mr. Rodgers.

MR. RODGERS: With all due respect, I think the reason those WCB issues are at the Legislature is because they are brought there by MLAs through their constituents.

MS. LEE: ...(inaudible)...

ACTING CHAIRMAN (Mr. Braden): Mr. Rodgers has the floor.

MR. RODGERS: So that leads me to believe that if an MLA brings that issue to the Legislature, then they must think that we are doing something fundamentally wrong. There is something fundamentally wrong. So they must have looked at this case and said something has been done wrong here. If that's the case, then they would have got the policy on whatever case that may be. I don't want to get into specific cases of adjudicating here, but the procedure rate now, I would suggest and you are an MLA and you have a concern or a constituent coming to you, you will go through the Minister and/or me and say this is the issue I have had. I have had MLAs call me and say I have an issue and I get the response for them. I say this is how the system works. That's the answer. Then if you don't agree with how the system works and I would be more than happy to give you every policy we have and every change we've made. You can certainly have every one. I can give them to you and say tell me which policy do you think is wrong and give us your input. We will look at that and we will take that information. With all due respect, the policies are in place, we set them, we review them on a regular basis, are they perfect? Sometimes we have to say no, there is no doubt about that. Again, I would offer every policy and we can give you the whole list and say here they are, tell me which ones you think are wrong. Tell me which ones you want us to fix. Give us your input and we will look at them. I will commit to that right now.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Rodgers. Ms. Lee, one more time and then I am going to go to Mr. Ramsay.

MS. LEE: Okay. Let me make this clear. We are working through lunch, right? This is the only chance I am going to get... This is my last kick at the cat. There is a Member's privilege and our job is to ask questions that concern issues from the constituents. In fact, with all due respect, I don't have to follow the protocol. The reason they get to where we get to, and I hope you will give us credit that when we listen to a story, we understand there are two sides to a story. I have said many times that we raise issues that become routine. We know not to raise so and so didn't get such and such a benefit, why don't you give it to them. That's not where we are at. We are talking policy directions, policy issues, mechanisms in place to address those issues. I think there has to be a very clear understanding. Mr. Hagen mentioned that already.

We passed legislation that allows WCB to get into a real estate transaction larger than \$100,000. I have no idea what the impact of that will be. We have the power to change the legislation so that you cannot do that. We have the power to change legislation so maybe every case could go through six medical officers. I am saying this is not just a protocol issue. We have to do something to account to the public and we have a system that is not working. We can't do it by a band-aid solution. If they were working, we wouldn't be here. We would not be here. You know what? I'm sorry. With all due respect, I am not hearing how we are going to fundamentally change the system so that GC becomes the proper independent policy development, policy-making body that it should be, where the GC could take into consideration the policy input questions that are coming forward. I am not hearing that. I am sorry. I am not hearing anything about how we can prevent the long-term condition cases to go to court. I am just not hearing that. What we are saying is status quo is what it is and we just need a little jiggling. I submit to you, if that were the case, we wouldn't be here.

ACTING CHAIRMAN (Mr. Braden): Thank you. Mr. Rodgers.

MR. RODGERS: I guess my answer hasn't changed a lot from the previous one. Again, with all due respect, I don't think it's fair to say... Let me rephrase that. The AG's report does not say the system is not working. I think it's not fair to say the system is not working. Are we perfect? No, we're not. Do we have some issues we need to deal with? Yes, we do. A lot of this report to me is on protocol and is on consultation and is on getting input. Is there a couple of specific policies out there, one in particular we all know has been challenged, yes. Are we working on that and do we discuss it as a GC? Yes, we do. But to say the system as a whole is not working, I think... Again, you are entitled to your opinion and I respect your opinion, but to say it's not working as a whole I would say is incorrect. We have work to do.

ACTING CHAIRMAN (Mr. Braden): Thank you, Ms. Lee, Mr. Rodgers. Mr. Ramsay.

MR. RAMSAY: Thank you, Mr. Chairman. It's an interesting topic we are onto now. One of the things that I think could happen in the near future is with the amount of

claims that are outstanding and people who are upset with the way they've been mistreated and maybe there is some misinformation there, it could be challenged. I think one of the things the WCB could look at doing is setting up a fund, a legal fund, for claimants to access to challenge the decisions of the WCB that we have here. I think if we had something in place, a mechanism like that in place, where claimants could access that to challenge the decisions, and they would have to go completely off the tracks to get to that stage, but that might give claimants a little bit of peace of mind that if they aren't satisfied, they could take legal action against the WCB and that's one area that maybe I could hear a bit of a comment from the Governance Council members who are here with us today. Before I get there, I just wanted to ask another question here and that is having the president as a non-voting member in Governance Council meetings, does that influence decision-making in any way? I would like to ask you guys that as well. In fact, I would also like to ask does the Governance Council ever meet in camera without any board staff or the president and talk about issues and policies specifically without any input from the board itself and the president?

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Ramsay. I think I caught about three questions in that opening round. For clarity, we have the legal fund for workers, the second one...Mr. Ramsay, the topic?

MR. RAMSAY: Was having the president as a non-voting member may or may not influence decision-making. The other question was whether the Governance Council ever meets in the absence of the president and/or administration.

ACTING CHAIRMAN (Mr. Braden): Okay. So there are three questions to the board. Bill Aho indicated he was ready to take on the question of the idea of having a legal fund. No, not that one? You can do some of the traffic management on your side to these three questions. Mr. Petersen.

MR. PETERSEN: Thanks, Dave. I appreciate your concern about having resources for workers to challenge decisions, but, quite frankly, litigation is not what compensation systems is about. It was initially set up for peers to sit down and discuss, with peers, concerns. We are not supposed to get into specialists. It is supposed to be worker reps and employer reps sitting down compassionately overviews the file. What's happened now is the offshoot is that a worker is pretty much forced to go to the justice system at his own expense at this point in time. Many of them are resorting to legal aid because unfortunately their financial situations have deteriorated to the point where they have to access legal aid. It's unfortunate that that is what's happening. I think if we were able to go and be much more diligent in our principles and make sure the presumption favours the worker and those issues are addressed with that sort of focus, we would avoid a lot of this litigation. So as far as your suggestion goes, although I appreciate where it's coming from, I think it would just already add another layer to an already bureaucratic system that would really not have anymore resolve than we have now.

So in that way, I really don't like litigation at all in the system. I think that it's unfortunate the workers are forced to go to the Supreme Court. We do have a couple of workers in

that scenario now and, first of all, it's not good for us because the optics are bad. I think that it's something we can resolve in-house if we were more diligent in enforcing that presumption for the worker.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Petersen and Mr. Aho. There are still a couple of outstanding points that Mr. Ramsay had made. Go ahead.

MR. AHO: Thank you, Mr. Chairman. To your questions, Mr. Ramsay, on whether council meets in the absence of staff/administration, the simple answer to that question is yes, we meet quite regularly to go over a number of things that need to be discussed without staff or management.

Does the president influence, as a non-voting member of council, our decisions, and the answer to that question is absolutely. He runs a wealth of knowledge to our council table and he provides us with some insight and provides us with all sides of the story, so we can make a reasoned and rationale decision with regard to it. He presents us with a complete picture even from the administration side. So, yes, he does influence what we say. Does he make the decision? No, we make the decision. All the policies are ours. All the decisions are ours. We make them.

If I can comment to the legal fund, one thing I would like to possibly maybe even refer to the document, but in the Auditor General's report, he did indicate that we do handle most of the claims very, very well. He indicated there may be a few. I have heard here a couple of times today that the mounting number of claims that are occurring which we are not seeing as GC. We know there are some issues out there and I think the Auditor General's report specifically dealt with those indicating that there are some there. They are situations that need to be dealt with and there needs to be a creative fashion brought forward to deal with those particular issues. We are working towards that. I made a statement earlier. It is our role as WCB to evaluate entirely a claim and determine whether it's compensable or not and sometimes the answer is no. Sometimes those people, when they get no as an answer, continue to come forward and then they bring that to your table. There has to be an understanding that sometimes that occurs. We cannot simply open the vault and resolve all of the... We can, we can resolve all of the issues simply opening the vault and giving everybody whatever they liked, but I don't know that that is what they are there for. I don't know that's what you people want us there for. We are there to make reasonable and rationale decisions. Sometimes the answer is no.

A legal fund, I think Steve made a comment to it. I think it would be a difficult one to establish. As an employer and as an employer's representative, I am sure there would be some reservation there to provide money to people to have them turn around and sue you for more money. It might be a legislated requirement as opposed to a policy requirement, I think.

---Interjection

MR. AHO: They've got lots of money. According to Steve, they have lots of money.

---Laughter

ACTING CHAIRMAN (Mr. Braden): I think, Mr. Ramsay, all three of your questions were addressed there nicely. Mr. Ramsay.

MR. RAMSAY: Thank you for your indulgence, Mr. Chair. I wanted to ask this question of the Governance Council members who are here, the workers' advisor is here with us today. In trying to maybe get some more independence in how that office is funded and the advocacy that should take place out of that office, maybe as part of the solution here, the WCB could look at allowing that office more independence in terms of funding. The Minister will be here with us tomorrow and I am going to ask the Minister this as well. Is there a way that somebody else should pay for the operation of that office and perhaps get another person in to help in the advocacy for claimants and if they want, they can bill the WCB back? It cuts the ties with the WCB. That might be an important step to take here in terms of trying to give some peace of mind to claimants, so there's not that...I know it's technically independent right now, but if you cut the purse strings and get some more help in that office, that might be one way. I would like to ask you guys your opinion. I know you are on the Governance Council and you work with this stuff all the time. What would be your feeling on trying to get financial independence and more of a complete arm's length away from the WCB from the workers' advisor's office and what he's trying to do?

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Ramsay. Mr. Petersen.

MR. PETERSEN: Thank you. As a labour rep, I do direct a lot of workers over to Colin's office. Unfortunately, there are optics out there that the workers feel the office has co-opted or is part of the compensation system. We did address it last time by having the advisor's office paid by the Department of Justice. There is that arm's length. The optics that we give him the money is not there. It would be difficult, I think, for him where the funding would come from if it didn't come from the accident fund. Really, next to the Appeals Tribunal, he is the workers' last resort for getting a hearing at no cost to the worker. If there are suggestions on how you felt, there could be a mechanism set up for where the money would come from. I mean you can't get the taxpayers to pay for it; you can't get employers to pay for it separately. There is money in the system. It's a matter of how much more can we do? I do believe the office is independent. I believe that Colin operates independently, he makes his own decisions. We have seen plenty of his decisions and he makes his comments and he's not afraid to make his comments. They are given to the Appeals Tribunal or the review panel, whoever he is making his comments to, and they deem to accept them or not. That's up to them.

As far as his individuality goes, I have comfort that his office is operating independently and is not in any way fettered by anything that we say or might do to them. I believe, too, knowing the individual personally, I don't think he's going to be influenced by review panel or appeal panel members. But you are right; there is an optic out there and that's

our job to try to change that to say that this is a safe haven to go to, you will get good advice. Not every worker's claim is valid, but the important thing to me when he talks to you later today, when you sit down and talk to the worker and explain the processes that have been gone to, what his entitlements are, they are not always happy, but at least they understand and have some comprehension of why they were denied or accepted. I believe Colin plays an important role there. A lot of times when things get to the worker advisor level, all it has been is a miscommunication or a misstep along the way that could be rectified very easily. I am not saying there is any blame there, but those things do occur. So I think Colin's office is important. The optics might be there, but unless you have some other mechanism in place where the funding would come from because really it has to come from the accident fund.

ACTING CHAIRMAN (Mr. Braden): Mr. Aho, did you indicate a response?

MR. AHO: Just a response on that, Mr. Chairman, as employer rep on the board, if the Legislative Assembly wanted to take over the responsibility of funding it, we would be more than happy to allow you to do that.

---Laughter

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Aho. They have all the money. Okay, Mr. Ramsay.

MR. RAMSAY: Thank you, Mr. Chairman. Getting back to the president and the decision-making process at the Governance Council level, I am just wondering how often, and I know both Bill and Denny mentioned that they are your policies and yours alone. Decisions are made and not influenced, although you take advice from the president. How often would you feel that policies or decisions are arrived at at the Governance Council level that you have substantially changed? They come from the resident, they come from the board. What have you substantially changed that has come from the board? Can you give me any examples?

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Ramsay. Mr. Rodgers.

MR. RODGERS: Thank you, Mr. Chairman. When policies come to the board, they typically come from our policy planning department. Yes, they have been vetted through the president's office, I am sure, as the president oversees all of it. I can say policies, when they come through our board, every single one of them are vetted well through our board. How many do we change? All of them? There are changes grammatically, stylistically. We don't like will, may or shall, we need to change that. Is this presumption in favour of the worker? We have good discussions at our board level. Those discussions when they take place, the majority of the discussion is through the board members. We have our strong employer rep on here. I believe Mr. Petersen actually wrote the act, so he can pretty much...So we do recite from it. We do make sure, I would say all the policies, unless it's just a stylistic or grammatical change or changing board to Governance Council, for example, things like that, will be pretty much

gone through and we'll say it's fine. Anything new, anything changed? It's vetted quite well and that vetting is done by the GC members, not the president, at that point. He's already had his kick at it.

ACTING CHAIRMAN (Mr. Braden): Okay, we've had a fairly thorough rinse. Mr. Petersen.

MR. PETERSEN: To give you an idea of how things come to us, things come to us first as information items, then they come to us as discussion items and then they come to us as decision items. So we are not there as an adversary, but when it comes to us as an information item, we give the heads up that we would like to have this changed. When it comes back as a discussion item, we say no, we still say there is further... Then when it comes to us as a decision, we say sorry, we still need more. We have ample opportunity to have input and we do take that input and it's received well by the policy people who were dealing with it. So it doesn't hit our table to make a decision on a Tuesday when we've had ample opportunity to deal with it.

ACTING CHAIRMAN (Mr. Braden): If I might bolt a bit of an addendum to that one, say over the last five years, how often have you gone out to stakeholders directly with a piece of policy and said what do you think, or is the process largely internalized? Mr. Rodgers.

MR. RODGERS: Thank you. Well, we have our new consultation policy. How often do they go out? Well, now they go out every time. In the past, we always consulted. Steve, maybe you can...

ACTING CHAIRMAN (Mr. Braden): Mr. Rodgers, what I am looking for is not specific to this or that policy, but is it the practice or the convention of the board of governors to say here is a policy that is universal or it's more to employers or whatever? Do you generally say yup, or we are going to go out and touch base with these folks? Would you say you have done that on a routine, consistent and thorough basis?

MR. RODGERS: All the way. Again, I am trying to think back to '02 when I first came up, but maybe now we do it over and above. We go back and would send them back to a physiotherapist or someone like that. I know what we are doing now. I can speak for what we are doing now. In the past, consultation is something we've been debating the last couple of years to get it to the point where we can now say we need to consult more. We need to consult more. So we've pressured staff to give us an explanation of consulting. Consulting and transparency seem to be the two words we have been kicking around the most in the last couple of years. We are at a point now where we consult.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Rodgers. I think we are going to park that one for now and I am going to go to Mrs. Groenewegen and Ms. Lee.

MRS. GROENEWEGEN: Thank you, Mr. Chairman. I have a few comments to make and hopefully it will evolve into a question as I am going along here. It's not a specific question at this point yet. As I see it, the workers' compensation organization is a group of employers over here. These employers have these workers over here. They want to create a workplace that's safe and an environment that's safe for these workers. Unfortunately, accidents happen. So the Workers' Compensation Board tries to bring a balance to protect the interest of employers, so that their contribution to the program and to the underwriting the risks to the workplace are not exorbitant at the same time trying to bring the balance of fairness to the workers, which is what the employers are there for and making the contribution for, is to ensure that those workers... They are their workers, they are there to be looked after. Somewhere along the road here with the Workers' Compensation Board for the Northwest Territories and Nunavut, there has been, real or perceived, there has been a perception that this organization is not as responsive to the injured workers as it could be. As I said, maybe it's the small minority of unresolved cases or case where the answer has been no at the end of the entire... Thank you, I have the floor. At the end of the process, the answer has been no and that gets publicity, right? Somewhere this perception is out there. And you know what? Perception is reality. To the people who perceive it, that is their reality.

So I am kind of interested in knowing what the Governance Council can do to address those very intangible subjective perceptions. It has to do with things that we can't legislate. It has to do with the posture of the organization. It has to do with the psychology within the organization. When a client or a claimant interacts with the Workers' Compensation Board, is that, as Steve said, a compassionate, understanding, helpful, supportive interaction on the part of the WCB? Or is it something that is received with some degree of defensiveness or suspicion that someone is trying to defraud the system? There is a balance here. We are talking about things that are very intangible here, but somewhere along the lines I have to tell you from some of the folks who are even attending these proceedings, somewhere along the line, the Workers' Compensation Board, has, in spite of all your satisfied clients who have responded to surveys and said we were well looked after, policies were adhered to, you perform and the workers' compensation insurance, for the lack of a better word, did what it was supposed to do for us, thank you very much. In spite of that, there is this perception out there. I don't really know what the Governance Council can do, because you cannot legislate an attitude.

I have a little, small organization and I tell the people at my reception desk, when you say good morning, I want you to, in your voice, say I am so glad you called, what can I do to help you today? I want to hear that in your voice when you answer the telephone. I call the Workers' Compensation Board, I get an answering machine or some kind of automated system that says it's cold. I don't know if everybody gets that, but I have only called a couple of times and that's what I got when I called there. If you can pay attention to those kinds of small details that send that kind of message.

We have a workers' advisor and that's great. Do we have a counsellor? People quite often after they are injured are in trauma that comes to bear on their families, on their

finances. Would it be the honourable thing to have some form of, going back to that work, compassion? On the very human side, not on the technical policies of the Workers' Compensation Board, not on the detail of the treatment they are going to receive or the compensation they are going to receive, but just on how they are doing as a human being and how they are coping.

I am a capitalist, I have to tell you. I have been an employer for many, many years but I would like to think of myself as compassionate too and we all care about our workers, so we want our Workers' Compensation Board to reflect those kinds of values that we want to see in our workplaces as well.

Anyway, again, kind of a vague question, but are there policies in the Governance Council where you can bring those kinds of impacts to bear on the overall organization and psychology of that organization? Thank you.

ACTING CHAIRMAN (Mr. Braden): Mrs. Groenewegen, we did talk about the culture, the corporate culture of the WCB very much in that context. Mr. Rodgers.

MR. RODGERS: Thank you. Thank you for that question and comment. You're absolutely right. What can we do? I know speaking personally, and I think I speak on behalf of the board, people like people to like them. I like people to like me. I think I am the type of person, so what can we do? We can set the tone at the top. They do, I mean, I am assuming most people want to be nice and want to be liked. We could set the tone. That's one thing we could do culturally and it's very difficult to do.

What can we do from a policy point of view? I can give you two examples of things that we are starting to implement now, again starting to turn this big ship. One is part of the accountability agreement with the CEO, we give him specific deliverables that we evaluate him on at the end of the year. We have added a new deliverable to his package, which is to give sensitivity training to all our claims staff in the department on an annual basis. I think that's something that's important.

Claims, adjudicators and managers are also, in some sense, counsellors. They are dealing with people who are in distress and who have obviously not had a good time. We put that right into the accountability agreement to ensure that sensitivity training was given and to relay, as we have said to our senior management team, this is not a slap on the wrist, this is a positive tool that we should be using and we should want to do this.

The other thing we've done that we have brought forward as a GC that was brought up here this morning, or maybe yesterday, was plain language. We do realize that our letters have gone and we've read some of them as a GC and said not good enough. We have to get things in plain language, not only the letters going out to claimants, but our website. When you go in and read a policy and Steve had mentioned to GC in Iqaluit, you go on that website, you pull a policy up, what did that just say? I have no idea. So I get frustrated and I give it up. Then I call somebody and because I am already

frustrated, it begins. So we need to set the tone at the top. We need to put things in plain language and we need to ensure our staff get sensitivity training.

I think that's a good start. Again, that's where we are and those are the things we discussed as a GC.

ACTING CHAIRMAN (Mr. Braden): Mrs. Groenewegen, how can we test and move that through? It's a very good aspect.

MRS. GROENEWEGEN: It is difficult to measure. I guess we could test the system. See, that's the problem. We, sitting around this table, haven't had that interaction with this system. We haven't experienced that, or at least I haven't. I don't know. Apart from phoning there and talking to folks who have, but the ones we are going to talk to are not the satisfied people. We are going to talk to people who weren't satisfied, which brings me back to the issue of probably on a percentage basis and even on a case file basis, there is probably a finite number of unresolved cases. I am wondering if there would be any merit -- I don't know exactly how you would do it -- to review... They may have already gone through the whole thing; the workers' advisor, the Appeals Tribunal, but is there any way of having something in the organization that could take a second sober look at the details of a case?

I have talked to people in the public who have been improperly treated by this government. I am not talking about the Workers' Compensation Board, but by this government. I could tell you I totally believe their story. Sometimes with the bureaucracy, it gets so layered and tangled up and letters and communication and that, it is impossible to untangle it and sometimes you have to step back from it and look at the simple case. There has been a person here who has been following these proceedings fairly closely. For the small amount of sometimes money and the time that it would take to go back and read this, I am all for err on the side of the worker. Yes, protect the interest of the employers and the people who are contributing to supporting the plan.

