

## **STAKEHOLDER CONSULTATION DOCUMENT: AMENDING THE WORKERS COMPENSATION ACT TO PROVIDE PRESUMPTIVE COVERAGE FOR POST-TRAUMATIC STRESS DISORDER**

### **INTRODUCTION**

Post-Traumatic Stress Disorder (PTSD) is a psychological condition affecting an individual who has been exposed to actual or threatened death, serious injury or sexual violence. The symptoms of PTSD are often debilitating and require timely attention and care. While PTSD is a treatable disorder, treatment outcomes are generally more positive when treatment occurs soon after the triggering event.

PTSD has received increased public attention in recent years, partly because of growing awareness of mental health issues in general and partly because of several high profile cases of PTSD among police officers, military personnel and others.

The Government of Manitoba has recognized the importance of PTSD as a potential work-related condition, particularly in respect of first responders. In its November 2014 Speech from the Throne, the Government committed to new legislative supports that will "raise awareness of workplace mental health for front-line personnel who routinely face traumatic events, with new resources for effective follow-up after a traumatic event occurs and improved access to workers' compensation benefits."

### **WHAT IS A LEGISLATIVE PRESUMPTION?**

A legislative presumption creates an inference that a fact exists because of the known or proven existence of other facts. In the context of workers compensation law, a presumption simplifies the adjudication process by eliminating the need to draw a causal connection between certain facts. Section 4(5.2) of *The Workers Compensation Act* ("the Act"), for example, creates a presumption that certain types of cancer in firefighters are an occupational disease, unless the contrary is proven.

### **WHY IS A PRESUMPTION BEING CONSIDERED?**

Psychological injuries, including PTSD, are already compensable under the Act. However, it is sometimes difficult to establish a causal link between workplace incidents and PTSD which can result in delay and inconsistency in adjudication. A presumption would speed up claim adjudication providing quicker access to treatment.

In addition, workers suffering from PTSD may be reluctant to come forward and make a claim because of the stigma that continues to be attached to mental illnesses. A presumption would be a step towards reducing the stigma.

## WHAT IS POST-TRAUMATIC STRESS DISORDER?

There are many mental disorders that might be experienced by workers and that might be caused by various types of events. PTSD, however, is a specific type of psychological condition associated with specific types of events.

The *Diagnostic and Statistical Manual of Mental Disorders* (the "DSM-5") is the standard classification of mental disorders used by mental health professionals in Canada and the United States. It is a compendium of psychiatric diagnoses produced by the American Psychiatric Association, consisting of diagnostic classification, diagnostic criteria sets and descriptive text.<sup>1</sup> It is considered the standard and definitive source of information about psychological conditions.

The DSM-5 identifies the triggers to PTSD as exposure to actual or threatened death, serious injury or sexual violence. The exposure must result from one or more of the following scenarios, in which the individual:

- directly experiences the traumatic event;
- witnesses the traumatic event in person;
- learns that the traumatic event occurred to a close family member or close friend (with the actual or threatened death being either violent or accidental); or
- experiences first-hand repeated or extreme exposure to aversive details of the traumatic event (not through media, pictures, television or movies).

PTSD can arise from different sources, ranging from a single experience, such as an accident or a violent act, to a prolonged, ongoing exposure such as that caused by war or family violence. The symptoms of PTSD can vary among individuals but generally include: reliving memories of the event; recurring distressing dreams of the event; flashbacks; avoiding reminders; irritability and over-reaction to common stressors. PTSD is marked by ongoing symptoms to the point where the symptoms impair an individual's social interactions, capacity to work and other important areas of functioning. PTSD can arise very shortly after the triggering event or it can be delayed by days, months or even years.

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<sup>1</sup> American Psychiatric Association, *About DSM-5*, online: <http://www.dsm5.org/about/Pages/Default.aspx>.

## POSSIBLE APPROACHES TO A LEGISLATIVE PRESUMPTION

### *Alberta's Approach*

Alberta is the only Canadian province to have enacted a PTSD presumption. The Alberta legislation focuses on first responders including police officers, firefighters, emergency medical technicians and sheriffs. Alberta's *Workers' Compensation Act* provides that if a first responder is diagnosed with PTSD, the condition will be presumed to have risen out of and in the course of employment unless the contrary is proven.

A private member's bill in Manitoba, Bill 205<sup>2</sup>, and private members' bills in Ontario and Nova Scotia propose amendments along similar lines to the Alberta legislation. None of these private member's bills have yet become law.

These legislative provisions focus on first responders because they are seen as being at greater risk for exposure to PTSD triggers than workers in other occupations. A presumption that is limited to certain named occupations has been criticized for focusing too narrowly on those occupations. PTSD triggers can occur in any occupation and workers in all industries face similar challenges when filing a claim for workers compensation on the basis of PTSD. Recent empirical research suggests that, in addition to first responders, health care professionals, social workers, train drivers, journalists, and retail workers all demonstrate high rates of PTSD symptoms.<sup>3</sup>

### *Alternative Approach*

These considerations suggest a possible alternative approach to crafting a legislative presumption in respect of PTSD. A presumption focusing on the triggers for, and diagnosis of, PTSD could capture all potential workers suffering from the condition regardless of occupation. The DSM-5 definition of PTSD, discussed above, provides an opportunity to craft a presumption on the basis of science and objective medical practice. Under this approach, if a worker has been exposed to a PTSD trigger in the workplace and is diagnosed with PTSD, it would be presumed that the PTSD was an injury by accident arising out of and in the course of employment unless the contrary was proven.

A provision drafted in this manner would not provide greater coverage to workers than they already have because PTSD is a compensable condition with or without a presumption. It would, as previously indicated, merely simplify adjudication and reduce the stigma of mental illness.

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<sup>2</sup> Bill 205, *The Workers Compensation Amendment Act (Presumption Re Post Traumatic Stress Disorder)*, first reading December 4, 2014.

<sup>3</sup> See eg, M. Skogstad et al, *Work-Related Post-Traumatic Stress Disorder, Occupational Medicine* 2013: 63; 175-182.

## KEY QUESTIONS

This Consultation Paper has identified some of the challenges associated with the adjudication of workers compensation claims based on PTSD and two possible legislative responses to these problems. Your views on these issues will be considered when formulating any future legislative proposal in this regard. Please consider the following questions for feedback:

1. Have you or your organization been involved in a worker's compensation claim based on PTSD? Was the claim satisfactorily resolved, and why?
2. Is there a need to amend the Act to improve the timeliness and consistency of adjudication in respect of claims based on PTSD?
3. Is a legislative presumption an appropriate method by which to improve the timeliness and consistency of adjudication in respect of claims based on PTSD?
4. What are the advantages and disadvantages of a presumption based on particular types of occupations?
5. If the Act were amended to provide a presumption in respect of PTSD for certain occupations, what occupations should be included?
6. What are the advantages and disadvantages of a presumption based on the triggering events for, and a diagnosis of, PTSD?
7. Should a legislative presumption be made retroactive and for what period of time?
8. Do you have any other comments or suggestions on the subject of PTSD in the context of the workers compensation system in Manitoba?

## PROCESS FOR PROVIDING INPUT

The WCB welcomes your input regarding the issues and questions posed in this Consultation Paper, or any other issue related to presumptive coverage for PTSD. This input will form the basis of a report that the WCB will provide to the Government of Manitoba at the conclusion of consultations in early May 2015.

Submissions, as well as the WCB's report to government, will be posted on the WCB website at: [www.wcb.mb.ca](http://www.wcb.mb.ca)

Please provide your input by May 1, 2015, to:

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