I know we aren't supposed to talk about specific cases, but there was a case -- and this is totally understandable to me as a layperson -- somebody had a fractured ankle, it's a pre-existing injury, then they go to work and it's not uncommon to re-injure the same thing. Quite often, that's a point of weakness. That's where you are going to get re-injured. Now there is a big federal case to be made for the fact that sorry, that was a pre-injury. You know what? The fact of the matter is if a person can't work, let's get away from the technical thing. A re-injury occurred, the person can't work properly, they say they're in pain, that can be quantified to some extent. Let's get off the technical bandwagon and look at the realities of the case. Go ahead and err on the side of the worker when there is a reasonable question. You know what? Like I said yesterday, medicine is not a perfect science and we don't have a crystal ball. Doctors don't have x-ray vision. They can't read your mind and they can't feel your pain. They do the best they can, God bless them and I am thankful for them.

Anyways, I have totally diverged here and I can't remember what I was going to ask now. I started off on something good.

ACTING CHAIRMAN (Mr. Braden): Yes, it was the performance measures. If there are these requirements, for instance, to do the sensitivity training and these benchmarks. I think that's where Mrs. Groenewegen was going and very much where we are looking to for ways to measure how are these attitudes and intentions working out.

MRS. GROENEWEGEN: The second thing to that is, is there a way to go back to the limited number of cases of unhappy... Could you have somebody to look at the cold case files and see if there is something we missed along the way, something that could bring some resolution to these things?

ACTING CHAIRMAN (Mr. Braden): Thank you. Mr. Aho.

MR. AHO: The difficult cases we are referring to end up on our table at some point in time for a decision. We don't drill down into all the cases that occur, but there are some that come to us and decisions have to be made specifically when they go to court or something to that effect. Mrs. Groenewegen is asking if there is a way that they can be reviewed. Some of them are reviewed. Is there a way to resolve them? That's the magic bullet that we are looking for is a way to resolve them, short of simply opening the bank and paying them off. If that's the will of the Legislative Assembly, you are the people who provide us with instruction. If that's the root that you want to take, then we can make everybody happy.

There are cases where no is going to be the answer and they will continue to come back to you. I guess what we need is a good communication with the people who do provide us with our marching orders. We need them to understand what it is we do and we need them to understand some of the difficulties that we have to deal with. We need to understand that sometimes we have to say no. If they have questions, we have to have a good communication method with the people we are taking those instructions from in the act. We need to be able to communicate to them why we said no and we need an understanding there. We need to work together in order to make that perception of workers' compensation better. We need your help.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Aho. Mrs. Groenewegen.

MRS. GROENEWEGEN: I think that's good for me right now. I am probably making more comments than I am asking questions, but it's too tempting not to. Thank you.

ACTING CHAIRMAN (Mr. Braden): This is something that we've set... This is a new chapter in this process and in the relationship between the Legislature, the WCB and other stakeholders. It's the beginning of a dialogue. I hope that we can see more of this kind of thing over the course of the rest of our term here in this Assembly and in future.

So discussion and dialogue is not hurtful or harmful to what we are doing. Mrs. Groenewegen.

MRS. GROENEWEGEN: Just one more thing. In terms of dealing with the clients again, I don't know what your sensitivity training includes, but to the average person going up against the system, the 120 people in it and not getting what they perceive to be caring, supportive treatment, it is a David and Goliath situation and we have to be ever mindful of that. I have taken on the system in my life a number of times and have prevailed. It's not in everybody's nature to do that and neither could they stay in the fight for as long as they might need to. So we need to understand the frailties of people's ability to take on the system. That needs to be part of that sensitivity. Thank you.

ACTING CHAIRMAN (Mr. Braden): Thank you. I think we are over to Ms. Lee.

MS. LEE: Thank you very much. On the last point, there are a lot of businesses whose life depends on customer service. WCB, in many ways, operates as a private insurance company, but it's not a private insurance company and they have insured money by legislation. It's true, you can't legislate good behaviour, but there's a lot that can be done to do that and I think that's the responsibility of the GC to reflect that. I think that's been said a lot and I am hoping that there will be something coming out of that.

Let me just go back to the issue of accountability. There is a suggestion that if the people who are not happy with WCB are people who have been told no. I guess people who have been told yes would not be coming to us, but I tell you not all the people who get told no come to us. I don't think the solution is if we pay them off, then everybody will be happy. That is not acceptable. That's quite patronizing, in fact, and insulting.

Let me tell you this, I am not talking about cases where people are upset because they are told no. People are upset when they feel like they have been treated unfairly. The policies in place do not make sense to them. Let me tell you, the WCB system, like compensable injuries, I think they might be outdated. I am talking about things that need to be changed. You might be dealing with simple cases. It's easy if you break an arm, break a leg, easy; chronic pain syndrome, very difficult. We are being told over and over again, it's complex. People can't agree on how it happened, how to treat it. Post-traumatic syndrome.

I am just saying the WCB compensable injury system may not be in line with 21st Century or prepared for the 22nd Century. I am talking about not people who are unhappy about being told no. People can accept no. They just want to know that they've had a fair hearing, that their conditions are not unfairly discriminated against. I think we have had court decisions that suggest that that is the case.

So let me just say this system, in the Meredith system and the WCB, it's not a private insurance system. In return for not being liable for workers being injured in their workplaces, they pay the fee to WCB. We have a legislative structure set up for that and

then workers are to be compensated. But that doesn't mean it's the employers who have a say on how the money is spent. It's an exchange process. The employers pay in exchange for not being liable. If there were 10 people killed on my job, WCB is going to take care of that. It's an agreement. It's a societal agreement. That's what makes this different from the private insurance system. Workers, it's a no-fault system. Workers come in and get compensated for that. I am telling you when I say the system is broken, I mean in the accountability system of how we evolve and change and somebody in our system has to be accountable to changing circumstances, a need for new compensable injuries, reflecting the court decisions, medical advances, that is not happening. So I am still looking for the accountability framework.

Let me just go to the legal fund because that's something that we have had lots of discussions, well, not a lot, but it's something I am very interested in and I am glad Mr. Ramsay asked a question on that. That goes to this agreement that we have. We have a system set up and you have legislative support to run your system. It's different from the private sector and it's not up to the employers to decide how the money gets spent. Employers pay into the system and they want it to work well. If we do believe that workers have the benefit of the doubt, that they should be protected under this system, why is it okay for the employers' rates to be paid for the WCB to go through the court process but not for the workers? A private company would not pay a legal fund to a disgruntled customer to soothe them to sue them. Private companies don't do that; governments do that. Governments do that. If it wasn't for the court challenge program, we would not have needed half of the advances we have made on aboriginal rights. If it wasn't for lots of other...The government understands that there is imbalance in the system. Workers don't want to go to court. Mr. Petersen is right. I am a lawyer, I encouraged people not to go through the court system, but the fact of the matter is as much as people have the right to go to their MLAs, they have the right to go to court. People don't go to court because I have been told no. No, they have to have a case. When their condition is being excluded unfairly, they are not talking out of thin air, because court decisions have said there are situations where conditions are being unfairly discriminated against.

I tell you this, I think employers could be convinced that there could be merit in this if they saw how much money WCB spends on going to court and defending and it will put the kind of mechanism, counterbalance, to the system that is not accountable right now. I am saying the accountability system is broken, not WCB as a corporation. I know there are 170 employees who go and work hard and they follow direction from the board and management. I am talking about the accountability system of how we, as a society, address the needs of workers; how do we enhance their power so they are not so imbalanced.

As a counterbalance, I would like to know from Mr. Rodgers if he would commit to look at the possibility of setting up a legal fund. I want a study done on that. I guess we could do that ourselves if they don't. I need to see still something that shows independence of the board and I want to know if the board would consider having independent legal services, medical services, just a system set up for the GC that shows independence

from the mechanics of the management of the board. That happens all the time. We do that in our government. The Legislature has our own staff. Cabinet has their own staff. I want to know anything that would give weight and strength to the notion of the independence of GC and that answers to the public interest. I think a legal fund, independent medical advice, legal advice, support, I think that all goes to address that.

ACTING CHAIRMAN (Mr. Braden): Thank you, Ms. Lee. Multiple layers there. To the independence, the perception of independence and the resources that you have to achieve that, Mr. Rodgers.

MR. RODGERS: Thank you. We obviously have gotten outside of the OAG recommendation, but what I will say to Ms. Lee is that anything that you would like us to research and get back to you on, we would certainly do it. Would I make a commitment right now to change the system? No, obviously I can't make that commitment here today. What I will do is make a commitment that if you have a suggestion or recommendation, I will certainly commit to taking that back to the GC, we will look at it and research it and we will have a response for you. I think that's fair.

ACTING CHAIRMAN (Mr. Braden): Mr. Petersen.

MR. PETERSEN: I would just speak to what Sandy alluded to as the antiquated policy-making process. Quite frankly, we are certainly not antiquated. We just brought in a policy for psychological compensability. We are leading the country in that sort of stuff. We also brought in harassment and stuff for post-traumatic stress as well; just all recently new policies that have been presented to us and put forth. We are on the cutting edge of those policies and they have to be further refined and we are finding that, but that is what the process is about and we intend to do that, but we are certainly moving forward with emerging trends. Our staff is very diligent in searching out jurisdictional comparison and looking for best practices. We, quite frankly, would rather be leading the pack than following the pack. That's where we are at, quite frankly.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Petersen. Ms. Lee.

MS. LEE: Thank you, Mr. Chairman. Once again, I have to agree to disagree with Mr. Petersen. Just yesterday I heard from medical professionals who said our jurisdiction is completely behind on the post-traumatic syndrome policy. The chronic pain policy, I am telling you, that's outdated. On the independence, Mr. Rodgers said talking about the independence of the board is outside of the scope of the Auditor General's report. I would like to ask the staff, either Ms. Langlois or the Auditor General's office, where there is a paragraph in the report about the fact that there is not as much independence of the board. I think this is a very germane issue. I am not interested in day-to-day management of the board and plain language communication; nice at the door, all fine. That's not where I want to concentrate my work. That's important, but I am very interested at the end of this process of having a very clear accountability framework and empowering the board and giving the resources and the capacity to do things that they're mandated to do by convention or have not let the public know.

Mr. Chairman, I would like to ask Mr. Rodgers if he would make a commitment, in response to that section in the Auditor General's report.

ACTING CHAIRMAN (Mr. Braden): Do we have a paragraph number? Page 9 of the report starting with paragraph 40/42 and it goes on at some length. Paragraph 40 of the Auditor General's report, page 9. Ms. Lee, the most specific reference you can give us, the better. It's addressed over several pages in the report. Mr. Rodgers.

MR. RODGERS: Thank you, Mr. Chairman. I think the question was are we committed to ensuring the board has independence; that the Governance Council is independent from the board? Is that...

ACTING CHAIRMAN (Mr. Braden): Ms. Lee, if you could clarify and I see Mr. Stadlweiser is ready to come in from the Auditor General's perspective. Ms. Lee, briefly and concisely, what is the issue we have before us?

MS. LEE: Okay, Mr. Chairman. I have made suggestions about a separate legal fund to empower the workers or things the board thinks or the GC might think is needed to empower, enhance the capacity of the board to do policy development and consultation work and changing compensable injuries, all those things that go to the policy formation of the board's work. What I would like to ask is maybe the Auditor General's office will quote the exact statement, but I remember very clearly the Auditor General yesterday said there is not enough independence of the GC in the workings of the board. My question to Mr. Rodgers is if he doesn't accept any of the suggestions I am making, that's fine. But would he communicate or give us a package or policy on how the GC sees being able to get that independence, assuming that you accept the AG's findings?

ACTING CHAIRMAN (Mr. Braden): Thank you. So to the Auditor General's statement or position about the independence of the Governance Council. Mr. Stadlweiser, could you help us a bit with this one and then we'll go to Mr. Rodgers.

MR. STADLWEISER: I am not 100 percent sure this is what Ms. Lee is referring to, but on page 2, one of our main points we did state the policy committee does not sufficiently demonstrate independence. There, we were referring basically to getting input directly from stakeholders on policy and it sounds like you are making inroads in that area. Certainly in the past, we thought it could be definitely strengthened and to show your independence. In specific areas like pain disorders, pre-existing conditions, input directly from stakeholders to show your independence and it sounds like from what Mr. Petersen said earlier, there are some inroads being made there. I believe that's where Ms. Lee is referring to our statement on independence. The wording is, "...do not efficiently demonstrate independence in that regard."

ACTING CHAIRMAN (Mr. Braden): Thank you. I have Mr. Rodgers.

MR. RODGERS: I will defer to Mr. Hagen.

ACTING CHAIRMAN (Mr. Braden): Okay. Mr. Hagen.

MR. HAGEN: What I was coming back to was from Ms. Lee there. I think a lot of her questions ends with accountability framework for the board. A lot of it comes from there. I think that's what we should address. I don't think any one of us have addressed that. I think, Denny, maybe you could elaborate on the framework we have currently and anything and everything can be improved, but I don't think we have addressed that particular question.

ACTING CHAIRMAN (Mr. Braden): Mr. Hagen, thank you. To an accountability framework, Mr. Rodgers.

MR. RODGERS: Thank you, Mr. Chairman. Back to the thing, we agree with all the recommendations the AG made and we are planning on implementing them. We look at this report as a tool. We look at it and say it's not all doom and gloom, there are some things we are doing wrong and we are going to implement them. We are accountable. The GC is accountable for what happens in this organization. When you talk about an accountability framework, we have a board that's made up of specific stakeholders. We are trying to increase our consultation process, the people we consult with that give us input on our decisions we make on policy. Can it be improved? We will take any recommendation and if Ms. Lee would like us to look at anything specific, we will absolutely do that and get back to you on that. Accountability frameworks can change, but we don't think we are without one.

ACTING CHAIRMAN (Mr. Braden): Ms. Lee, finish up your turn here and then I understand that some lunch is ready for us and we will take a short break and then resume.

MS. LEE: Thank you. I would like to thank Mr. Hagen. I would love to see an accountability framework and I hope that he will bring that to the board. At this point, Mr. Rodgers and the board, I have to go beyond the point of generalities. I take your word, you accept this report as a to-do list, action items, and you are going to work on that. I need more specifics. I need a commitment from the board specific to the accountability question. Who are you accountable to? How do you account? Of course, we are all accountable for our own being. Consultation is just one process and I have repeated this about 10 times. It's great if you listen to somebody 10 times. What comes out of it at the end? Is it a sausage, a wiener or a hamburger? What is it? How can the public feel that the input they put in is reflected in your work? I need an accountability framework.

ACTING CHAIRMAN (Mr. Braden): Ms. Lee, thank you. Mr. Rodgers.

MR. RODGERS: I guess I don't quite understand exactly what you are asking. I don't know if anybody can help me out on the board? We are accountable through our appointments. We are accountable through the act. We are accountable through everything we do. I don't know specifically what you want.

ACTING CHAIRMAN (Mr. Braden): We have touched on this topic in many different ways over the course of the last...We are now into our third day as a committee in reviewing and examining this, our second public day. If I can paraphrase Ms. Lee or try to condense some of it, the stakeholders' confidence that as policies or factors come before the board, there is indeed an avenue that they know where they can have their voice heard. It is a structured process. It is not an occasional or reactive or spontaneous process, there is some mechanism to it, but also that their input will be seen to be taking effect. There is a disconnect there. The confidence that if I have an opinion, it's going to be heard, not argued or denied or put off or responded to with a letter, as we have already heard, that has language that is difficult to understand. There is a lack of confidence in the public side that this is going to be a responsive organization. Mr. Rodgers.

MR. RODGERS: Thank you. This year when we table our corporate plan, we are planning to have a public meeting, an open meeting where people can come out and observe and we can take their questions. When we go to the communities now, in Fort Smith, for example, we hit every post office box. Come on out, come and meet us. We don't get a lot of response to that. Other than going up and knocking on all these doors ourselves as a GC and saying hi, I am Denny Rodgers, what are your concerns, I really don't know. We are trying to get people involved.

ACTING CHAIRMAN (Mr. Braden): Alright. I am going to give Mr. Hagen the last word on this.

MR. HAGEN: We seem to be going around and around on this. Accountability is all in our policies of how we interpret them or how we make them work. I would think one of the steps perhaps in this forum is go over all the policies, make recommendations and go into a consultation process just on policies that are existing in the WCB. Obviously, if people have a problem, it's with how the policy is used or not used. For example, in the Auditor General's report, he says that they haven't been properly dealing with workers in camps. Our policy says they are covered 24 hours a day. The Auditor General's office picked up that that is not always the case. They are not always applying that evenly. There are some instances where they are not covered after 12 hours of work, for example, that our policy dictates clearly. So there is a breakdown there. Again, that decision that he put in his review was to do with policy. So I think if we are going to make any changes that are going to be satisfactory to the committee, the government, to the public, it's going to be in our policy changes and the information out there is going to be the education of people who will understand them better. I see that as the starting point and how we get to the end of it should be decided here.

ACTING CHAIRMAN (Mr. Braden): Let's take a break.

---LUNCH RECESS

ACTING CHAIRMAN (Mr. Braden): Okay. Okay, thank you, committee. Thank you, committee and witnesses. We'll resume. And right, we have I think on the order paper here I had Mr. Ramsay and that's all that I have on the paper so far.

MR. RAMSAY: Just wait until Denny comes back.

ACTING CHAIRMAN (Mr. Braden): Okay. To Mr. Pokiak and then I'm going to be seeking a bit of help from committee. I would like to step in on a few points, but I would like somebody to take the chair for me. Mr. Villeneuve? Mr. Villeneuve, then. Okay. Thanks. Once we've exhausted everyone's interest here, I'll come in and then we do want to look at a 1:30 start up with Mr. Baile and I'm going to be resolved to do that on time.

Fine. We all, yes, we know we all have other diversions. But thank you, everyone, for your attention. We've had a good morning. It's been kind of a long one. We'll continue with Mr. Ramsay.

MR. RAMSAY: Thank you, Mr. Chairman. I wanted to talk a little bit about the interaction with claimants. I was very interested and I know it's in the report a number of times, but the lack of customer service training for front-line staff. I know you've spoken about sensitivity training for caseworkers and the type of ongoing training that should be taking place. Performance measurements that should be taking place. There's a lack of a comprehensive risk management plan, as well. There are a number of things that I believe that as an organization you should be working on. But the organization itself has been around for 30 years and if you look at some of the problems that are identified in the report, especially when it comes to the interaction with claimants, it would just beg the question that this work should have been done a long time ago. I mean, this organization deals primarily with a client base and it has to have its ducks in a row when it comes to dealing with claimants. I wanted to get the chairperson's comments on this, where do you go from here? I know the vice-president of NWT Operations was here yesterday and she's in the position now and she seems to be very aware of some of the concerns that are out there, that were identified in the report, and what steps she might be willing to take to try to rectify some of that. But I want to hear it from you. The leadership comes from the Governance Council and is it a concern of yours that there has been some failings in terms of training available to staff, staff sensitivity to claimants, and the overall interaction experience that claimants have with WCB staff. I guess I'll ask that question, Mr. Chairman.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Ramsay. Mr. Rodgers.

MR. RODGERS: Thank you, Mr. Chairman. That is certainly a fair question. I can tell you that from a Governance Council point of view, obviously we're aware. We hear things and MLAs bring things to our attention and so on and so forth. Other than the fact I mentioned, we did put in the CEO accountability agreement that you will still be training on in the staff. We've also said as a GC we're not happy if people don't like us. So we need to, you know, if that's, how big the image problem is we're not 100 percent

sure, but if there's a small image problem we need to fix that. I can assure you that we did say, we took our full senior management staff to task in saying we need to fix this. This is a problem, this is something we need to do. From that meeting came the sensitivity training directive. To answer your question, can we fix it overnight? No. Are we looking at it? Absolutely. Are we aware of it? For sure. You know, we do want to make sure, I mean, the business we're in is a very difficult business, obviously. Like Bill had said earlier, sometimes we have to say no. So you're never going to be 100 percent to everyone and everyone is never going to be 100 percent happy, but having said that they should feel comfortable walking through our doors and they should feel comfortable when the phone is answered on the other end. So yes, we're aware of that and yes, we've made that clear to admin.

ACTING CHAIRMAN (Mr. Braden): Mr. Ramsay. Thank you.

MR. RAMSAY: Thank you, Mr. Chairman. I thank the chairperson for the response. I do have a sense that the Governance Council and the WCB administratively is intent on trying to get some more training for the staff, sensitivity training, and things seem to be all the right things are being said. But again, I think an action plan with some clear time lines and what exactly, what types of training exactly the staff will be sent to or taken, what type of training is going to take place I think is important to try to get some focus on that and make sure that things happen. I'm glad then. I know it's in capable hands with the chairperson and the Governance Council.

The one thing I wanted to touch on, and I know the chairperson spoke of the possibility of a meeting, a full-blown public meeting, so you could get not just us, we sometimes get tired of listening to one another talk. We want to hear from claimants. We want to hear from the public. We want to hear from people who have been through the system and hear their experiences. I know the Auditor General's staff heard from a number of them. But Mr. Chairman, just so the public is aware, what is the process here? I know we go through the three days with the Governance Council, the administration, the Minister, the Workers' Advisor. When does the public have a chance to ask some questions and to get a say in this? I think that's very important. Perhaps we can expand upon this. Is it going to happen in the fall? Thank you.

ACTING CHAIRMAN (Mr. Braden): That's to process and to committees, we are in control of that process, Mr. Ramsay. When our sub-committee, and you will recall that the whole AOC group asked four people, and I was one of them, to look at how to manage the handling of the Auditor General's report we decided that the three days that we are engaged in right now would be with the Auditor General and with the five agencies or officers specifically named in the WCB. We are, it's entirely up to us as a committee whether or not we want to re-open this process, invite other witnesses, invite the general public to speak to it. That's entirely ours. The committee I think in its wrap up of this discussion here, we should indeed be looking at what other steps, what other people do we want to hear from before we report on this in the fall session. So we are in control, but that is a decision that we have yet to make as to whether and when we are going to open this to other people. Mr. Ramsay.

MR. RAMSAY: Yes, thank you, Mr. Chairman. That is my point exactly. I think before we make any or have any findings or recommendations stemming from these meetings, we can't really do that unless, I believe, we open it up to the public and we have the opportunity to hear from the people who have been through the system themselves first hand. I know the chairperson, the reason I'm bringing it up now, and I know it's a process question, but the reason I'm bringing it up now is the chairperson has said that in the fall they're looking at doing a type of town hall meeting or something to that effect where people can come and ask questions. Now, is it possible that we can couple our efforts, just so the people come and talk to us, I mean, I think it's important that everybody's there. Not just the members who are having a look at the Auditor General's report, but the WCB themselves, the Governance Council, and if we can make it, everybody there I think would stand to gain more from a meeting like that than just if we had a meeting and they had a meeting. Again, I think we'd be better served if we did it together in partnership and we hear it from people. I mean, that's just a suggestion. I'd like to ask the chairperson if he'd be willing to entertain an effort like that.

ACTING CHAIRMAN (Mr. Braden): Okay. So a suggestion for a potential collaboration. Mr. Rodgers.

MR. RODGERS: Thank you, Mr. Chairman. I think that's an excellent comment and an excellent idea and subject to ratification by my board, of course, we'd be more than willing to have a public meeting on this report. As a matter of fact, I would go so far as to say that we would have a public meeting on this report and invite public members to come out and ask questions of us. If that could be a joint meeting with this committee, even better. I think that's an awesome suggestion.

ACTING CHAIRMAN (Mr. Braden): Alright. Thank you. Respecting committee's jurisdiction and our obligation to our audience, which is the Legislative Assembly as a whole, we'd need to look at our own approach to that. But I think that's got a good basis for it for moving ahead then. Mr. Ramsay.

MR. RAMSAY: Thank you, Mr. Chairman. No, and that's something again we can talk about a little bit further when we wrap things up here tomorrow. I thank the chairperson and the board for looking positively on that thought.

One of the other things, getting back to the sensitivity training, I'm just wondering, and I know it's going to be starting or it's in the process, but who actually carries out that sensitivity training for staff? The concern that I have is I hope that it's not somebody who's been in the WCB for a number of years, you know, 15 or 20 years, and are hardened by policies or whatever that have been in place for the time they've been there. Maybe you could bring somebody else in to provide the type of sensitivity training that I think the caseworkers could use. Thank you.

ACTING CHAIRMAN (Mr. Braden): Mr. Rodgers.

MR. RODGERS: Thank you, Mr. Chairman. Thank you for the question. I don't have that information available, but I will commit to getting the information and the details of the sensitivity training for the member and have it back.

ACTING CHAIRMAN (Mr. Braden): Okay. Thank you. Okay. Thanks, Mr. Ramsay. I have Mr. Pokiak and Ms. Lee. Mr. Pokiak.

MR. POKIAK: Thank you, Mr. Chairman. I would like to go back. If I understood correctly, earlier the chair said that the GC can change policy. I want to talk about one specific policy in regard to, I guess the work camps that are out right now. In the AG report, there was one incidence where there was a worker that was injured at the campsite, I guess. That's the way I interpret the information. It goes on further to say that the policy is very clear that workers are covered 24 hours a day at the worksites. However, yesterday when we were meeting with the WCB, a member from the board indicated that it's a matter of interpretation of that policy. So I'm just wondering if the policy is clear that if you're at a work camp, you're covered 24 hours a day coverage. I'm just wondering, can the board look at maybe looking at that policy and clarifying it out so that it can be applied to all across the board? Thank you.

ACTING CHAIRMAN (Mr. Braden): Mr. Pokiak, thank you. Familiarity with that camp policy. Mr. Petersen.

MR. PETERSEN: Yeah. Actually, when that came up in the report I was quite surprised because I chaired policy for quite a while and I was not aware that that policy was not being administered in an even manner. So that was brought to our attention and I brought it to our general counsel. He had said that they weren't aware of it until the Auditor General's office picked it up. We spoke to that very briefly this morning because coming here we sort of wanted to get our, to see what we could, how we were going to answer these specific questions because we thought this would come up. Mr. Hagen had stated, most camps do have internal policies that, you know, you can't go on the land or go hunting or go fishing and get hurt and expect to be covered. So I mean, even though our policy may state that they're covered 24 hours when they're at their camps, individual employers would have their own policies that would impact our policy. So perhaps that's what the administration was alluding to when they said it was interpretation and perhaps, and again, not being here in the conversation yesterday, I would assume that maybe that was what it is because the intent is that yes, they are there, they're captives, they're there for 24 hours a day, seven, but it's not reasonable to think that if they grab a boat and go fishing when they're not working and hurt themselves that that would be deemed a compensable injury because they're not really working. So those were issues that perhaps he was speaking to in interpretation. Again, I'm just surmising because I wasn't here for the conversation yesterday. But we are looking at, in light of this report we are going to take the policy and we've asked for it to come back to us so we can look at it and just see what exactly might have been the problem.

ACTING CHAIRMAN (Mr. Braden): Thank you.

MR. RODGERS: Are we going to go back and look at some of the previous case? We talked about that too.

ACTING CHAIRMAN (Mr. Braden): Mr. Pokiak.

MR. POKIAK: Yeah, thank you. Just for clarification in regard to that policy. So does that apply only to staying in the camps other than some recreation activities? Thank you.

ACTING CHAIRMAN (Mr. Braden): Okay. Mr. Pokiak, could you repeat the question? Thank you.

MR. POKIAK: Yeah, thank you. Just for clarification in regard to that policy in place now, does that mean that if you have recreational activities in the camp and they get hurt, does that apply in the camp itself or? I understand what Mr. Hagen is saying in regard to maybe some people going out and walking around and getting hurt, but does that apply within the camp itself? Thank you.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Pokiak. Mr. Petersen.

MR. PETERSEN: I believe it does, but again, having not seen the policy as yet, I'd have to defer it and get back with further clarification to the member on that.

ACTING CHAIRMAN (Mr. Braden): Anything else, Mr. Pokiak? Yeah, go ahead.

MR. POKIAK: Thank you. Just in that regard, I'm just wondering, why wasn't the board aware of this policy, you know, having the AG pick that up? Thank you.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Pokiak. Mr. Petersen.

MR. PETERSEN: Again, as soon as I saw that in the report I was very surprised and I went right to our counsel and said, why were we not informed of this? Counsel themselves were not aware of it, so it obviously shows that there were some disconnect there in the interpretation of what that policy was. I don't know if we've had a complaint because normally what happens if the policy has gone awry and there are people who are disputing what happens it comes to our table to make some sort of decision, and that's never happened. So we were not aware until we read it in the report and as soon as we read the report we asked to have that policy put in front of us at the next meeting so we could address any deficiencies or inconsistencies that might be in that policy and we did that as soon as we got the report. I was surprised to see that, as counsel seemed to be because they weren't aware of it until, and I don't know what mechanism was used by the Auditor General's report to pick that specific policy out.

ACTING CHAIRMAN (Mr. Braden): Okay. Mr. Pokiak. Go ahead.

MR. POKIAK: Okay, Mr. Chairman. Just in that regard. I'm just wondering, are there any policies that the board aren't aware of that are not being followed? Thank you.

ACTING CHAIRMAN (Mr. Braden): Mr. Petersen.

MR. PETERSEN: No, not at this point, but I certainly have requested that there be, they do search to see if there are policies that are not being interpreted or administered in a fair manner across the board.

ACTING CHAIRMAN (Mr. Braden): Thank you. Mr. Pokiak's questioning and the answers have raised an interesting issue. Why is it that counsel was not aware that a policy was not being adhered to? Does counsel, which I'm assuming is sort of the first line of monitoring and compliance, did they not, did counsel not have a process by which they were checking and monitoring and testing the compliance of your policy framework? Mr. Rodgers.

MR. RODGERS: Thank you, Mr. Chairman. We don't adjudicate or look at our cases on a case-by-case basis, so unless something's brought to our attention we wouldn't know. This is a case that the policy and the situation, I think the OAG found the policy wasn't being followed appropriately with these two cases, I believe. It's not a question of the policy not being in place, it's just not being followed. And unless, I mean, we're digging down and looking at every case and claimant that comes through adjudicating them, no, we wouldn't see them. I think, I mean, I would hope, but I would think it's a rare, you know, it's an anomaly and it was missed and it's one of those with a little bit of ambiguity there.

ACTING CHAIRMAN (Mr. Braden): Yeah, and certainly we would hope so too. I guess what we're looking at though is there is an expectation that legal counsel has a responsibility to ensure that policies are being adhered to. Where I was going was not just specific to this one, but what kind of a routine and vigorous process is there or is there not to review and in effect do what the Auditor General did on request, but do this on a regular and a routine basis within the organization. Do you not have some kind of an audit of your own for these kind of complaints, Mr. Rodgers?

MR. RODGERS: Two things: We do have an internal auditor who we have hired who picks certain aspects of the organization and does internal audit on that. We are also audited financially. I don't know how much on policy annually by the Auditor General's office as well. We set the policies and we put the policies out there to be administered. Then we task administration to do that. So that's our role as the GC. Our internal auditor, I would think, would be our, he reports to us. He gives us his work plan and says these are the areas I'm working in, these are the things I've found. Other than that, that's, I don't know if the OAG has anything they want to add.

ACTING CHAIRMAN (Mr. Braden): Mr. Simpson.

MR. SIMPSON: Thank you, Mr. Chairman. I don't want to belabour this, but I suspect this was an anomaly as the Governance Council said. However, in our report we've alluded to the need for a good quality control mechanism throughout the whole process and this particular example, while in itself is not a serious issue -- serious in its own right, but not a systematic type of issue -- does point out to a need perhaps to have the internal auditor or supervisors or somebody of that ilk just maybe making sure that all applicable policies have been applied in a particular case-by-case basis. Perhaps give some assurance to the Governance Council by way of some certification or whatever once a year, orally or in writing. Because that way you can discharge one of your responsibilities, which is to monitor internal controls and while no one would necessarily expect you to do that yourself you can get some certification from the staff that they are doing it on your behalf.

ACTING CHAIRMAN (Mr. Braden): Okay. Thank you, Mr. Simpson. Yeah, those are the kind of things that can help us build those kind of confidences in, and then knowing that they are performed. I have Ms. Lee and then, ladies and gentlemen, looking at the clock here I really would like to get a couple of comments in. I have no one else on the list. Then I'm going to ask Mr. Villeneuve to take the chair and see if I can talk about a couple things. Ms. Lee.

MS. LEE: Thank you, Mr. Chairman. I'd like to address another issue, separate from the issues that I was talking about this morning, but it's in line with the quality control that Mr. Simpson mentioned and the mechanisms for counterbalance, checks and balance, because what we need to work toward in our roles and as opposed to the administration who follows the policies that we put in place institutional mechanisms that would function and that gives confidence to the workers that they're being processed fairly. Those institutions have to survive the people that are coming and going. You know, board members come and go, MLAs come and go. Anyway, in that regard I want to talk about the independence and strength and capacity of the appeal's tribunal because, you know, theoretically we have the system set up where claimants go and file and the caseworker will make a decision and then they go to review committee and they go to appeal's tribunal committee and it's only when, and theoretically this is supposed to minimize a chance of people going to court. This Appeals Tribunal is a court of appeal on their decisions.

Auditor General's report has made some observations about lack of strength at that level, and independence. It made mention about the medical advisor information that they get. The Auditor General's report stated situations where opinions were sought by the board, by the tribunal without having the claimants present. I bring again the issue that the medical advisor talked about yesterday. He said that his role is strictly advisor, but people in practice know that often times he does get the final say at many levels. I know the Minister answered in the House that the Appeals Tribunal are asked to look at the whole facts separately, independently and give it a fresh look, but I'm not sure if that's how it's translated or what the procession of that is.

And there's also an example in the AG report about tribunal wanting to, or the staff wanting to have their own website separate from WCB. You know, anything that would, I think it's to the benefit, and I'm not trying to rack up expenses, but in the interest of WCB and just giving more confidence to the people that at every stage of this process that they're going to get a fresh look. They're going to get looked at freshly on their evidence and their claim, you know?

So I'd like to know from Mr. Chair, Mr. Rodgers -- I have two chairs, so I get to say Mr. Chair too -- what he's prepared to do to strengthen and to strengthen the capacity and to take measures to enhance their sense of independence and that they are well-resourced to do their job. Thank you.

ACTING CHAIRMAN (Mr. Braden): Thank you, Ms. Lee. Mr. Rodgers.

MR. RODGERS: Thank you, Ms. Lee, for that question. Obviously we're arm's length from the Appeals Tribunal and I certainly won't speak on their behalf. I do know that they can call witnesses, whichever they feel I guess they need to get information, they need to decipher the policy to get to, to come to their conclusion. I mean, whatever recommendation comes from the Minister's office, if it means it comes to, their going to request more funding, that's to improve the Appeals Tribunal, that can only be seen I think as a good thing. We are, I guess, one of the things that we were suggesting, and I don't want to open this back up again, but if we do decide to build a new building our suggestion will be that the Appeals Tribunal not be in it and that they be in a separate building because I think that perception alone and I think that was also, you know, from the OAG's report. So you know, from a GC point of view I guess that's pretty much where our involvement stops at the Appeals Tribunal level.

ACTING CHAIRMAN (Mr. Braden): Okay. Ms. Lee.

MS. LEE: Well, paragraph 205 to 209 speaks to the Appeals Tribunal and I know that we will have representation from the tribunal later, but the fact is it's the board and the GC that make decisions on funding and that's what I'm assuming. Do they come, do they have their own budget and they can make whatever decisions they need to do their work?

ACTING CHAIRMAN (Mr. Braden): Thank you. Mr. Aho.

MR. AHO: Ms. Lee, yeah, we provide them with funding and basically that's the only involvement we have with them. They bring us a budget and there's, we simply rubber stamp it and pass it on, is basically what we do. When the Minister instructs us to we review it. We review it and then when the Minister instructs us to add \$50,000 to their budget, we add \$50,000 to their budget. At the Minister's request we increase their funding.

ACTING CHAIRMAN (Mr. Braden): Ms. Lee. Thank you, Mr. Aho. Ms. Lee.

MS. LEE: Thank you. Paragraph 205, I don't want to read that, but it speaks to the need for the tribunal not only to be independent, but to be seen as being independent. And that the board needs to, it says here, the board needs to work with the Appeals Tribunal to reinforce this perception, as well as the actual independence of the Appeals Tribunal. So I want to ask, there is some involvement with board not in any way interfering, but building capacity, you know, making sure that the system is overall, it's each individual parts are resourced with whether they want to set up a separate website or whatever, have a separate building. Well, maybe not, they won't get a new building on their own. But you know what I mean. I would like to ask the board to look into that and see what measures they could take, if any, to make sure that this happens.

ACTING CHAIRMAN (Mr. Braden): Mr. Rodgers.

MR. RODGERS: Thank you, Mr. Chairman. Thank you, Sandy. Again, we have very little involvement with them. To be honest, I couldn't even name all the Appeals Tribunal members, I don't think. I try to keep that far back. I know who the chair is and we really do try to keep arms length. We leave that to the Minister's discretion where it should be and we see it, a wise man once told me to see it as kind of a Supreme Court for the WCB. So we, I mean, if they come forward and said, hey, these are some recommendations we have to make it better, make it work better, these are some, we need additional funding. I don't see that as being a roadblock.

ACTING CHAIRMAN (Mr. Braden): Mr. Petersen.

MR. PETERSEN: And we do...(inaudible)...process, I mean, we do a lot, allocate funding for the Appeals Tribunal, so if they did require more funding then certainly that request would certainly be entertained and discussed and put into the budget if they thought there was justification for that. So there certainly is room for doing that.

ACTING CHAIRMAN (Mr. Braden): Thank you. Ms. Lee.

MS. LEE: Thank you. Let me ask it in a different way and in specific to medical advisor's role. Medical advisor is a component or employee of the board. And I think that the board could make sure that there is no operationally or in terms of perception that his advice plays a role in that. And that somebody somewhere has to make sure that the tribunal entertains new evidence and makes sure that case is looked at from a completely fresh approach and that there be no even, not actual, but perception of involvement. And the involvement in this case is not, we are not just talking about GC, but the entire system of the board. Thank you.

ACTING CHAIRMAN (Mr. Braden): Okay. Thank you, Ms. Lee. I don't know if there was a question there.

MS. LEE: There was a question.

ACTING CHAIRMAN (Mr. Braden): Ms. Lee, if you could clarify your question.

MS. LEE: Maybe I'm just not good at posing questions. I'd like to ask the board chair or whoever is responsible, whoever wants to answer it, to make a commitment to make doubly sure that there is no interaction operationally or perceptualized of medical advisor staff and the board. Could I ask the board to make a commitment to do that? Thank you.

ACTING CHAIRMAN (Mr. Braden): Okay. Thank you. The Governance Council. Mr. Aho.

MR. AHO: Thank you, Mr. Chairman. We are, as our chair has indicated, we are at arms length with them and we don't tell them where to get their advice. We do approve in their budgets amounts of independent counsel and it would be interfering in their process if we were to tell them to use or not to use any advice that they choose to access. So we simply approve the money for them and they make the decision as to where they get their advice from. If they choose to use WCB's medical staff for, to get the information from them for their decision, that's their choice. We can't step in there. It's not something we can do.

ACTING CHAIRMAN (Mr. Braden): Okay. All said and done. Ms. Simpson will be before us later on today, so we'll pick that one up with her. No, Rodgers, your wife is not, at least I don't believe she's scheduled to appear before us.

---Laughter

Okay. Yes, thank you. Mr. Villeneuve, will you please take the chair and I'll put my hand up and seek your recognition.

ACTING CHAIRMAN (Mr. Villeneuve): Thank you, Mr. Ex-Chair.

---Laughter

If nobody has any questions, he's got the floor.

MR. BRADEN: Okay. Thank you very much. The, many, many things have come forward and I will be as a member of AOC, Mr. Chairman, be very strong in advocating that committee does take this report and asks the public and other stakeholders to tell us what they think about it so that we can make a good report to the Assembly in the fall. We'll deal with that in our wrap up. But I think it's very important that we go into the Assembly with that kind of feedback and perhaps to some extent we can collaborate with the Governance Council on efforts that they want to make as well.

But I guess to get down to three cases here, Mr. Chairman. I wanted to reflect on some comments that Mr. Rodgers made this morning, I think quite early perhaps in his opening remarks, that the WCB has a poor image problem and this was to some extent the way it was related on CBC Radio news. To me, it is far more than an image problem and I don't want to give the impression that or leave the impression that this is somehow

not a really serious situation or golly, there's no fireworks here, we don't really have to worry about this. We do have to worry about this.

Mr. Chairman, the voices of the injured workers who came to me, and this was my motivation in taking so much time with this, the voices of those injured workers, their sense of helplessness, hopelessness in some cases, and of their families means that these are people who are among, I think, the least advantaged in our society. After suffering an injury and probably in the midst of coping with a disability, with pain, with uncertainty about their futures, and kind of being abandoned, and then turning to me and saying what do I do, this is why this is so important. We are talking about a relatively few numbers of workers. I'll be the first to acknowledge that in most cases we are indeed, you are indeed serving the needs of those workers and satisfying the requirements. But it is these others that I feel we use process, we use benefit of the doubt, but in favour of the institution and not in favour of the worker.

That is what causes me to want to continue to put significant priority on achieving the accountabilities and the transparencies and improving the trustworthiness of this organization. It is already trustworthy, but it can be, it has to be much more. That is where I want to go.

So Mr. Chairman, I guess it's a plea, it's a comment, it's an observation. This is not an image situation. An image may be a consequence of it, but we have compliance, we have timeliness, and indeed, as the Supreme Court pointed out, a couple of fairly significant areas of fundamental justice and Charter rights that were clearly found to be at odds with what the board believed it was doing right.

Mr. Chairman, a question that I'd like to pose relates to, I guess that role that we would play, and perhaps more specifically the Minister should play. The Auditor General's report found that there was not the kind of clarity in the Minister's role or the exercising of his authorities. And that very much led to the frustrations that we as MLAs felt, as I've described earlier in this process, not getting, not being able to get through our normal protocols of working through Ministers the kind of answers that I felt were satisfactory. So I wanted to see if the Auditor General's comments on the lack of clarity in the Minister's roles and responsibilities, does the governing council feel comfortable with knowing where the Minister's authority starts and stops? Or does it too feel that there's room for some rebuilding and reshaping here, Mr. Chairman?

ACTING CHAIRMAN (Mr. Villeneuve): Thank you, Mr. Braden. Yeah, to the question of accountability, I guess, again. Where do the Minister's roles and responsibilities come and go as far as the Governance Council is concerned, I guess. Mr. Rodgers.

MR. RODGERS: Thank you. And thank you for the question, Mr. Braden. I've been in the chair less than a year at this point, sitting as the Governance Council chair, vice-chair before that. There needs to be some -- and we've brought this up -- clarity and some protocol. I think just to make, I guess, the expectations on both sides. To set up between not only the Minister's office, but the Regular MLAs. To this point, and I will say

that the relationship that I have as the chair with the Minister has been a good relationship. I've had no issues in dealing with Minister Dent, but it has been an informal process at this point. We speak regularly. Any information that's requested by him is cc'd through me through e-mail and vice-versa. So what we'd like to do is formalize it now. All we're going to do is make suggestions. I think that's the Minister's role and I'd never want to step over those boundaries there. We will, because we have the staff to do it, say here are some suggestions and we will do whatever the Minister deems appropriate, essentially. He appointed us as a board and, you know, we will make suggestions. Like I said, at this point the relationship has been a good relationship, but it has been an informal relationship. We would like to formalize it and we will give some suggestions and then let him look at that. His decision.

ACTING CHAIRMAN (Mr. Villeneuve): Thank you. Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman. I'm pleased to hear that. An informal relationship for an organization as significant, as big as the WCB is not appropriate. So formalizing this should be a priority. And formalizing some form of relationship with other stakeholders I think is also a part of the steps that I would like to see toward building that trust and that confidence. I suppose we could spend collectively a long, long time looking at all the different layers and approaches and minutiae that could go into this. I might put out a couple of suggestions.

Two things that I would like to formally see considered at all stakeholder levels are the annual report and the corporate plan. We may get into some arm-twisting here, Mr. Chairman, on the aspect of whether those plans are approved at the Ministerial or Cabinet or even committee level. I've been through this kind of thing in a previous life when I was with the NWT Power Corporation, especially recognizing the need for the independence of WCB, the question of approval, let's just park that one for now. But to have an annual process where everybody could come in and consider those two documents, this one and the corporate plan, even, you know, for information and review, if not approval, could be, I think could serve very well as a point of information, review, familiarization, and potentially testing a few ideas or concerns that may come up. So I just wanted to put that out. Would those be a couple of areas that we might look at instituting sooner than later, at least as a start, Mr. Chairman?

ACTING CHAIRMAN (Mr. Villeneuve): Thank you, Mr. Braden. I guess just to add a little bit to what you're asking, I would like to ask the chair or Mr. Rodgers, do we need to formalize it? Do you think that we need legislation in order to formalize some kind of protocol, process, with stakeholders, with government, the Minister, with Governance Council and everybody that's involved here on top of what Mr. Braden is asking?

MR. RODGERS: Thank you, Mr. Chairman. No, I don't think it's in the form of legislation. I think policy would do it and protocol. I think the legislation states that the Minister appoints. Regarding the corporate plan, and I think Mr. Petersen was going to speak to that, Mr. Chairman, if that's okay.

ACTING CHAIRMAN (Mr. Villeneuve): Mr. Petersen.

MR. PETERSEN: Yeah, currently what we do is we have meetings in both jurisdictions when the corporate plan comes out and we normally have a public meeting, but again, we send invitation out, but it's not a sexy document. Like, people aren't dying at home waiting to get the corporate plan for the WCB. So unless they've got a vested interest, they don't come out. We end up talking amongst ourselves about it and we pat ourselves on the back and it's usually a very good meeting, quite frankly. But at the end of the day it's hard to get, I mean, how do we make it enticing? If we could get something like an OAG report or something that really does resonate with the stakeholders to get them out for a purpose, I think that's going to be our goal. We tried that the last time we were in Hay River...no, Fort Smith? We actually sent out invitations to people and people came because they felt, actually, a couple people said – in Fort Smith, that was – and some people said that had they not got that invitation it's just another event going on in town. So it was nice, I think that's the format we will take. We'll say to various please come and attend this meeting and it's more of a formalized setting where we have a presentation and there's questions and answers afterwards.

ACTING CHAIRMAN (Mr. Villeneuve): Thank you, Mr. Petersen. Earlier you just mentioned something that when you did send out those invitations anyway, the turnout was still on the low end. I guess to me it seems that, I guess, the whole WCB image is so tarnished today because of what we're doing here and now, that people just feel like what's the use of going out and participating and providing input if nothing is going to change. How are you going to change people's perception that we are willing to change, we're new, we're thinking of new ideas and new approaches and we're willing to bring them on. Do you have a way of addressing that? Mr. Rodgers.

MR. RODGERS: I'd like to make a quick statement and be careful here, but when we go to Iqaluit, we go there and we send invitations and we get a fairly good turnout. People come out and they're interested and we generally get, believe it or not, compliments when we go to these meetings. The people we do speak to in other communities generally the feedback we get, yes it's low in numbers, but it's been good feedback saying yes, this is productive. I live in Inuvik, I speak to people up there, I never hear anybody come up to me and say we don't like you guys. And the rest have said, the majority of, I guess, if it's bad publicity and how small it is ends up in the capital. I guess obviously it's where our biggest population is and I think that's where we need to focus our...But I mean, I don't say that to be, it's just a fact. It's a fact that we've noticed on the board that the majority of the negative things that come out come out of the Yellowknife area. I think we need to focus in there. It's one thing we've found.

ACTING CHAIRMAN (Mr. Villeneuve): Right. Thank you, Mr. Rodgers. Mr. Petersen.

MR. PETERSEN: Just a point, I mean, this is a sweet system for employers. It's the cheapest insurance they're going to get, so there are very few complaints about the rates they're paying. I mean, for the most part they're quite happy. They're concerns more, as I was mentioning earlier, which is very laudable, is the treatment that workers

get in the system. That's their concern. They're paying for a system, they want to ensure their workers are getting treated fairly. Our...(inaudible)...are one of the second highest in the country, so employers are getting a really inexpensive insurance system that's covering 80 percent of the workforce here in the Northwest Territories and for the most part they have very few complaints. There are a few pockets, like the sub rate that was talked to earlier, and again that was more miscommunication because the rates didn't actually go up. Subsidizations came off. I mean, their rates didn't go up, their subsidies fell off by 25 percent. So there was, that whole thing was handled poorly, perhaps.

But at the end of the day the reason people aren't coming out is that employers are generally happy with the rates their paying, their happy with the coverage their getting. Workers for the most part, they do come to us, but the format, it's not an arena for them to have a soapbox because we're quite, we say as a Governance Council we can't deal with their claims on an individual basis. Their format is best in the workers' advisor office or other formats and it will come to us at that level. So at the most part people are generally quite happy with the way the system's going, so that's why there's not the huge turnout. That's why I'm sort of excited with this OAG report maybe we'll get more people out if there's really an impetus to get them out there and discuss something.

ACTING CHAIRMAN (Mr. Villeneuve): Thank you, Mr. Petersen. Mr. Braden.

MR. BRADEN: Yeah, one more topic that I wanted to put on the table. Actually, repeating the whole notion of the benefit of the doubt, I think I've already talked about roles and responsibilities and degrees of accountability for me as an MLA and as a Legislative Assembly and a Minister. That's an area with a pretty big scope and we're going to need to work on that one.

The other one that I see as being a significant piece of work is the benefit of the doubt and the reasonable circumstances where there is no clear-cut decision or resolution that belongs to the worker and I have not seen the kind of emphasis or weight or significance put on this really fundamental part of our belief and our trust in the whole WCB. I'm going to be looking for ways in which we can define this better, in which we can see it applied in policy and in practice, and that will help me understand, you know, as an MLA and an advocate for constituents and workers, how far I can go with this idea and where I know it can't go. But it is, I believe it is such a significant aspect of why we need to have a WCB, why we've all agreed to do it this way, but I don't see it being applied and utilized to the degree that I believe it should. And I think part of the reason for that is we don't really know where to go with this thing and it's easier to ignore it or to deny that it's there or avoid it. That's why I'd like to see some more time and some more energy spent into defining and applying benefit of the doubt. Mr. Chairman.

ACTING CHAIRMAN (Mr. Villeneuve): Thank you, Mr. Braden. I don't know if there's a question there, but if any members want to respond to Mr. Braden's recommendation or suggestion of how the board intends on developing an action plan. He's not talking about tearing down the walls of Fort Knox over there or anything, but maybe being a

little more compassionate, publicly compassionate, I guess, and letting the public know that we do care about your injuries, about your claim, about your family, you know, the whole counselling issue. We already touched on all of that. But just going with what Mr. Ramsay was suggesting, is the board going to develop an action plan with specific time lines on when they plan on carrying out certain changes? I guess that kind of addresses Mr. Braden's concerns. Mr. Rodgers.

MR. RODGERS: Thank you. Well, obviously as you've said we've touched on a lot of topics here. In the fall, we'll have our action plan based on the OAG report and, as I've said, we will put a specific plan together on how we are to implement the recommendations, both on the board's side and GC's side.

I can only say as the chair, you talk about compassion and being compassionate, I mean, this board cares. We are not a bunch of stuffed suits up here that we don't care. I understand there are a small number of claimants out there that have been in the system a while. You know? The only thing I can say as the chair is that we do look at these things. These aren't things that we try and sweep under the rug and these aren't things that we try to ignore. As I said, it's a big ship and we think we're on the right track to make some positive changes, to make some positive changes throughout the organization. From a staff sensitivity point of view we believe the direction has to come from the top. And we are undertaking that process and I can only ask for your support and to give us a little more time and hopefully you'll see those changes. You'll see those changes out there. I urge you as MLA's to call myself and any of the board members if you have an issue. If you have an issue with a specific policy, we will get you the information. If you want the information we'll give it to you. We'll give you whatever detail you want that we can give you, we will give it to you.

I think this is, I think this meeting is a great start. I'd like to have more meetings like this. I think the public meeting is an awesome idea. I think if we were to get together, both at a public meeting with this OAG report and field questions from the public, I'd welcome that. I know my board will welcome that because we enjoy those kind of things. We're not, again, trying to hide behind a veil of secrecy. There's some things we need to improve and there's a lot of good things being done as well. I guess I'll leave it at that.

ACTING CHAIRMAN (Mr. Villeneuve): I agree. Anything more, Mr. Braden?

MR. BRADEN: No, thank you. Okay, anybody, any other committee members? Any more questions? Did you still want to, you're still on the list. I'll give you one more...

MS. LEE: I can't let it pass without saying...

ACTING CHAIRMAN (Mr. Villeneuve): ...question, Ms. Lee. Ms. Lee.

MS. LEE: Thank you, Mr. Chairman. I have to stress again, it's not about information, it's about change.

ACTING CHAIRMAN (Mr. Villeneuve): Thank you, Ms. Lee.

MS. LEE: We are not looking for more information, we are looking for change. We being the voice for the people who want things changed.

ACTING CHAIRMAN (Mr. Villeneuve): Thank you, Ms. Lee. Like Mr. Rodgers said, it's a big ship and he can't spin it around on a dime. But tweaking is happening, anyway. So that's good. Looking at the time, I guess we got other things on the agenda, but I'll just open the floor to Mr. Rodgers. Maybe you want to make some closing remarks for the GC. Mr. Rodgers.

MR. RODGERS: Thank you. Just again thank you very much. Thank Roger and Dan for the professional way they did this report. I'd like to thank, some great questions fielded here today. I hope, I mean, that this is viewed as a positive thing and I hope that when the Members walk away today, they walk away with at least some assurances that we are there to do a job and we're doing the best we can to do it. We're realizing that there are some things we need to fix, but for the most part it's all there, it's all working. The things that need to be fixed I think were brought out appropriately in the report and we're going to fix them. And again, I really appreciate it and I know from my point of view, and I won't speak for the board, I'll let them speak for themselves, I view this as a positive thing. I view this as a positive report. A tool, if you will. This whole meeting is a positive thing. So I appreciate it. Thank you very much.

ACTING CHAIRMAN (Mr. Villeneuve): Thank you, Mr. Rodgers. I want to thank you, Mr. Rodgers, Ms. McDonald, Mr. Aho, and Mr. Petersen and Mr. Hagen. Thank you very much for providing us with a lot of insight into the GC's operations and action plans, I guess, and recommendations and responses to all the good work that the Auditor General did. I look forward to more communication, I guess is the big...

MS. LEE: The 'C' word.

ACTING CHAIRMAN (Mr. Villeneuve): ...plan, I guess is. Some collaborative effort into making WCB a better image in the general public of the NWT and probably all those claimants that are out of territory too. I'm sure they're listening in or are going to be quite interested in the report. But with that, again, thank you very much on behalf of the committee. Much appreciated. We'll resume with who at 1:40? Okay, Mr. Baile, workers' advisor, at 1:40.

---SHORT RECESS

ACTING CHAIRMAN (Mr. Braden): Committee, with your concurrence we will continue our review of the Auditor General's report. Before us now we have Mr. Colin Baile, workers' advisor. Mr. Baile, I think we'll just ask you to take the floor if you have any opening comments for us, and we also have considered the aspects as regard to the Auditor General's report of your office. So we have some questions that we will like to pose to you as well. But you have the floor, Mr. Baile, for any opening remarks.

Workers' Advisor's Opening Comments

MR. BAILE: Thank you, Mr. Chair. What I would propose, with your consent, is to go through the report and point out several of the sections I'd like to draw your attention to. I anticipate that's probably about 15, 20 minutes.

I would like to start by saying two things; firstly that I'm very impressed by the level of engagement of this committee on this topic. It's such an important issue dealing with a systemic institution that I'm enheartened by your interest in it. Secondly, I would like to express how cognizant of my responsibility appearing before this committee being the only non-WCB organization or entity to do so.

To start, I'd like to bring you back to the reason why this audit was requested; that MLAs were hearing from constituents of their perceived mistreatment or unfair treatment by the board. As several Members have expressed during this hearing, that there's great similarities in those stories.

Firstly to the motion that brought the Auditor General of Canada here. The Auditor General was asked to examine several elements of WCB including attitudes and philosophy of the board, also whether or not the management of claims conformed with the spirit and intent of the act. Ms. Fraser was asked yesterday about attitude and replied that the board had followed the act and the policies in the administration of the claim. I appreciate that to audit attitude would be almost impossible, but it is such an important element of what brought the Auditor General to this task. In fact, I would suggest it's the core issue.

The report is a critical first step for this jurisdiction, as well as Nunavut, in its deliberations about WCB, and if nothing else it provides this House and all the affected stakeholders with the opportunity to approach these core issues with the intent to build rather than renovate. Our WCB system is based on the work of Justice Meredith and you've heard so much about the Meredith principles, however, I think it's critical just to take a quick review of where that came from.

It was the turn of the last century and in this country there were nine-year-olds working underground in coal mines for pennies a day. Injured workers were routinely fired. Families of workers killed on the job were often subject to lifelong poverty. Then the law started to change suddenly and it became possible for injured workers or their families to successfully sue employers.

At one point prior to the Meredith report, CN Rail, which at that time was one of the largest employers in the country, had no less than 50 lawyers dedicated solely to defending that company against claims from injured workers. It's in that climate that the Meredith report or the Meredith Commission began. One would say it was in defence of the mounting legal cost of employers rather than the health and safety of workers that prompted it, but in any event we ended up with four Meredith principles the first being security of payment.

1. A worker is guaranteed compensation for as long as earnings are impaired.
2. It's a no-fault system, so there's no need to prove negligence.
3. It's an employer funded collective liability. All employers pay into it.
4. It should be administered by an independent agency.

The trade-off was that injured workers could not sue their employers. As such, WCB benefits have become a right. The question I would suggest that this committee is faced with, should they wish to look at this in a much broader aspect as some of your Members have spoken of in the last couple days, is whether or not the Meredith principles are enough of a foundation for our compensation system.

I propose to look at several sections of the report itself, and I'll be referring to them by the paragraph number. The first being paragraph five. Its unique feature is that in reviewing the evidence of a particular claim it may be required by law to make all reasonable inferences and presumptions in favour of the worker. I would suggest that the word "may" is in appropriate. This suggests that the requirement to make all reasonable inferences and presumptions in favour of the worker is discretionary. In fact, it's an entitlement.

The act itself speaks to this entitlement in section 7.5. What it says essentially is the evidence adduced and medical opinions draw all reasonable inferences and presumptions in favour of the worker. That's what the legislation says. Let's move down one level, then, to the policies, and certainly there's been a lot of discussion about policies. Here's what the board policy says about this benefit of the doubt. In circumstances where the weight of evidence is evenly balanced, the decision shall be in favour of the claimant. Benefit of the doubt shall not be used as a substitute for evidence. This speaks to the subtlety of where you get the conflict, the policy conflict. The legislation says draw all reasonable inferences and presumptions in favour of the worker. When it gets to the policy level, the board's policy is in circumstances where the weight of evidence is equally balanced. There's a huge distinction. Evenly balanced means, ah, it could go one way or the other. But to presume all reasonable inferences and presumptions, or to apply all reasonable inferences and presumptions in favour of the worker, is far broader. It moves it away from the fence to encompass so much more, and this speaks to how WCB applies their policy. This is one policy that says okay, we'll give the benefit of the doubt to the worker, but only when it's right on the fence. And I've seen this in practice numerous times. It's on the fence; fine, we'll tip it to the worker's advantage. That isn't what the legislation says.

Policy is not black and white. It's not the instructions that you get from Ikea to put together a very simple three-part piece. Policy, I would suggest in that analogy, is more like the instructions for a barbeque. You've got all these pieces, it's very complex and it's how it's applied. I don't have issue with the vast majority of board policies, it's how they are applied by the board in the administration of claims.

Paragraph eight speaks to the stakeholders. I would suggest that this list needs also to include both public and private healthcare providers and the local Bar. Oftentimes

injured workers are sent, for instance, to Canmore Pain Clinic to deal with chronic pain syndrome and other pain issues. They should be part of this; they're a service provider.

Paragraph 13 refers to the board being fully funded. I suspect, because I'm ignorant in this area, that the term "fully funded" has an accounting definition. When I look at the numbers, I would suggest this board is not fully funded; it's overly funded.

Paragraph 20. The office of the Auditor General of Canada does not audit policies or comment on them specifically. I understand why; unfortunately, I believe that that's precisely the audit that was required. It's how the board applies its policies. It's not enough to say that this policy complies with legislation, but rather how it's applied.

Paragraph 26. We found the Governance Council fulfills its oversight role in some areas, but could make improvements in others. "Well" is a very subjective term and I think it would have been very helpful to have a comparative analysis that would compare the Governance Council with other similar governance agencies or bodies. In that way the "well" could be defined.

Paragraph 28, the board's relationship with the Minister. Again I believe it would have been helpful to have a comparative analysis, perhaps even examining or referencing other models. And in using the report's own language, it may have been of assistance in both paragraph 28 and 30 to have used the language of "we expected to see."

As raised yesterday, a more independent review of the board's activity is required. I would suggest it raises the point again is why does this jurisdiction not have an ombudsman.

Paragraph 33 to 36, I concur with this observation and recommendation that it's critical that there be clear, well defined communication protocols between the board and the Ministers.

Paragraph 37, that the Governance Council performance be assessed regularly and the findings supplied to the Ministers at least once a year. This speaks to a very important issue and is well raised. The assessment, however, should not be internal nor, to my mind, should it be contracted. It should be stakeholder driven to ensure greater independence. This may mean the creation of a body made up of employers and workers together with other stakeholders.

Paragraph 4. You've heard again a fair amount about the need for Governance Council training. In its absence, the Governance Council is not independent, is not informed and is not capable and I would suggest it become similar to, and I know this is frightening for this group, become similar to a government run by bureaucrats. They need that capacity.

Paragraph 75 dealing with when policy issues leave claimants unsatisfied they look for a way to vent their frustration. The issue of board policy is central to the perceived

failings of the board. It's not enough that the Governance Council approves policy, but rather it must take an active and meaningful role in identifying which issues require policy development or which policies require amendments, and to act independently to ensure fairness. It's interesting that the act outlines in section four what the Governance Council's roles and responsibilities are. They're to make policy, including a policy to consult stakeholders; they're to certainly take care of the accident fund. There is no specific legislative requirement for the Governance Council to look out for injured workers. They do not have a clear legislative mandate to protect the rights of injured workers. They're there to make policy and take care of the money.

Paragraph 100. Common reasons for denial include injury that occurs outside work and the lack of objective medical evidence of injury. This is a term that I encounter daily in my work; objective medical evidence. It's the golden ring and it's also the core to the conflict of medical opinion. In policy, the medical advisor advises board adjudicators, as you heard yesterday from Dr. King. That's the legislated role; that's the policy role. But in practice, the medical advisor's opinion is never viewed as one opinion of many. I have not encountered one occasion or one decision where the medical advisor's opinion was not followed by a decision-maker at the board.

Paragraph 104, the recommendation that the board should follow all its policies. It's very important to understand, and in deference to the authors of the report, I must disagree that policy as stringent as it's presented. Policy is not law. Unlike regulations, policies are intended to assist administration, or to assist in the administration of the legislation, yet board policies are held to be governing edicts. They're given far too much authority. Where I see this quite often as well is in staff training or how staff administer claims. They administer claims to the policies without keeping an eye on the umbrella that's the legislation. Our courts, the Supreme Court of the Northwest Territories as well as the Supreme Court of Canada, have said on numerous occasions, an administrative tribunal such as the Appeals Tribunal need not follow policy blindly. It must be applied on an individual basis and where it's found to be inappropriate, they can disregard it.

Paragraph 109, the taping of telephone calls. I agree with this recommendation with reservations. I would suggest that the recordings must be managed outside of the claims section of the board with strict assurances that they may not be used in any way in the administration of claims. Keep it separate. If it's intended for training, that's the only use it should be put to. Further, I believe that tapes should be maintained rather than transcribed. I'm sure any of you who have read transcripts of Hansard know that they lose quite a bit of the message, and if they're being used for training purposes to deal with dissatisfied claimants, it's critical to be able to maintain the ambiance of the conversation.

Paragraph 127 dealing with the need to check calculations. I would suggest such measures are very important; they must be reviewed. I've run into several circumstances where claimants are told that they actually owe money back to the board due to the board's miscalculation. All of a sudden someone who is without work, unable

to work, is receiving often very little in the way of monetary benefits, is told oh, by the way, for the last two years we've miscalculated your benefits, you owe us \$4,000. Don't worry, we'll let you pay it back a little bit at a time. Calculating and checking the calculations are critical.

Paragraph 146, the recommendation to better serve out-of-territory claimants to seek opportunities for resolving long unresolved claims. There is value in videoconferencing, but I would suggest the need for board personnel to attend outside the jurisdiction is not necessary, and in fact is cost prohibitive. You heard Dr. King speak yesterday about the complications of the medical advisors being certified to practice in each jurisdiction. I don't believe there would be great value in sending people here to various places.

Paragraph 157, the board employs the medical advisors. As I stated earlier, the medical advisor's opinion is considered paramount to any other medical opinion by case managers and adjudicators, and I believe that the Auditor General concurred with this in the following paragraph, 158. This is the rule; it is not the exception. It happens every time, to the point where I have had cases where I have had eight specialists in the area of medicine relevant to the injury and those eight opinions were discarded in light of the medical advisor's opinion.

Paragraph 160, the recommendation that the board and the tribunal should develop a formal process for resolving differences in medical views. There certainly needs to be a process to resolve conflicting medical opinions. Which model to use should reflect independence and conclusion. Greater weight must be given to examination reports as opposed to interview reports. Right now the doctor who examines the individual, their opinion is not given any more weight than the doctor that simply reviews the file.

The issue of cost I would suggest, as raised by Ms. Lee yesterday, is an administrative matter. It's the cost of doing business, and certainly the courts have consistently supported that view.

Paragraph 168. This deals with the need to explain the process earlier in the process to claimants. Policies are not explained well. I spend a tremendous amount of my time explaining the process to people. But more frightening is that I'll receive calls from clients who are in the system, they've been in the system for a while, and they have no idea where they're going in the system or, more accurately, where the system is taking them. They don't know what's going to be happening after this step or after that step; it's not laid out for them, there's no flowchart that says okay, you're here and if this happens, you're here or here. It's we'll wait and see. Let's see what happens with this step and then we'll let you know what we're going to do. That creates incredible frustration, it creates anxiety. And these aren't just the individuals, but rather their families and everyone around them are affected by the lack of knowing.

Paragraph 174 and the issue of video surveillance. This issue is very controversial within the WCB world. What I find troubling with our board is the weight that video surveillance is given in the decision-making process. In fact, on numerous occasions

I've seen the board use video surveillance tape as a basis of determining the level of impairment. It's not enough to say ah, we caught you working when you said you couldn't work; that's one thing. But to say based on this video, you can go back to work. And in one case an individual walking down the street carrying four bags of groceries was enough to say you're able to work.

Paragraph 188. The way that a matter gets to the court is by way of what's called judicial review, and judicial review is not an appeal. Injured workers do not have the ability to have an appeal of their decision before the courts, but rather judicial review is a very narrow window whereby the court can say the tribunal erred, or the board erred, take it back and rehear it, and usually keep this in mind when you're doing that. That process is very expensive. At a minimum it's \$5,000. If someone is at this stage in the process they probably haven't been working for at least one or two years and they don't have \$5,000.

Paragraph 189. The Appeal Tribunal members' opinion of a Governance Council policy is irrelevant. I respectfully disagree. As mentioned before, policy is not law. Even though in the legislation it does say the tribunal shall follow board policy, the jurisprudence says no, they have to apply it appropriately and if it is reasonable.

So to look at the big picture; communication, this is certainly an issue but I would suggest it's not the issue that prompted this report. It needs to be addressed, but more importantly the underlying issues that create the communication problems need to be addressed. As far as policies, it's not the policies that create the conflict per se, but rather how they're being applied. Policies are not clear cut; they're open to interpretation and inevitably they're interpreted by the board in favour of the accident fund.

Attitudes, philosophy and the spirit of the act are still unknowns to this committee I would suggest, and I would put the question out how is this House going to deal with those issues, and, finally, are the Meredith principles enough of a foundation? Thank you.

ACTING CHAIRMAN (Mr. Braden): Thank you very much, Mr. Baile, for your very methodical and concise and I think I can say, committee, plain language comment to the Auditor General's report. Your experience with this, Mr. Baile, just for committee, you have some credentials in dispute resolution and some experience with this. Could you just give us a brief snapshot of your background in this field?

MR. BAILE: Thank you, Mr. Chair. I have a chartered arbitrators designation as well as mediation. I conduct training for administrative tribunals in hearing process, weighing evidence, and I've conducted approximately 3,000 hearings in other capacities.

ACTING CHAIRMAN (Mr. Braden): Alright, thank you. Thank you, Mr. Baile. We've got some signals here from Mr. Simpson, Ms. Lee and Mr. Ramsay. Mr. Simpson.

MR. SIMPSON: Thank you, Mr. Chairman. I appreciate Mr. Baile's elaboration on a number of the points that we made in this report. I just want to clarify something for his purpose and I'm sure we actually did explain this at the beginning. While he feels that the essence is auditing policy, our office does not audit policy. That is the purview of legislators in this case. I would somewhat disagree with your comment about board policies. The Legislature empowered the governing council to make policies. And while it may not have the power of legislation, it has the power to become authoritative statements. I just want you to understand that while we understand your perspective on this, and it's a valuable perspective I might add is taken into account in this thing, we do not do that.

With regard to one other thing, just as a point of clarification, the office of the Auditor General is an independent organization. It holds itself out as independent of the political structure both federally and territorially, and therefore a request from the Legislature is merely a request, it is not an instruction, and it's up to the Auditor General to decide exactly what was focal the particular audit would be, and the scope that was decided upon here was appropriate to our legal mandate and it was doable. Audits have to be doable. We cannot pluck that out of the air, as attractive as they might be from time to time. So I just wanted to put that on the record just to explain.

Now having said that, I'd just like to play tribute to Mr. Baile made himself available to us on a couple of occasions for very long and informative discussions and it was very helpful in understanding some of the issues. His perspective is very valuable, but unfortunately, as auditors, we are constrained by rules of the profession, rules of methodology. So I just wanted to make sure that that was not some fundamental misunderstanding between ourselves. Thank you, Mr. Chair.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Simpson. I think this has been a bit of a learning curve for committee, too, to understand how far will the Auditor General can go in rendering opinions or advice or conclusions to us as legislators. I've got a clear understanding of that through this exercise. Where I guess I value Mr. Baile's opinions and others who are involved in this process is perhaps from a less objective point of view. We appreciate the clarification. Committee needs to know where those boundaries are, but it will be our responsibility and we will take responsibility for how we apply the guidance and the advice and the opinions we get from you both. Mr. Baile.

MR. BAILE: Thank you, Mr. Chair. In answer to Mr. Simpson's comments, I am very cognizant of the limitations of the audit and the nature of the audit. I think my point was that perhaps there are areas of this issue that were not audible -- sorry, is that the proper -- auditable by your office. They're too subject to be audited. Thank you.

ACTING CHAIRMAN (Mr. Braden): Okay, Mr. Simpson. At the expense of getting into a...

MR. SIMPSON: Sorry, I'm not getting into a...(inaudible)...thing, I just want to agree with Mr. Baile here and just point out that the report is a catalyst to discussion and

debate and moving forward. I think your appearance here today, Mr. Baile, is part of that process. The things that we were unable to get at because of objectivity and difficulty and actually getting objective evidence I think can be extended by the committee and others that appeared before the committee. So I think that was made plain all the way along, Mr. Chairman, and I think, quite frankly, we have done that. So I welcome hearing the rest of this discussion. Thank you.

ACTING CHAIRMAN (Mr. Braden): Alright. Thank you, gentlemen. We have Ms. Lee, then Mr. Ramsay, then Mr. Villeneuve. We got started about 15 minutes late and I'm going to allow us to go hopefully, if we need, that much longer to give us time to hear Mr. Baile. So, Ms. Lee.

MS. LEE: Thank you very much. I must start by saying I think my colleagues here would agree with me when I say I would benefit greatly from taking lessons from you on how to be so precise and succinct and passionate at the same time in raising the points that you did. I have to tell you that was so helpful and very good information for us to work with. I was feeling when I was listening to you and writing furiously all the paragraph references that you were making, I think we are sort of displaying our own lack of understanding or bias in the way we even schedule our time. Maybe we should have gone with the workers' advisor first, you know, in the assumption of doing this work for the benefit of the employees, rather than going the town down so to speak. Because as you have mentioned, we have this component to speak on the workers' behalf and then we have the whole other management and administrative issues that we have been dealing with for the last two and a half days. So I just cannot say enough about how useful and relevant your presentation here is today. I think the way to make up for the way we may have lost in our process in not giving the workers' advisor enough time or in the right order is that we have to do our work to make sure that this is reflected in our committee proceedings. It's really too bad that we don't have anybody from WCB or the Governance Council. I know they've probably spent too much time here already so they couldn't wait to get out.

Having said that, I have a couple of questions on your presentation, one to do with the Meredith principle and the second thing to do with your observation that it's not the way the policies are written so much as the way it's applied. On the Meredith principle you mentioned that we have to think about whether that principle is valid anymore and I don't understand why you say that, because it seems to me that the four principles under the Meredith principle where you're talking about giving workers guaranteed earning for lost time if they're not able to work, no-fault system, a collective insurance system, an independent system, seems to me those are still valid. If we could work the system so that those four are followed, then we wouldn't have as many issues we do have now. So I'd like to get more elaboration from Mr. Baile as to what he means by that, and also add to whether or not he thinks that 100 year ago or at the turn of the last century the Meredith principle came up because surely a worker can't fight against 50 lawyers from CN, but are we getting to that point now where we have lots of high cost of doing litigation and admin law review, judicial review process being very narrow and expensive and not giving the workers opportunity as they think it does?

I have a second question...

ACTING CHAIRMAN (Mr. Braden): Okay, alright. Thank you, Ms. Lee. We have a good one on the floor now for Mr. Baile.

MR. BAILE: Thank you, Mr. Chair. The Meredith principles are just that, principles. They're a tremendous foundation for WCB or for workers' compensation issues. I guess what the question should be, are they enough of a foundation? When these principles came into effect or when they were created, one couldn't even envision a claim for carpal tunnel syndrome from keyboarding, or post-traumatic stress disorder from a piece of equipment falling. They weren't on the able. Are these enough to build an entire social system on that will meet the needs of injured workers?

ACTING CHAIRMAN (Mr. Braden): Okay. Thank you, Mr. Baile. Ms. Lee.

MS. LEE: But why not? If that caused lost time of working, if the employees feel that they're not being treated independently or that the benefit of doubt is not being given to them, isn't it about the application of that principle rather than change in circumstances? I'm still not clear as to why that doesn't apply.

ACTING CHAIRMAN (Mr. Braden): Mr. Baile.

MR. BAILE: Thank you. It's not that they don't apply; in fact, they do apply. They apply very well. But there are perhaps maybe other principles that should be added to these four. For instance -- and I'm really pulling this off the top now -- should there be a principle of expeditious process that the impact of family should be considered, that it should be a more holistic process? Right now the process is not holistic. Right now an individual is the last person that the board will accept evidence from. In fact, I would suggest that most claims could be adjudicated without contact with the worker at all under the present system. Thank you.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Baile. Ms. Lee and then Mr. Ramsay and Mr. Villeneuve.

MS. LEE: Thank you. I understand now. So we should be considering extra principles to operate from. I just want to ask my last question on what Mr. Baile said about it's not the policy but it's how it's applied, and he gave an example of how the law says all reasonable inferences and assumptions should be made for the benefit of the worker, but the policy says only when it's a tie. Now, it sounds to me a question of how the policy is written and it doesn't follow the legislative guideline, but it's not how it's applied because it seems to me that's how people apply it. Do you know what I mean? It seems to me we need to change that policy to be more close to the legislation rather than the question being how that policy is applied, because, you know, that's how it's applied and that's why we have problems. Could I get clarification on that?

ACTING CHAIRMAN (Mr. Braden): Mr. Baile.

MR. BAILE: Thank you, Mr. Chairman. That example, yes, the policy could be more clear. Let me give you another quick example. A policy to determine the level or the amount of benefits that someone receives is based in part on how much money they were making. So they were making X amount of money and this equates to X amount of benefit based on annual income. But when it comes to vocational rehabilitation that comes later down the process, rather than looking at the same annual remuneration they say oh, no, we're not looking at that, we're going to look at hourly wage at the time of injury. Those two may be very difficult and as a result the entitlement in vocational rehabilitation is reduced. It's not the policy, it's the application, because the policy says based on income. The legislation says annual income, but they ah, well, we're interpreting this to be hourly wage. Policies can be interpreted any number of ways. You can't write a policy that is -- not on these kinds of issues -- that are so clear they won't be open to interpretation.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Baile. Mr. Ramsay.

MR. RAMSAY: Thank you, Mr. Chairman. I want to thank Mr. Baile for being with us here this afternoon. I guess Ms. Lee mentioned it a little bit, but I just want to state for the record that if you look around the room, there's not one person here from the Workers' Compensation Board. Honestly, Mr. Chairman, I take offence to that. I think they should be here. Mr. Baile spoke of what gets lost in transcribing meetings. Sure they can get the notes from the meeting or the transcripts, but they're not here. I mean here we are talking about the workers, the claimants and the issues that they're faced with on a day-to-day basis in dealing with the WCB and where is the WCB? They're not here. It's not lost on me and I just wanted to state that at the onset.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Ramsay.

MR. RAMSAY: Thank you, Mr. Chairman. Now I get to some questions I have for the workers' advisor, and the first one would be if Mr. Baile could give me an overview of what he sees as the corporate culture of the Workers' Compensation Board and whether or not he believes it actually reflects that presumption in favour of the worker today. I know it's a tough question, but I'll ask it. Thank you.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Ramsay. A tough one, but a very valid one, very much at the heart of why we're here today. Mr. Baile.

MR. BAILE: Thank you, Mr. Chair. I guess it's time for the tough questions. Let's start from the top down. I believe that the Governance Council is in a tremendous transition, that they're moving to a place that everyone wants them to be. I give them a lot of credit for the direction they're going.

The board administration has a mandate and that mandate is to administer the legislation and manage the accident fund. I believe that at some point in the last 20 years managing the accident fund has taken a greater priority than managing the legislation.

As with any organization, any changes that happen at the top filter through the system downwards and by the time they get to the bottom it's often just a drip. It takes a profound change at the top to effect how program delivery happens. If they want to change the culture, then there needs to be changes inserted at all levels of the organization. It can't be enough just to come from the top down. It's my experience that claims services does their work in an honest and faithful manner. They do what they've been trained to do, and I believe for the most part they do it quite well. The challenge is what have they been trained to do? How have they been trained to deal with people? How have they been trained to make decisions and to talk to those irate people on the phone? I'll leave it at that. Thank you.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Baile. Mr. Ramsay.

MR. RAMSAY: Thank you, Mr. Chairman. I do appreciate Mr. Baile's honesty in answering the questions. The next question I'd have would be whether or not Mr. Baile has had any experiences or concerns that all claims might not be treated with impartiality. I'm wondering if in his experience has he...The reason I'm asking this is when Mr. Baile was going through the report he had mentioned over the years the medical advisor having his advice never brought into question and, in fact, specialists' opinions, and many of them were just cast aside in favour of that one opinion of the medical advisor. So I'd like to ask Mr. Baile that question. Thank you.

ACTING CHAIRMAN (Mr. Braden): Mr. Baile, to the question or the issue of impartiality.

MR. BAILE: It's my experience that the board administers claims in a manner that they've been instructed to do so. I don't believe there is any malice or bias in how they do their work. There are circumstances where people are treated rudely, but I don't believe the decisions are biased. Biased...well, of course they're biased. They're certainly not malicious.

ACTING CHAIRMAN (Mr. Braden): Okay. Thank you. Yes, it's difficult dancing on the heads of pins here, but let's trust ourselves a little more to be open and forthright on these. Something that we reflect on is the advice of the Auditor General who found that, with only one or two exceptions, that everything was handled in the claims looked at in 2005 -- I'm looking at Mr. Stadlweiser here -- everything was followed according to policy expectation. Our call for this review, and I'm hearing from Mr. Baile, is with a longer historic lens. We're looking at several years, I guess, of events on the part of at least some workers, and so we have this bias of our own. So we need to look at that historic experience. What is going on now, and we've heard over the last couple of days, a number of steps that the WCB is taking in transition, as you have called it, Mr. Baile, and hopefully we'll see that it gets us to a better place. Was that your second? Okay. Somebody else is keeping track here. Go ahead, Mr. Ramsay, one more time around.

MR. RAMSAY: Thank you for letting me keep score myself. The next question I want to get to and it has to do again with the medical opinions and I wanted to get back to that if I could. Are specialists only overruled -- you know, Mr. Baile said they're overruled quite often -- but are they only overruled if the issue or the dispute is whether or not the injury actually occurred in the workplace? Because that seems to me to be the crux of the medical advisor, because he seems to think -- and this is the medical advisor -- that because he's the medical advisor for the Workers' Compensation Board, he's the be all and end all to whether or not an accident or an injury occurred in fact in the workplace and I don't understand why other specialists or medical practitioners could not determine whether or not an injury happened in the workplace. I think that to me is part of the issue here and I'd like to hear from Mr. Baile on that. Thank you.

ACTING CHAIRMAN (Mr. Braden): Thanks, Mr. Ramsay. Mr. Baile.

MR. BAILE: Thank you, Mr. Chairman. You've pointed at the dance. If this issue was resolved, it would probably eliminate 60 percent of my caseload and it comes down to objective medical evidence. Where I see the medical advisor's opinion being routinely taken at greater value than let's say an orthopaedic surgeon's is on the issue of causation, meaning could this work activity cause this condition. An example is carpal tunnel syndrome. Could keyboarding cause carpal tunnel syndrome? The board's position is that the medical advisors, because of their training, are experts on the issue of causation. When they look at a report in that light from, for instance, an orthopaedic surgeon who could have 20 years of experience dealing with carpal tunnel syndrome, when that specialist says it's a possibility that this condition was caused by this activity, the board's view is that the orthopaedic surgeon may be a specialist in carpal tunnel syndrome, but not what causes it, whereas the medical advisor is a specialist in what causes things.

I have a great difficulty with that. Another point that was raised by Dr. King yesterday was the balance between -- I will try to get the terminology right -- the scientific examination of evidence versus the clinical examination of evidence. The difference is the orthopaedic surgeon looks at the individual, does physical testing and comes to a conclusion, whereas the medical advisor reviews all medical journals written on that topic in the last 20 years and draws a conclusion as to whether or not the medical community, as a whole, believes this to be the case.

The frailty in that process, as I have encountered on more than one occasion, is that it's a subjective examination of scientific literature. That medical advisor may be putting more emphasis on one or two studies. Now the challenge comes when all this information goes to the adjudicator who is really the decision-maker. On one hand, they have one page from Dr. So-and-So whose orthopaedic surgeon is saying it's a possibility that this work caused this. On the other hand, you have a medical advisor's report with 16 medical journals saying my examination of the medical literature suggests that this could not possibly happen. What is the adjudicator to do? I hope that answers your question.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Baile. I have Mr. Villeneuve and then Ms. Lee.

MR. VILLENEUVE: Thank you, Mr. Chairman. I want to thank Mr. Baile for some good insight. I think he answered a lot of the questions that we already had written down for committee members to answer just in your opening statement. One thing that I did pick up on was basically when you were talking about the policies and the practices that the compensation board and its staff carry out everyday that allows this system or makes it possible for adjudication to be an option without interaction or even listening to what the claimant has to say. To me, I find that pretty disturbing that policies that they use and they work with and are developing or amending are providing an option such as that to come up with a decision without even hearing from the claimant to begin with. That, to me, sounds disturbing and not a good direction in which policy development or practice should be carried out.

How do you feel with this last couple of days with listening to the board and the GC? How do you feel with their explanations to policy developments, policy amendments? Are they moving towards more of this kind of option being available for the board or the adjudicator to come up with a decision that wouldn't even need input from the claimant himself? Are we going more in that direction, or are they trying to avoid that option? What is your take on it?

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Villeneuve. Mr. Baile.

MR. BAILE: Thank you, Mr. Chairman. Firstly, just to backtrack a bit to your first statement, I don't want to give the impression that they are making a lot of decisions without talking to claimants. It does happen, but it happens in a narrow scope of the work that they do.

As to the last couple of days in direction, I believe Mr. Rodgers' analogy of the super tanker is a very good one. You can turn the wheel in the wheelhouse, but it's going to take a long time for the ship to actually turn. I have no doubt that Mr. Rodgers and the other members of the Governance Council want change and they want to move forward. In order for those changes to affect the individual that's hurt tomorrow on the job, there needs to be an infusion of a different philosophy in the level of claims management. There needs to be the desire and the passion to move away from the insurance model to a more compassionate, holistic examination of people's injuries, to realistically provide giving all reasonable inferences and presumptions in favour of the worker. I believe that's how the board was 20 years ago. As soon as they got stuck on the objective medical evidence model, it tightened it right up. I am speaking somewhat anecdotally in that I wasn't doing this work 20 years ago, but I certainly look at a lot of files that go back that far. The philosophy in how they did their work 20 years ago compared to today is very different. For those of you who were here 20 years ago, the board was in the basement of city hall. You could walk in the front doors and hi, how are you doing. It was very open. God bless Dr. Gibson; he would write down a few things and say yeah, I would say that's about 15 percent and off you go.

It became more codified and more bureaucratized to the point where it's now a bureaucracy trying to support itself.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Baile. Mr. Villeneuve.

MR. VILLENEUVE: Thank you, Mr. Chairman. Thank you for that. That pretty much sums up a lot of what is in the report also. Maybe it's a little over funded in itself now and the sow just keeps growing and growing. There is no end once the trough gets bigger. Just again in policy development when the board and the Governance Council was talking about reviewing policies, amending policies, they have the authority to do that and they do that every three years. But it seems like what I am hearing from you and the claimants and people who are working with workers' compensation, it's kind of more or less that policy is interpreted depending on whether you are a claimant, an employer or a WCB employee. The common practice seems to be swaying more in favour of protecting the investment of the Workers' Compensation Board. Decisions are based on how much money are we going to lose, how much are we going to have to pay out, instead of really looking at the claimant and saying what is really the injury or what is the circumstances specific to that case. I think that the whole policy interpretation of the Workers' Compensation Board is more or less going toward let's interpret these policies for the benefit of the trough. I really find that it's very bureaucratic and not only...I don't know; communist. I just find that really disturbing that the Workers' Compensation Board has gone from the worker to the employee of workers' compensation to protect them, to protect the investment, protect the company. We will talk about protecting the workers, but it doesn't really seem that it's going that way. How you say, given any advice to the board or the Governance Council, that changes in the interpretation of specific policies dealing with workers' claims and how they interpret the policies would benefit the workers more? What simple policy is there that would amend or re-interpret?

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Villeneuve. Show us the magic wand, Mr. Baile.

MR. BAILE: Thank you, Mr. Chairman. I would like to preface my answer with two things. One is I don't believe that there is a conscious effort at the board to hoard, to say we are not paying anybody anything so that we can build a tower. I don't see that. What I do see is subtle changes in philosophy that at the program delivery level results in someone on the phone perhaps being treated in a way that is unbecoming the organization. So I don't believe for a minute that there is a conscious intent not to pay benefits.

The other thing I would like to say is please take my comments knowing my perspective. On the bell curve of claimants, I see this little end group here who are profoundly dissatisfied with WCB. I don't see any of the people who say thanks for much for the cheque, I can get back to work now. They don't come to me. However, I do see a lot of those people at the end of the bell curve.

As far as a policy that would set things straight, there is no such thing. It's not policy driven. If it were, you could create legislation to do the same thing. You can't. It's the philosophy and the intent of the organization that will guide where it's going in the future. The Governance Council is even limited in that. You heard today the policies, they seem to pop up with problems. It's the emperor has no clothes. Look at that, we have all these policies, everything is going great. They don't realize something is wrong until it's brought to their attention. Until recently, there was very few mechanisms to make them aware of it. I know I asked repeatedly for audiences...Well, we don't need to hear from you at this meeting, that's changing.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Baile. I think that's okay, Mr. Villeneuve. I am looking at the clock. I have Ms. Lee and Mr. Ramsay on the desk. There is one point that I would like to make and then I think we are going to be scheduled to bring Ms. Simpson in. Mr. Villeneuve.

MR. VILLENEUVE: Thank you, Mr. Chairman. Just with policy development and amendments with your office, do you have...I know there is no formal protocol in place, but you have the Minister at your disposal or you can use the Minister's office for advice or direction that you want to get down to the Governance Council level. Do you use the legislative avenue through the Minister to provide maybe some possible amendments to any policies that you feel are being misinterpreted or not practiced in accordance with what the intent was or is?

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Villeneuve. Mr. Baile.

MR. BAILE: Thank you, Mr. Chairman. I do have a direct relationship with the Minister's office as I am appointed by the Minister as per the legislation. I would suggest, however, that that avenue may not be the best for introducing comments on policy in that it could be viewed as the Minister's office trying to interfere with what the Governance Council is doing. I do have a contractual obligation to inform the Governance Council of changes that I believe are necessary. So I do, in theory, have a direct pipeline to the Governance Council on policy issues. I believe that pipeline will be much bigger in the future, based on what I have seen in the last couple of days. I would prefer to use that and leave the Minister's office out of it from my end.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Baile. I am of the understanding that part of your contract is to file an annual report with the Minister. Is that correct? It's nothing that we have seen circulated or made public, but I just wanted to know if you do indeed file an annual report and is that a potential avenue for you to offer advice. Mr. Baile.

MR. BAILE: Thank you, Mr. Chairman. I do file an annual report and starting next year, I believe it's the Minister's intention to table that report. It hasn't been tabled in the past. I do make recommendations to both the Minister and the board within that document and in the future it will become a public document.

ACTING CHAIRMAN (Mr. Braden): Thank you. Ms. Lee and then Mr. Ramsay.

MS. LEE: Thank you, Mr. Chairman. I will try to be brief. This is so useful. With the concurrence of the committee, I think we have very few questions to the tribunal people and maybe we could exercise their discretion a little bit. I have a few questions based on what Mr. Baile has said.

For me, things are getting more crystal clear from the muddy water I have been through over the last two and a half days. One of the things is there are things we could do. For example, you listed that maybe we should enhance and improve the Meredith principles to reflect 100 years later that we live in today. I am comforted to know that board staff are doing what they're supposed to be doing within their guidelines. It needs a larger direction to say you need to put it onto the holistic examination of a situation. That gives me a lot of hope for me to work on. You also say the board mandate states they have to administer the legislation and then manage the fund. But that might just be dealing with...Okay, that's a neutral stand and you are supposed to manage the accident fund, which is more for the employer. Where is the balance for the employee? We could add to that so it creates a balance. That may direct the philosophy and policies at the ground level.

You spoke about the...(inaudible)...that happens in the application of policies. This is where it's not as clear for me. You spoke of two examples; one is where the policy says for some accident cases or claims, loss of income is covered, but when they get into vocational rehab then they are paid wages. I don't know how that is determined. I don't know if they pay minimum wage plus, but it's a lesser amount. Can we, as a Legislature, or the Minister or the WCB say that's not following within the spirit of the legislation or something, or is that totally within the board administration to make those changes? Do we have the power to...Does the Governance Council have the power to do that?

Similarly is the medical advisor role. The medical advisor could say I am doing my job and it's up to them what they do with my opinion, but we know in reality that his opinion overrules everything else. That might be in the narrow definition. There is nobody doing anything wrong, but the effect is not the way we had meant it. If we put a balanced question there about medical advisor role or policy interpretation application, determining the remuneration, that all has to be reflective of the more important principle of interpreting everything for the benefit of the workers and giving that specific mandate to the board and the board having to make sure all their policies and interpretations are in line with that principle. Do you see that as something at this level could work on to change the system for the better? Thank you.

ACTING CHAIRMAN (Mr. Braden): Mr. Baile.

MR. BAILE: Certainly the area of responsibility is very clear cut. This House has the responsibility of the legislation and the Governance Council, the responsibility of the policy. They serve two very different purposes. The policies stem from the legislation,

so if this House chooses to create legislation with greater direction, then the board has to live with it. They have to create policy accordingly. The issue that you raised about the medical advisor and conflicting medical opinions, I would like to say firstly that I don't think it's the fault of the medical advisor. The medical advisor is doing what the medical advisor is hired to do. It's in a different process where it breaks down. This Legislature may want to look at legislation like Yukon where I believe in their legislation, the most senior medical opinion is given the greatest weight. So a specialist opinion is given greater weight than a general practitioner's opinion.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Baile. Ms. Lee.

MS. LEE: Thank you for that and is something we need to consider and something that is workable finally that we can consider.

This is something totally unrelated and that is to do with video surveillance. I do believe the board told us that that never takes place; that they do not video injured workers; that it's folklore. It's a misconception and misinformation, it does not happen. I want to know in what cases does that happen, how does it happen, under what policy do they use that?

ACTING CHAIRMAN (Mr. Braden): Thank you. I am getting a bit of a signal that you might not be on the same page. Collette, do you want a moment or can somebody help us clarify that?

MS. LEE: I have another question in the interim, though.

ACTING CHAIRMAN (Mr. Braden): Okay. Let's see if we can deal with this one now. Mr. Baile.

MR. BAILE: Thank you, Mr. Chairman. The board does have use video surveillance; without question they use it. They don't hide the fact that they use it. It is a tool that they use and there is a policy. I believe there is a board policy on video surveillance. How it's used and the extent to which it should or should not be used is debatable. The weight that it's given is very much in question. It's one thing to say that as I mentioned before and they are saying they can't work, videotaping is great. We saw you working the till in the store, you were working. To videotape someone raking their lawn and drawing the conclusion that they are capable of doing heavy equipment operating as a result is ridiculous.

ACTING CHAIRMAN (Mr. Braden): Thank you. Ms. Lee, does that help you out on that question?

MS. LEE: I will have to go back to the notes and see how they reconcile. My memory is subject to question.

ACTING CHAIRMAN (Mr. Braden): Mr. Ramsay.

MR. RAMSAY: Thank you, Mr. Chairman. It's a good discussion we are having here and I wanted to get back to something we touched on with the administration yesterday and I think it was again this morning. It came up with the Governance Council in the optics of your office. I know you provide a tremendous service for injured workers out there, and claimants. But the optics are that the purse strings are still with the WCB, the office isn't independent. Even though I know it is and most people will know that it is, but for the claimant there is still that question in their mind about the impartiality of the office.

I made the suggestion this morning that maybe it could be financed a different way. It could be billed back to the WCB by maybe the Department of Justice, for lack of any other department. What would your comment on that be; the public perception of the workers' advisor office and how it's resourced? Thank you.

ACTING CHAIRMAN (Mr. Braden): Mr. Ramsay, thank you. Mr. Baile.

MR. BAILE: I perceive my office to be independent. I take great strides in maintaining that independence. I, however, appreciate where some people may perceive it not to be independent because it's paid for by WCB. It's my understanding that every workers' advisor office in the country is paid for by their respective boards. In fact, the Alberta workers' advisor office is actually in WCB; it's actually a department of WCB. Most of the other ones are affiliated with the Department of Labour or some such ministry or department. This is the only jurisdiction where it's contracted. As raised this morning, the funding has to come from the board. Government certainly isn't going to say here is some money for you. If the money is coming from the board, how many cut-outs do you need in order for it to be palatable? I can't answer that.

ACTING CHAIRMAN (Mr. Braden): Okay. Thank you. Mr. Ramsay.

MR. RAMSAY: Thank you, Mr. Chairman. I would like to thank Mr. Baile for that response. The other question, and Mr. Baile said resolution to the conflicting medical opinions and if we could ever get to that type of resolution, it would reduce your workload by 60 percent, I think it was that you said. I am still going to ask this question. Is your office resourced, staff-wise and workload-wise, to the extent where you feel claimants have access to whatever information they need or advice they need in order to have some peace of mind that their claims are being dealt with fairly and in a straightforward fashion?

ACTING CHAIRMAN (Mr. Braden): Mr. Baile.

MR. BAILE: Thank you, Mr. Chairman. The answer is no. Because so much hinges on the medical argument in WCB, the only defence is a higher level of medical opinion. Those are very costly. You heard about the potential cost of medical appeal panels. If the workers' advisor office had funding to selectively ask for independent medical examinations, I believe that would be money well spent. I could see there being some challenges in that it would be a discretionary fund that the workers' advisor would have

to decide which cases used this funding and which didn't, but it would go a long way. Similarly, a legal fund. I can't represent someone before the courts. There are several issues that I would love to take to judicial review. I can't. If my client can't afford a lawyer or legal aid criteria is not met, it doesn't happen. That's the end of the game.

ACTING CHAIRMAN (Mr. Braden): Thank you. Mr. Ramsay.

MR. RAMSAY: Thank you, Mr. Chairman. We talked about that this morning, maybe somebody should look at setting up a legal fund as a last resort. Again, it gets back to the peace of mind for claimants that that option is available, there is always a way that they can see a resolution to their claim. Are you aware of any other jurisdiction in Canada, workers' compensation, where they do have something like that, like a legal fund set up for claimants so that they have that peace of mind and as a last resort can go that route? Thank you.

ACTING CHAIRMAN (Mr. Braden): Mr. Ramsay, thank you. Mr. Baile.

MR. BAILE: Thank you, Mr. Chairman. I am not aware of any systems that provide direct monetary support for legal action. However, what a number of the workers' advisors offices have are lawyers on staff. In fact, the Alberta office is virtually all lawyers because they just deal with appeals. They don't do advocacy work; they only do representation. Nova Scotia is another jurisdiction that has lawyers on staff. In fact, it was the Nova Scotia workers' advisor office that took the matter all the way to the Supreme Court, the Martin matter, that opened up the chronic pain issue.

ACTING CHAIRMAN (Mr. Braden): Okay. Thank you, Mr. Baile. I have nobody else here except me. Mr. Ramsay.

MR. RAMSAY: Thank you, Mr. Chairman. I just wanted to probe a little bit on this. Mr. Baile, you say you are under resourced. I believe you 100 percent. You don't have to convince me of that. Obviously there is pushback from the Governance Council and the WCB in providing you the tools that the workers' advisor office needs to carry out its work and its mandate. Why do you feel like there's been that pushback? That, to me, is an important part of this. I want to see what Mr. Baile has to say about that. Obviously, you have gone to the Governance Council and suggested things that you might need. Why have they said no? Thank you.

ACTING CHAIRMAN (Mr. Braden): Thank you. Mr. Baile.

MR. BAILE: Thank you, Mr. Chairman. I am concerned that in some way I have mislead you. For the work that I am doing now, I don't believe I am under funded. If my mandate were to be expanded to include the ability to hire independent medical examinations or lawyers to represent a judicial review, then certainly I am under funded. With the mandate I have now, I am not under funded. The reason that there are not more resources is probably because I haven't asked for them. I don't feel that there has been a pushback and there is historical, my predecessors, without getting into it in great

detail, I put forward a budget every year to the board and say this is my budget for this year. Primarily, it's based on my contract with the Ministers responsible. If I were to be told by the Ministers that we want you to expand your mandate, then at that time I would feel confident in going to the Governance Council and saying based on my mandate provided by the Ministers, I now need X number of dollars and this is why.

ACTING CHAIRMAN (Mr. Braden): Thank you. Mr. Ramsay, you have gone around this. I am giving you a little bit of latitude; quite a bit perhaps. One more and then I have to go to Ms. Lee.

MR. RAMSAY: Thank you, Mr. Chairman. And it just so happens that we are getting together with the Minister tomorrow, so I think it's very important. If the mandate and the expansion of the mandate has to come from the Minister, I think we have to make sure we ask him that question tomorrow, because I do believe there is a need for it. I will leave it at that. I know we have another witness here and we'll move on, Mr. Chairman. Thank you.

ACTING CHAIRMAN (Mr. Braden): Thank you. That's certainly one of the things we've highlighted for the Minister, are the potential legislative initiatives that might be part of the change here. Ms. Lee.

MS. LEE: Thank you, Mr. Chairman. This is really good. I am really excited about the fact that I can see something tangible that this committee can work on to improve the situation. I just have a couple of questions. Let me just ask my last star I had on my note from Mr. Baile's presentation. It had to do with GC's ability to assess their own work. Mr. Baile mentioned that it shouldn't be internal or contracted, that you would need another body to do that. Where does that process end then? If GC was functioning properly, they should be self-governing. At some point, it has to come to an end. We can only review each other so much. So I just want to do know if Mr. Baile could comment on that and is there any other mechanism for us to do that independently without us setting up a new system?

ACTING CHAIRMAN (Mr. Braden): Okay. Thank you. Mr. Baile.

MR. BAILE: Thank you, Mr. Chairman. The reason I suggested that an evaluation of the Governance Council should be stakeholder driven is that I believe the Governance Council should be accountable to its constituents. Who are its constituents? To my mind, injured workers, employers and other peripheral stakeholders. One of the reasons I believe we got to the place where we were recently was there was not that infusion of direction from stakeholders at the Governance Council level. They became stale. They became complacent. That seems to change. What needs to happen in order to ensure that passion continues? Outside suggestion and input would be invaluable.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Baile. I have no other committee members on the list. There were many points, Mr. Baile, but one that I will stick to and then we will bring Mr. Simpson to our table. In a discussion a little bit earlier, Mr. Baile,

we talked about a policy per se, not being so much the problem but the application or the implementation or the interpretation of policy on a case-by-case basis. Then you said, and I hope I got this right, it is how the policies are applied and invariably they are in favour of the accident fund. That statement, if I have that right, really helps peel back a lot of the layers and helps me define where the WCB is now attitudinally. I feel exploring this point of how policy is applied and where the biases are is really fundamental to where this committee needs to start and which direction we want to prod or push or be the catalyst. So I wanted to perhaps at least confirm with you, did I hear you correct that your sense is that the application of policy seems invariably to be in favour of the accident fund, not the worker? If there is anything you care to elaborate on or further define on that statement, I would find that very powerful and very helpful. Mr. Baile.

MR. BAILE: Thank you, Mr. Chairman. Having that quote given back to me, it sounds very coarse. Perhaps I can modify it by saying in the absence of appropriate inference and presumptions in favour of the worker, what is left? If a decision is made where reasonable inference and presumptions are not in favour of the worker, what are they in favour of? I don't want the accident fund to be seen as hell or the man behind the curtain, but that's the beneficiary should this presumption not be applied.

ACTING CHAIRMAN (Mr. Braden): So this is communication here. We are bouncing things back and forth, so we are on the same page. So it is not a bias then. You are saying to us that this is not a bias or a default that the system has, that it's going to go to the fund unless it's absolutely clear that the worker deserves it. Where it isn't absolutely clear, the fund is going to get the bias. Is that where we are going?

MR. BAILE: Yes, I think we can say it a lot of different ways. If policy and especially this kind of legislation and this kind of policy, the courts have repeatedly said they need to be interpreted very liberally. They're not. The policy themselves are not against the worker, but it is the application of the policies that perhaps limit the benefits that people are receiving.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Baile. I am prepared to stop there. I wanted to go back to you if you have any closing remarks.

MR. BAILE: Thank you, Mr. Chairman. I think I have said enough. However, if you feel I haven't, I would certainly make myself available to the committee should they wish to hear from me further today or tomorrow. Thank you. I'm sorry; there was one more thing. I greatly value the report of the Auditor General. I believe that it was done so well. I was impressed by the people involved in its creation and the end result. It is the catalyst that we all needed to open this and look at it. So for that, I thank the Auditor General's office very much. Thank you.

ACTING CHAIRMAN (Mr. Braden): Ms. Lee is trying desperately to get in here.

MS. LEE: Okay, one short question. Thank you for the indulgence. Mr. Baile, I know you were involved with the Act Now panel and there had been suggestions for legislative change and that legislation has done that. Were your suggestions for changing philosophies or spirit or intent of the act, was that recommendation made and was it followed and if not, why not? Is that a long answer?

ACTING CHAIRMAN (Mr. Braden): That's a little bit off the topic.

MS. LEE: Okay, I'll do it privately. We'll do it by e-mail, but I think it's to the benefit of committee.

ACTING CHAIRMAN (Mr. Braden): Mr. Baile, we have noted several times, or I have noted several times as acting chair of AOC, that this is hopefully the first of more meetings of this kind on this topic. I know we will welcome you back. Thanks for coming today.

MR. BAILE: Thank you.

ACTING CHAIRMAN (Mr. Braden): We aren't doing too badly here, folks. Can we reconvene at quarter to, please, to take up Mrs. Deb Simpson from the Appeals Tribunal?

---SHORT RECESS

ACTING CHAIRMAN (Mr. Braden): Thank you, committee. After a long and a very, very full day we have before us the chair of the Appeals Tribunal, Ms. Simpson. Again, we will take as long as required. We're getting started about 20 minutes late here and I want to make sure that Ms. Simpson has every opportunity to present her story, so we'll go as long as it takes. Then we'll be resuming and completing our review tomorrow morning.

Just for the record, to refresh the record, we have Mr. Villeneuve, Mr. Pokiak, Mr. McLeod, and I believe Mrs. Groenewegen, Ms. Lee and Mr. Ramsay will be joining us for the end of the day. We have Mr. Simpson and Mr. Stadlweiser from the Auditor General's office, and for committee staff we have Mr. Schauerte, Ms. Langlois and Ms. Payne. Thank you.

So, Ms. Simpson, chair of the Appeals Tribunal, thank you very much for accepting our invitation. Do you have any opening remarks or comments that you would like to present to committee this afternoon? Ms. Simpson.

MS. SIMPSON: Thank you very much for inviting me. Shall I start before Ms. Lee and those folks come back?

ACTING CHAIRMAN (Mr. Braden): Thank you, Ms. Simpson. Yes, we've established quorum at the start of the day and those Members will be coming in. We're on the record now, please begin.

Appeals Tribunal Chair's Opening Comments

MS. SIMPSON: Okay. Well, I just wanted to start by saying I'd like to reiterate what Colin said, and that is I was very happy to see this report, also. I think there's no organization or group or company or government that's perfect. And when we do these kinds of reports, we're able to highlight the areas that require improvement, and that's what I think this report is about. It's about how can we make ourselves better.

I can't really comment on the Governance Council, nor can I comment on the workers' advisor or on the board itself, but in terms of the Appeals Tribunal, I've been serving on the Appeals Tribunal now for about five and a half years and I think we're doing a reasonably good job. We have a mandate and we try to fulfil our mandate. There's only a couple of points in the report that refer to the Appeals Tribunal. I wondered if you wanted me to speak of those or did you want to ask questions?

ACTING CHAIRMAN (Mr. Braden): Thank you, Ms. Simpson. I think we'd certainly like to hear any comments or feedback that you have to it. I know you were given the opportunity before the report was finalized to speak to it as well, but this is the public opportunity to discuss. We're looking for a wide field here. We do have a couple of questions prepared that we will be posing to you. But this is your chance, if you will, to help start us off.

MS. SIMPSON: Alright. Well, just to bring the Members here and the others sitting at the table, and the folks in the audience also, up to speed, if you're not aware, the Appeals Tribunal consists at the moment of five individuals. There are two people representing labour, two individuals representing employers, and myself, I'm public interest. At the moment, we're in the process of identifying another individual to take on the other public interest position and that should be happening very shortly, so we will be a group of six.

For every panel that we have, for every hearing that we have, we have a panel of three. The panel consists of one public interest, one employer and one employee. So we sit together as a group of three and have a hearing. That's how it works, and I wasn't sure if everyone here in the room was aware of that.

We have about four to five hearings a month and that keeps us fairly busy, considering that we are part time. This is not a full-time job for us. Most of us, as a matter of fact, have other jobs that we work at. So being that we're part time, we complete a fair number of hearings each month. We're able to successfully complete a fair number.

We do deal with the board in that we share...Our office space is right in the middle, actually, of the WCB and I know that is an issue. We're on the third floor of the Centre...the mall over here.

ACTING CHAIRMAN (Mr. Braden): Centre Square Mall.

MS. SIMPSON: Yes, we're on the third floor there and we're surrounded, actually, by WCB folks, except that there is a door that they can't come in our door unless they have the right key. It's security sensitive, of course. And we're working on that because we are aware of the fact that the optics of that kind of thing are not good. I fully understand what a worker might feel like when he would come in, or she, and realize that we're right in the middle of the thing. So at the moment we are working on locating outside space. I haven't got a date as to say yes, we'll be moved at this point, but it is certainly something that has been undertaken and it is actively being sought out, some space that will be outside of the WCB. But we do have our offices over there and we have a staff of two people. We have a senior appeals registrar and a junior appeals registrar who do all the background work for us, who prepare the case summaries, and prepare the cases, and field the calls, and write all the letters and all that sort of thing. So that's the logistics of how we're set up and how we operate. But I do understand there is opinion in the report that mentions that the optics of not having our own space is difficult. So just so that everyone here knows, that is an issue that is being dealt with as we speak here. We're anxiously looking to find some outside space.

Another issue that came up in the report was the issue of medical advice or using the services of the medical advisor or the medical advisors that are employees of the board. We don't do that. We go outside for medical opinion and for medical diagnosis. We try to get specialists to give us an opinion. The only time we ever consult with the medical people at the board is when we need a clarification, because it is their reports that we're looking at so we will ask them to clarify a certain point because we're not doctors, we're laypeople, so we need a clarification. And after we've had a hearing, if we're uncertain about something, we will ask them to come and give us clarification and they'll bring a model if they want to explain about a shoulder or something and they show it to us. So that is the only time that we use the internal medical people.

We also have our own legal counsel in Calgary. So we do not use the legal council of the board either. So we are at arm's length and we are independent. We are not interfered with by anyone. We are not interfered with by the Minister; we're not interfered with by the Governance Council or by any staff of the board. We operate any independently. I know that's an issue in here, too.

We do represent our constituencies, however. There's the employee representatives from the unions, the Federation of Labour and the PSAC; and the employer reps are two people who have been chosen because they represent individual employers, one from Nunavut and one from Norman Wells; and public interest, we're public interest.

Any questions so far about how we operate or how we do business?

ACTING CHAIRMAN (Mr. Braden): Thank you, Ms. Simpson. That's a good primer for us. We can engage now. Ms. Simpson, our practice to acknowledge any Member who has comments or questions and we give them three at bats with you, and then we keep going around until everyone has had a chance. If there's anything else you would like to put forward to us before we engage...

MS. SIMPSON: Okay. There is one more thing.

ACTING CHAIRMAN (Mr. Braden): Then Ms. Lee, I will go to you as soon as Ms. Simpson is finished with her final point.

MS. SIMPSON: Yes, one more thing. One of the other issues that comes up in the report is the whole issue of communication. The report speaks to the lack of good communication and we certainly do agree with that. Just so that everyone here knows, one of the things that we're doing about that and we're going to develop our website so that we have a website that is apart from the website of the WCB. On that website we'll have all the information that might be required by a claimant; phone numbers, staff, we're even planning to publish our decisions. Of course, they'll have to be sanitized somewhat to protect the identity of the individuals, but the decisions themselves will be publicized. And this is done in many jurisdictions in the country. We've looked around and we've observed what happens elsewhere. So this is something that we've got underway as well right now, and we're hoping to have that up and running by Christmas.

ACTING CHAIRMAN (Mr. Braden): Thank you, Ms. Simpson. Ms. Lee.

MS. LEE: Thank you very much, Mr. Chair, and I'd like to thank Ms. Simpson for being here with us today. My apologies; I missed the beginning of your presentation. We've been going non-stop for about two days now and excuse me for that.

Going by what I have heard on the issue of medical advice and medical opinions, Ms. Simpson, you mentioned that you clarified the situations under which you look to the medical advisor of WCB and that's fine. I'd like to know, though, about the other medical opinions you get. Do you get them locally? Are there more than one in that? Could you explain more about how do you ensure...and I'm not suggesting that it's not happening, but it's just, you know, there are some perceptions out there from workers who are skeptical of the whole WCB process. So in the interest of addressing the perception, what measures do you take to ensure that everybody understands and accepts and can see that your review process is the court of appeal and that the file is reviewed with a fresh look and that medical opinions are looked at differently? Is that the extent of the review, or do you look at just the specific question on a file, or do you get to look at the whole file? Do you talk to the claimant or do you have to meet with them? How does that work?

ACTING CHAIRMAN (Mr. Braden): Thank you, Ms. Lee. Ms. Simpson, to the independence and the integrity of your process.

MS. SIMPSON: Okay, thank you, Ms. Lee. Our process works like this: we receive a file from our administrative people, they put the claim file together and that consists of a claims summary at the beginning, which is a summary of all the paper that's in the file and it's usually done chronologically so we can see what has happened, when it happened, who's involved, what the doctor said and so on. There's generally a medical summary in that as well, so we can see what the medical history has been. Then the file also contains all the medical reports from any doctors, from when the worker was first injured and went to the hospital or the doctor right on through. It contains all the medical reports. It also contains all the back and forth information between the claims people and the claimant, all the letters. Anything that would be on file pertaining to that particular individual is contained in the file. So we get a very comprehensive case file that we review prior to the hearing.

Now, when appellants first put in an application to have a hearing, they get to choose whether they are going to have their hearing face to face or if they want to have it just as a documentary hearing, in which case we would just review the file, or we often use the videoconference facilities at NorthwTel, because very many of our claimants don't live in town here. So we will connect with them via videoconference. But the claimant himself or herself get to choose which method that they would like to have, and then we proceed in that fashion. The panel members review the file. If there's any question at all about the opinions that are on the files...See, we're looking at medical opinions that have been made by doctors who have already examined the appellant, doctors at the hospital here perhaps, doctors in the South. If there's any question about any of that, we will send that appellant for an independent assessment. If we're wondering about anything, we don't wait around. We will request an independent assessment if we're wondering about anything that's medical on the file.

ACTING CHAIRMAN (Mr. Braden): Thank you, Ms. Simpson. This is all very useful. Ms. Lee, is this helping to answer your question? Are there any more specific avenues you would like to go in?

MS. LEE: Thank you. I have a specific follow-up and one is that I'm understanding from Ms. Simpson that in no cases were the medical advisor of WCB played any role in being the final medical opinion on studying your case.

MS. SIMPSON: Not for the Appeals Tribunal. Not in our decision.

MS. LEE: Yes, I understand that. I just wanted her to confirm that. That's how I understand it.

ACTING CHAIRMAN (Mr. Braden): Alright. Thanks. Just for control purposes here so the WCB's medical advisor was not a direct report to you.

MS. SIMPSON: No.

ACTING CHAIRMAN (Mr. Braden): Ms. Lee, that was your question, then. I think you have one more then, Ms. Lee.

MS. LEE: On this topic, Mr. Chairman, I wonder if Ms. Simpson could give us some information on how are situations of conflicting medical opinions handled by the tribunal.

ACTING CHAIRMAN (Mr. Braden): Thank you, Ms. Lee. Big topic for us today, Ms. Simpson.

MS. SIMPSON: Yes, it is and I read what was in the report on that issue. My comment there was I did not disagree with the approach of using a medical panel. I felt that that could be a reasonable approach. It would be costly, I said that, and also it would slow the process down; slow an already lengthy process down. That having been said, the Appeals Tribunal, for the last five years since I've been on the Appeals Tribunal, what we've done, we have to give the weight of evidence to the appropriate individual. If we have a specialist and we have a general practitioner, my experience has been that the weight of evidence has gone with the opinion of the specialist.

ACTING CHAIRMAN (Mr. Braden): Thank you. Okay, there's an extra step that we've encountered on that and that is to this area of causation. If there is an additional speciality, if you will, that comes into play, it is where those medical examiners who have a causation expertise can outweigh or overrule the advice or the findings of specialists. So this is something that we've encountered here or found out it's part of the dynamic. In your examination, does the weight of a medical examiner and this aspect of causation come into play in comparison to opinions of specialists, Ms. Simpson?

MS. SIMPSON: Who are these experts on causation? We have never used one or I've never heard of an opinion of such a person.

ACTING CHAIRMAN (Mr. Braden): Okay. It's the medical examiners, medical advisors that have told us about this expertise and how it has come into play.

MS. SIMPSON: We've never used that. In our situations, for example, we may need to get an additional opinion to clarify things for us. We may need to know about somebody that has carpal tunnel, for example, carpal tunnel syndrome. So we would send that individual to a carpal tunnel person that we know of in Edmonton, Calgary, wherever, or in their area, sometimes they live in the Maritimes. But we don't look for causation experts. I don't know any.

ACTING CHAIRMAN (Mr. Braden): Alright. Perhaps it's getting a bit mixed up with some of the terminology there, medical examiners and medical advisors. I think perhaps it's the medical advisor. Dr. King brings this speciality into play. Looking at one part of the Auditor General's report here that the WCB responded to in some detail and talks about this. Okay, thank you. Any other Members who wish to speak? Ms. Lee, have you exhausted your...It's been a long day.

MS. LEE: I'm ready if you have nobody on the list.

ACTING CHAIRMAN (Mr. Braden): (Inaudible)...as well as I should be here. Okay, you've had three. I'm going to go to Mr. Villeneuve and come back to you if on one else comes in. Mr. Villeneuve.

MR. VILLENEUVE: Thank you for coming here, Ms. Simpson. I have a question on after a person has gone through the Appeals Tribunal and they're not satisfied with the decision that the Appeals Tribunal has come out with, and they go to litigation through the court system and the courts determine that yes, they have been treated unfairly or unjustly. They have a case and they're able to go through the whole legal loopholes that are required and they come back. How does the Appeals Tribunal handle a decision made in the justice system for a person that's gone through the Appeals Tribunal and the courts have determined that their appeal was not handled...I shouldn't say handled unfairly, but botched. May just not in line with what the courts have decided what is fair and equitable for benefits or whatever. How would the Appeals Tribunal handle that?

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Villeneuve. Ms. Simpson.

MS. SIMPSON: Thank you. Just so you know, we are the final level of appeal and the only way a decision can go beyond us, either through the courts to the Governance Council, as well, the only way that can happen is if we have not followed the principles of natural justice or if it has been determined that we haven't followed them. So if that is the case and the Governance Council determines this when they read our decision, they can stay our decision and order us to rehear. But in some cases, the appellant may decide they would like to go the courts and if they do that, the courts will hear the decision. But they don't make a decision on our decision; they tell us to rehear the decision; they tell us we're fettered our discretion, or we haven't applied policy properly and so it will come back to us.

ACTING CHAIRMAN (Mr. Braden): Thank you, Ms. Simpson. Mr. Villeneuve.

MR. VILLENEUVE: Thank you, Mr. Chair. How often is that? Okay, if the courts determine that you've fettered your decision of your discretion of the process through the Appeals Tribunal, do you change the way that you hear the appeal, you know the way that the process...

MS. SIMPSON: ...(inaudible)...

ACTING CHAIRMAN (Mr. Braden): Thank you. I'll let you get your question out, Mr. Villeneuve.

MR. VILLENEUVE: What changes are made after that? Are you just rehearing based on the same process?

MS. SIMPSON: Okay. Thank you.

ACTING CHAIRMAN (Mr. Braden): Thank you. Ms. Simpson, please go ahead.

MS. SIMPSON: We don't change our process; the process is the same. But in some cases, we may have to strike a different panel because in some cases the legal counsel for the appellant may say I feel that that individual is biased or whatever so shouldn't sit on the panel, so we would restructure the panel. Most often what we have to do, and it's only happened twice, actually, since I've been with the group, once it was on a case that was decided before I was appointed to the tribunal and when it finally came back we had been told we had fettered our discretion. So in other words, the group had the discretion to make the decision and they didn't make it, or they stuck with policy and they had the discretion to move and they didn't. So we had to then strike and panel and determine if we had fettered our discretion. We had to look at that. We have to look at the issue that the court sends back to us, we can't look at other things. The justice said that we had been correct on all five points, but the out point we had fettered our discretion. So that is the one point that we have to re-examine and look at again.

Now, the other issue that we had just recently, just this year, and I'm sure you're all familiar with it, was the EI issue and that's been in the public, a lot of people know about it. The issue was whether or not employment insurance is considered to be a part of remuneration when determining what a person is going to get by way of compensation.

ACTING CHAIRMAN (Mr. Braden): Thank you, Ms. Simpson. One of the things... Those are out there; they're important. For our purposes today, we want to try not to get into details of specific issues. But certainly I'll put everyone on, as I have a few times, put everybody on notice that we do want to return to them. But our purpose here today is much more of a kind of governance and a process basis, but thank you for advising us for that and we understand the illustration you're bringing to us. Mr. Villeneuve, anything else?

MR. VILLENEUVE: Yes, one more quick follow-up with reference to the out-of-town appeals and your videoconferencing and stuff. Just from going through the report, approximately half of the claimants are out of territory, and I'm making the presumption that probably half of the appeals are probably out of territory also. So are those appeals drawn out an extra year because they're out of territory and you've got to seek legal counsel in the Maritimes or medical advice over there? Are they handled just as expeditiously as they are if they were in Yellowknife?

MS. SIMPSON: ...(inaudible)...

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Villeneuve. Ms. Simpson. Just for transcription, we would...

MS. SIMPSON: Sorry.

ACTING CHAIRMAN (Mr. Braden): So to the aspect of turnover and timeliness, Ms. Simpson.

MS. SIMPSON: Yes, the out-of-town hearings are handled in the same way that if the person was heard in town. When the request for appeal is submitted, it's all logged and recorded and then the process starts. It depends on how quickly something...For example, we may need more medical information, so that can slow the process down. We may need to get verification of employment in a certain year or a certain time frame, and so we have to write to the employer. That may slow the process down. There are a number of things that can slow it down and it's not because the staff aren't working to try to push these things through, but sometimes it can be very difficult to get all the information and do it in a timely way. But the people that are in the Maritimes, they have access to Mr. Baile in the same way that the people who are here in Yellowknife do. So the process moves along as quickly as it can move along. Sometimes two appellants will cancel. They'll decide they're not ready or they can't appear. So we try to accommodate, but sometimes you have to bump them down and so they have to start moving back up the list again, in fairness to all.

ACTING CHAIRMAN (Mr. Braden): Okay. Mr. Ramsay.

MR. RAMSAY: Thank you, Mr. Chairman. I'd like to thank Ms. Simpson for being with us this afternoon. I guess I wanted to start off by saying I was really happy to hear you're in the process of relocating the offices of the Appeals Tribunal out of the workers' compensation office complex, and looking at getting independent space and the sooner that happens, obviously that would be a good thing. I think it's again public perception and the optics of everything. Although there is absolutely no evidence of any tampering by anybody, I mean it's just the way things should play out.

The question I'd have in the Auditor General's report, in paragraph 207 it talks about the Appeals Tribunal relying on board staff, including medical advisors for explanations on medical matters, and sometimes that the claimant and workers' advisor are present during clarifications and at other times they're not there. It also spells out that there's no specific Appeals Tribunal policy in that regard and I'm just wondering is that something that should cause us concern or something that you'd be looking at developing? Thank you, Mr. Chairman.

ACTING CHAIRMAN (Mr. Braden): Ms. Simpson.

MS. SIMPSON: Thank you. I don't think you should be concerned. I think it's a similar situation to after we have a hearing, for example, we get together as a group to talk about what happened, and collect our thoughts and make our decision after the hearing has been completed. So if we're going along and we come to something that we're unclear about, we'll ask the medical advisor for clarification and clarification only. So if we don't understand how this shoulders out of place, we'll ask him only just explain that to us in simple terms. I don't know that there would be a need for the appellant to be there when that would happen. It would really slow the matter down I would think. It's

no different when we need to get advice perhaps from one of the pension people and ask them how they calculated this. It's a simple matter of clarification. So I don't think it should be an issue for you, but it certainly could be something we could put within our policy and procedures if people felt that it was necessary.

ACTING CHAIRMAN (Mr. Braden): Mr. Ramsay.

MR. RAMSAY: Thank you and I thank Ms. Simpson. One of the other things I wanted to ask about was the number of appeals that the tribunal's heard over the past three years, from 2003 to 2005; 78 appeals and the Appeals Tribunal has overturned approximately 18 percent of them. I don't want to get into detailed specifics, but generally why are cases that come before the Appeals Tribunal, why are they overturned in favour of the worker? Thank you.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. Ramsay. Ms. Simpson.

MS. SIMPSON: Good question. I would say for the most part they're overturned because the policy hasn't been applied in the way that the Appeals Tribunal feels it should have been applied. The policies are quick black and white, but in some cases there's discretion. And I think it's important as laypeople, and we are laypeople, that we use our discretion when we look at these situations. So when we overturn, it's because we feel that the policy hasn't been correctly applied. Sometimes we have had cases where we feel the medical argument is not sufficient, and that would be, again not to get into cases or anything, but in the situation of carpal tunnel syndrome, the Appeals Tribunal has a different view of how we look at a case like that than perhaps the medical advisors to the board.

ACTING CHAIRMAN (Mr. Braden): Thank you. Mr. Ramsay.

MR. RAMSAY: Thank you, Mr. Chairman. Again I think Ms. Simpson for that. I just wanted to ask, in your experience as the chair of the Appeals Tribunal, do you encounter situations -- and this is outside of the conflicting medical reports -- where perhaps the administration of the policies and correspondence that goes back and forth between claimants and the administration folks in the claims section at WCB, there's conflicts in there in what's reported, how things are written, and the claimant hasn't got a way to go back and question some of the things that staff members have said about them, or suggested things were one way when in fact they weren't that way. How do you take that type of situation into consideration, I guess, when you're looking at individual cases? That's a bit of a complex question, but I wanted to ask it nonetheless. Thank you, Mr. Chairman.

ACTING CHAIRMAN (Mr. Braden): Okay. Ms. Simpson.

MS. SIMPSON: That's a tough one. I think, as I said earlier, what we try to do is we look at the whole file and then we don't just confine our thoughts, though, to the file. We have to listen what the appellant has to say; we listen to Mr. Baile and what he has to

say or whoever the representative might be. We have to take it in context and we have to consider the whole thing. We can't just, you know, pull a remark here and a remark there out of context. I think it's very important that you look at the whole picture. But we also understand that communications as it is can be awkward at the best of times, and it is very difficult because sometimes things aren't written or said clearly. But we do have access to the notes to file, which the notes to file are what the claims people write when they're speaking to people on the phone. We have access to all that information, as well, as part of the file. So we get a pretty thorough, clear picture of the whole situation.

ACTING CHAIRMAN (Mr. Braden): Thank you, Ms. Simpson. I'm going to go to Mr. McLeod now.

MR. MCLEOD: Thank you, Mr. Chair, and thanks to Ms. Simpson for being here. I appreciate the fact that all the witnesses have come before us and I think they have all done a very good job at appearing before us. I would have given admin a B minus, but other than that I think everyone else gets an A.

Something I wanted to touch on here and it's in the report and it's speaking to the appointment of members to sit on the appeals board. The report recommended that they stagger the appointments and it seemed like the tribunal has agreed to it. If you have agreed to it, what needs to happen for this to come about? Is it through the Minister or is this in legislation? How soon can we expect this to come about? Thank you.

ACTING CHAIRMAN (Mr. Braden): Mr. McLeod, thank you. Ms. Simpson.

MS. SIMPSON: Well, you're correct in saying that that is through the Minister, because it is the Ministers who appoint. So what my plan was, and I've spoken with Mr. Dent about this, is that we do just that, we would stagger the appointments. So as appointments come up, you'd have a setup where you'd have two-year appointments, three-year appointments and it would be staggered as such. So you wouldn't have a situation where you'd have all new members at one time. So that's what we're looking at doing. That's what we're going to do.

ACTING CHAIRMAN (Mr. Braden): Thanks. Mr. McLeod.

MR. MCLEOD: Thank you, Mr. Chair, and thank you; that was very helpful. So when you stagger the appointments, I think it said that you have three workers' representatives and two employers', and the other two are...

MS. SIMPSON: (microphone turned off)

MR. MCLEOD: So the appointments would be staggered, so you'd have one workers' rep that has some experience, then a new workers' rep come on board. Excellent. Are you appointed as chair by the Minister or through a vote of the other members?

MS. SIMPSON: (microphone turned off)

ACTING CHAIRMAN (Mr. Braden): Thank you, Ms. Simpson. We need to get these answers on the record and that little red light needs to go on. Okay, so Mr. McLeod's answer about are you appointed or vote as chair.

MS. SIMPSON: Yes, that's by vote from the members of the tribunal.

ACTING CHAIRMAN (Mr. Braden): Okay. What about the criteria of geographic representation, Ms. Simpson?

MR. MCLEOD: I was getting there.

ACTING CHAIRMAN (Mr. Braden): Okay, alright.

MR. MCLEOD: It's okay; go ahead.

ACTING CHAIRMAN (Mr. Braden): I'll do that and give you another one if you want, Mr. McLeod. So there's the sectoral representation and the geographic, as well.

MS. SIMPSON: My understanding is that there's nothing written anywhere about geographic representation. It's clearly spelled out in the act that there's employer, employee and public interest, equal numbers, and that's what it says.

ACTING CHAIRMAN (Mr. Braden): Thank you, Ms. Simpson.

MS. SIMPSON: And my understanding, just for further clarification, Mr. Braden, is that when there's a vacancy on the tribunal, the Minister puts out a call letter and people respond.

ACTING CHAIRMAN (Mr. Braden): Right, and that is very much the convention that we're used to here. Among others, Ministers usually ask MLAs for some input there. Mr. McLeod, I stole your thunder there, I'm sorry.

MR. MCLEOD: I'm getting used to it. It says in the report that the chair spends eight to 10 days a month as chair of the Appeals Tribunal and you do have another job, so you're investing a lot of time. So in your experience as the chair, in your opinion, do you think that a full-time chair is needed? Thank you.

ACTING CHAIRMAN (Mr. Braden): Thank you very much, Mr. McLeod. Ms. Simpson.

MS. SIMPSON: Good question. I think it could easily come to being a full-time paid position. There's certainly enough work there, especially in light of some of the recommendations that have been made in the report in terms of developing training plans for individual members, ensuring that members get appropriate training and orientation and all that sort of thing. It's difficult to do from part time. I am very fortunate

that I don't have an employer who's upset when I am not there. So I am quite lucky, but not everyone would necessarily be in that position.

ACTING CHAIRMAN (Mr. Braden): Yes, of course, Mr. McLeod. This is an aspect that we have already had a look at and wanted to explore with you. Mr. McLeod, go ahead.

MR. MCLEOD: Thank you, Mr. Chairman. Thanks again, Ms. Simpson. So now that we've heard that you think there is enough work for full-time shares rather than being voted on by the Members, should the chairs not be appointed by the Minister for a certain term, like four or five years? Thank you.

ACTING CHAIRMAN (Mr. Braden): Thank you, Mr. McLeod. Ms. Simpson.

MS. SIMPSON: Well, that's certainly one approach. In other jurisdictions, in Alberta, for example, every single member on the Appeals Tribunal, they are all hired. They are not appointed; they are hired. They are hired by the government or whomever and the Minister would okay it or agree with it. There are many approaches that could be used to make that happen.

ACTING CHAIRMAN (Mr. Braden): Thank you. Ms. Lee.

MS. LEE: Thank you, Mr. Chairman. I have a couple more questions on medical opinions. Ms. Simpson mentioned earlier that the tribunal has not dealt with causation. Just to give a background, from our understanding, a lot of dispute about WCB files come from causation in that if someone has carpal tunnel syndrome, it's not just enough that one has that condition or chronic pain syndrome or back problems. It's not enough to establish that that person has that condition. You have to establish that that is as a result of a workplace injury. I am wondering if Ms. Simpson could clarify, don't those cases come up where you have to look at not only that there is a condition there but it was caused by an injury? How do you assess those without going to a specialist on causation?

ACTING CHAIRMAN (Mr. Braden): Thank you. Ms. Simpson.

MS. SIMPSON: Yes, that's absolutely right. You have to be able to establish causation and it's spelled out very clearly in the act where it says that if a worker is to receive compensation, it has to be objectively proven that the accident has caused whatever it is that they might have. So we have to be able to see from our review of the file and from when we ask the individual what happened and so on, we have to be able to make that link between the two.

ACTING CHAIRMAN (Mr. Braden): Ms. Lee.

MS. LEE: That link is not made necessary by medical doctors alone, but circumstances and extent of the file and such. I could be corrected if I am wrong; but in

the totality or entirety of the file, the Appeals Tribunal will make judgment about the existence or absence of that causation to establish a claim.

My next question is to do with the fact that Ms. Simpson mentioned earlier that the tribunal seeks independent medical opinions from lots of places and they go all over the place in Canada to get that expert opinion. I am wondering why, then, when you have questions for clarity, do they have to go to medical advice for clarification? Why would you not go to the initial medical examiner or people who have given that opinion? There is perception of too close a connection between the tribunal and the board and the medical advisor being seen as the board's employee. I accept Ms. Simpson's submission here that the tribunal only goes to the medical advisor for clarify, but why even do that? Why not ask all the clarifications to those who have given the medical opinion in the first place if there is something not understandable?

ACTING CHAIRMAN (Mr. Braden): Ms. Simpson.

MS. SIMPSON: Very good point. When we are asking for clarification, Ms. Lee, we are looking at the medical advisor's report, the one that the medical advisor of the board has written and asking him to clarify what's he's written. If we have a question on something that's been written by an outside doctor, we would certainly approach him on that, but generally what we are looking for is a further explanation on what a condition is, how it would show itself and those sorts of things. That's not to say that we couldn't go outside for that opinion, but you are looking at adding a month onto the process if you are required to do that, at least a month. Doctors don't respond quickly.

ACTING CHAIRMAN (Mr. Braden): Ms. Lee.

MS. LEE: So then what happens if there is a conflicting opinion between the medical advisor and other medical opinions? Who do you go to?

ACTING CHAIRMAN (Mr. Braden): Ms. Simpson.

MS. SIMPSON: We go outside.

MS. LEE: Then whose opinion is the final opinion?

MR. SIMPSON: We have to weigh the evidence. If we have gone out to a specialist and they have provided us with sufficient evidence that we feel is credible and that we can use, that's what we would use.

ACTING CHAIRMAN (Mr. Braden): Okay. Thank you, Ms. Simpson. This is a useful exchange. It's helping us to sort out some of the jurisdiction, if you will. Ms. Lee.

MS. LEE: I have a separate set of questions.

ACTING CHAIRMAN (Mr. Braden): I also have a couple of areas to quiz on, but I would like to...Pardon me? Sure. With committee's concurrence, Dave. If you want to take it from here, thanks.

ACTING CHAIRMAN (Mr. Ramsay): Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman. Ms. Simpson told us in her earlier remarks that they are laypeople who are appointed to the Appeals Tribunal and not at all to take away from the skills, the intent or the commitment of the folks who are appointed, but the professional capacity to undertake this work. I am just wondering, to what extent, if we look at other jurisdictions, are there people with legal, medical or some kind of professional training or careers in this field who are otherwise members of tribunals in other places? Are we expecting too much of laypeople to serve in our Appeals Tribunal? Is there a level of skill and development and experience that we should be looking at as the NWT as our labour market advances and matures, Mr. Chairman?

ACTING CHAIRMAN (Mr. Ramsay): Thank you, Mr. Braden. Ms. Simpson.

MS. SIMPSON: Good question, Mr. Braden. You are absolutely right about that. There is a certain level of skill required and that's something we do look for. We have developed a job description within our group that we have shared with the Minister and we've asked that he look at that description when he's looking at making appointments, so that he can address the competencies and so on that are there and make sure the people he is going to appoint have those competencies.

In other jurisdictions, they do have a whole panel of lawyers. In Alberta, for example, the Appeals Tribunal consists of all lawyers. That's not the approach this WCB has chosen to go with. I think it's a good approach, but the approach we have works well too. We have a well rounded group of individuals who have a variety of skills, who have the competency to do the job, who have experience in industry, all those sorts of things. So as a group, we are very fortunate that we have that kind of representation amongst us. We have a representative from Nunavut as well from the employer's side. So we have a good well rounded group. That's not to say that we are always going to have that. It will depend on who gets appointed. I think the way it stands now, we do have a good group. We have to work hard at making sure the members we appoint get the appropriate training so we can do these kinds of things. That's something as a chair that I have worked hard at. I have organized workshops and so on for the members in critical thinking and decision writing. We meet about every two months as a full group just to discuss issues and share ideas and so on. We do endeavour to do a good job at whatever we do and we take it quite seriously.

ACTING CHAIRMAN (Mr. Ramsay): Thank you, Ms. Simpson. Mr. Braden.

MR. BRADEN: Mr. Chairman, also earlier today Ms. Simpson said that we are doing, paraphrasing or quoting back, we are doing a reasonably good job. I don't want to challenge that statement, but I would like to get some idea of some of the critical

indicators that you take as signs that indeed an Appeals Tribunal is doing a reasonably good job. This is something, Mr. Chairman, that we want to look for across the board in our job as an Oversight and Accountability committee. What are the measurements that we can use to assess the performance, the value for money, all the other things that come into trying to be a government? What are the things that you use to indicate that you are doing a reasonably good job? What are the indicators?

ACTING CHAIRMAN (Mr. Ramsay): Thank you, Mr. Braden. Ms. Simpson.

MS. SIMPSON: That's a hard one. It's really hard to assess yourself, as I am sure you are aware. I think one of the best ways to do it is to have an independent group, such as Mr. Simpson and Mr. Stadlweiser, come in and have a look at things, have a look at the files, have a look at the decisions and try to determine if we are following our mandate and if we are producing decisions that are in line with the act, with the legislation, with the policies and so on. It's very difficult, as I said, to assess yourself but if you have an independent group every couple of years, every three years or so, to come in and assess things from an operational perspective. We can set benchmarks for ourselves. We can say next year we want to make sure that this year we completed 24 cases. Next year, we want to complete 30. We could do those kinds of things, but in terms of operational success and so on, it really takes an outside adjudicator to do that.

ACTING CHAIRMAN (Mr. Ramsay): Thank you, Ms. Simpson. Mr. Braden.

MR. BRADEN: We went over a lot of ground on that this morning with the Governance Council and this is where the accountabilities will come into play and the transparency of our institutions is when we can design, I believe, Mr. Chairman, collectively the things we believe are important as the benchmarks, as Ms. Simpson has said, and make sure they are realistically and accurately measurable and say here are the things that we want to achieve in our Appeals Tribunal. One example, I am not going to profess to have them, but one example may be the length of time that an appeal is in circuit, if you will. If there can be ways of shortening the time for turnaround, that may be one benchmark that we would all be interested in and that we could all look forward to. I think, Mr. Chairman, what our committee is going to be seeking are ways for all agencies concerned with workers' compensation to try to arrive at some of those benchmarks. I am not talking about pages and pages or reinventing a whole bunch of systems, but coming up with some ways that we can routinely regularly test to see what the performance is. I guess I would certainly endorse outside independent organizations like the Auditor General coming in on occasion or giving an independent performance opinion, but I am going to be pressing for our own set of criteria that we know we can regularly and accurately rely on.

One final question that I put, Mr. Chairman, is that Mr. Baile told us earlier today, if I have it more or less right, he said if we had clear, concise communication between clients, between injured workers and the board, caseworkers, workers' advisors at all levels, he feels that 60 percent of his workload wouldn't be there because better communication earlier on in an injured worker's file would help to eliminate many of the

expectations or confusion or the errors that occur and may result in things going to the level of the Appeals Tribunal, for instance.

I want to come back to this theme of communication which is, again, one of three or our major parts that we want to work on. Mr. Chairman, would Ms. Simpson agree that better communication, more effective communication could be as effective as reducing the workload by 60 percent?

ACTING CHAIRMAN (Mr. Ramsay): Thank you, Mr. Braden. Ms. Simpson.

MS. SIMPSON: I have to agree that better communication is necessary and that it will improve the working situation of everyone involved, the workers, the staff, the Governance Council. Everyone should be communicating at a better level with everyone else, but I don't know if I can say 60 percent. I couldn't say how that would affect Mr. Baile's workload, but I think we all have to strive to communicate in a clearer, plainer way, so that people don't misunderstand. That's one thing we have worked on in our decisions, is to try to write them so they are more clear and easy to understand. We are writing for the appellant and that's what we have to keep in our mind at all the time. It's the appellant that has to read it and they don't want to read pages and pages of policies quoted at this, that this doctor said this and this doctor said that. So we want to keep our decisions short, simple and to the point. That's what we try to do.

ACTING CHAIRMAN (Mr. Ramsay): Thank you, Ms. Simpson. Next I have Ms. Lee. Did you want back on the list, Mr. Braden?

MS. LEE: I want to ask questions about policy interpretation by the appeals board, but just one more follow-up on the conflicting medical opinion. I believe what Mr. Baile said was the conflicting medical opinion is such a big issue for him that if that issue was addressed, his workload would go down by 60 percent. On that note, Ms. Simpson earlier indicated that the tribunal refers to the medical advisor for clarifications on things. So I thought that had to do with terminology, technical terms and such. Now I have learned in the later answers that the medical advisor provides medical opinions on cases. I just want to confirm that that is the case. If that is the case, the medical advisor's opinion might be the only one that gets introduced at every level that workers have to follow and that might lead to the perception that, in fact, his opinion is not only the one...I don't mean him, not the individual, but the office. We know there are two medical advisors. That goes in every step of the way and there's a perception and Mr. Baile, in fact, stated that he knows of no case where that opinion did not override all other opinions. I would like to know if that was true and did the tribunal if the medical opinion by the medical advisor was used in the lower process. Once the file gets up to the appeal tribunal case, would they consider not looking at the medical advisor's opinion in terms of getting fresh, medical evidence? I believe the tribunal is a lot more powerful. It's a very powerful place. It's the place of last resort for workers, for most of them. In the interest of adding more objectivity, how would that work, or is that possible?

ACTING CHAIRMAN (Mr. Braden): Thank you, Ms. Lee. Ms. Simpson.

MS. SIMPSON: I think the reason we see the medical advisor's opinion at all is because it's part of the file, just like we might see if there was a medical doctor here in town who examined the appellant at some point, we would see his opinion as well because all those diagnosis and opinions are all part of the file. So I don't know how you can weed that out and still get a complete picture.

ACTING CHAIRMAN (Mr. Braden): Thank you. Ms. Lee.

MS. LEE: That's good to know and I think that's an issue we need to consider because workers, when they are denied at the first level by whatever opinions and backgrounds that were there, they want to get a fresh hearing, looked at by a fresh examiner and by fresh opinions not by having everything else looked at. If the same file keeps following, is that enough to give them a fresh look? I don't think that's the question we need to pursue.

Let me just throw this last question out there. Mr. Baile mentioned that fact that policies of WCB are not law. Policies follow the law, policies can be changed. It's not as black and white as it should be, but in many aspects WCB follows the policies like it's written in stone. It's also Mr. Baile's opinion that the tribunal could interpret the policy differently. That they don't have to follow all policies, but only when they are appropriate. I think this is a different definition because I think WCB really believes that the tribunal has to follow all the policies to a T and if they aren't followed, the decisions go to the Governance Council. The tribunal, while it's the last court of appeal for workers, your decision is subject to judicial review and Governance Council overriding your review. Has there been any time when it's made a clear...Have you been made to understand that the job of the tribunal to follow the policies to a T and I would also like to bring in this what Ms. Simpson brought up earlier about a judicial review decision where the court ruled that your discretion was fettered because the policy was being under applied instead of being over applied. Do you feel that you have room to over apply or use your discretion to fit those circumstances where appropriate? This is a complex question, but I think this is something we have to address.

ACTING CHAIRMAN (Mr. Braden): Thank you. To policy and the scope that you feel you have, Ms. Simpson.

MS. SIMPSON: Ms. Lee, I think we do have discretion and we've seen what happens when we have been told by the Supreme Court that we have fettered our discretion if we didn't apply the policy as it might have been applied. So, yes, we do have some discretion and it's on a case-by-case basis. We have to look at every single case individually and the situation and the circumstances of the case and apply the policy. We are interpreting how the policy should be applied and it's not that black and white. It's not always that easy.

ACTING CHAIRMAN (Mr. Braden): Ms. Lee.

MS. LEE: That discretion, I would assume, takes into consideration decisions where compensation is in favour of workers because of the Meredith principle and I don't now, I am assuming that. Do you feel the general spirit, intent and philosophy that you operate under is that where there are tight cases or where you have this mountain of evidence and circumstances, is it the approach of the tribunal to make the case and decisions that favour the right of the worker or the benefit of the worker? What do you use to exercise your discretion on individual cases?

ACTING CHAIRMAN (Mr. Braden): Thank you, Ms. Lee. Ms. Simpson.

MS. SIMPSON: Again, I think we have to look at each individual case and situation individually on a case-by-case basis and we have to look at it as a complete and whole file. We have to consider everything. We have to consider all aspects of the case. It's really difficult to talk about without citing a case, but I think it's very important to remember things like there is a benefit of doubt policy. That says if the weight of evidence is equal, you give the benefit of doubt to the worker. So that's something that we do. If we are looking at something in the weight of evidence, we consider that it's equal, then the benefit of the doubt goes to the worker. That's a policy of the WCB.

ACTING CHAIRMAN (Mr. Braden): Thank you, Ms. Simpson. I have lost track again, Ms. Lee. I have no one else on the list. There are a couple of other points that we might ask about. Ms. Lee, perhaps we can conclude this particular area.

MS. LEE: I have two questions. I wonder if Ms. Simpson, under legislation, it says that the reasonable assumptions and inferences on a case should be made in favour of the worker, but under the policy it says only when the evidence is equal. So the policy is a narrow interpretation of the law. In fact, the law, according to Mr. Baile, is wider than that. Have you ever been advised of that and does that come into play when you are looking at the file and using your discretion, or do you have to file that the discretion goes in favour of the worker only when the cases are equal?

ACTING CHAIRMAN (Mr. Braden): Thank you, Ms. Lee. Ms. Simpson.

MS. SIMPSON: I know of one case where that was the situation and that was exactly it. The weight of evidence was equal, so the decision was made in favour of the worker. We do have an outside lawyer that we consult with on cases of this nature. If we were uncertain about the legal aspect of it, that's what we would do. We would consult with our legal advisor because we aren't lawyers and we don't claim to...It's difficult sometimes when you are trying to figure out is it the act that comes first or the policy and which do we go by. Those kinds of situations again are on a case-by-case situation.

ACTING CHAIRMAN (Mr. Braden): Thank you, Ms. Simpson. Committee, there are two other points. I don't know if they are terribly complex and I would like to pose them to Ms. Simpson. One regards the resources that the tribunal has to undertake its duties and in the area of administrative support, do you have assistance or do you have call for

assistance in helping draft a decision? I think you've told us you have administrative support, but we wanted to find out specifically when it comes to writing and drafting decisions, are you adequately resourced there or would this be something that would help you, Ms. Simpson?

MS. SIMPSON: Resourced in terms of financial resources?

ACTING CHAIRMAN (Mr. Braden): Assistance in the area of drafting decisions, or is the writing something that panel members undertake entirely by themselves? Do you need some extra help there?

MS. SIMPSON: We do undertake it by ourselves, yes. That's something that has been the practice with the tribunal, is the panel members write the decisions and then they, first of all, discuss the outcome and come to agreement on what the outcome is. One of the three will agree to write and then it's passed around amongst the three to have input and so on. Then we finalize it and then it goes to our registrar to put the package together. I think that system works very well.

ACTING CHAIRMAN (Mr. Braden): Okay. Another area also regarding funding and resources regards the independence. Does it cause you any concern that funding for the tribunal comes directly from the board? Is this something that you find causes any concern for the way you operate?

MS. SIMPSON: I haven't found it to be a concern. Each year, I present a budget to the Governance Council and there has never been an issue with the request for the funding. It's never been questioned. Our funding goes up and down depending on where our members are coming from and how much those kinds of costs are going to be.

ACTING CHAIRMAN (Mr. Braden): So the one area we are looking at here is the independence of the tribunal from the board. So I am just exploring this area of independence and where your funding comes directly from the board. That's not something that you perceive as a difficulty.

MS. SIMPSON: I don't see it as such, but I did note it in the report that it was mentioned that possibly that money could be funnelled through another government department or something other than the board. That was something mentioned in the report. That could work too. It's never been a difficulty for us. We've never felt pressured because of the fact that we have to go to the Governance Council to get approval of our budget. It's not been an issue for us.

ACTING CHAIRMAN (Mr. Braden): Okay. I think we've covered the ground that we planned to, plus perhaps a little bit more. Ms. Simpson, thank you very much. You have, if you wish, the opportunity to make some closing remarks for today at least. I think we would probably like to continue this kind of discussion with you as our oversight

of the WCB continues over the next while. For today, do you have any remarks to close off on?

MS. SIMPSON: I think we've pretty much covered it. I would be available too if you had further questions or if something comes to you later on. I will be back in town on Monday. So anytime after that, feel free to give me a call.

ACTING CHAIRMAN (Mr. Braden): Thank you. We will undertake to report on the Auditor General's report in the Assembly in the fall. So there may be some other hearings or opportunities for the public to come and respond. That is our next step, is to take the recommendations that the Auditor General has made and go back into the Assembly with suggestions on where to go with our next step.

MS. SIMPSON: Perfect. Thank you.

ACTING CHAIRMAN (Mr. Braden): Mr. Simpson, Mr. Stadlweiser, do you have anything that you would like to close off today with? Mr. Stadlweiser.

MR. STADLWEISER: No, I have no comments, except to thank Ms. Simpson for coming today.

ACTING CHAIRMAN (Mr. Braden): With that, we will declare the day concluded.

---ADJOURNMENT