



OBA Submission on Workplace Safety and Insurance Board's Draft Occupational Disease Policy Framework

Submitted to: Workplace Safety and
Insurance Board

Submitted by: Ontario Bar Association

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Introduction

The Ontario Bar Association (the “**OBA**”) appreciates the opportunity to make this submission to the Workplace Safety and Insurance Board (“**WSIB**”) in respect of the draft occupational disease policy framework (“the **draft Policy**”).

The Ontario Bar Association (OBA)

The OBA is the largest and most diverse volunteer lawyer association in Ontario, with over 16,000 members who practice on the frontlines of the justice system, providing services to people and businesses in virtually every area of law in every part of the province. Each year, through the work of our 40 practice sections, the OBA provides advice to assist legislators and other key decision-makers in the interests of both the profession and the public, and delivers over 325 in-person and online professional development programs to an audience of over 12,000 lawyers, judges, students and professors.

This submission was prepared by the Workers’ Compensation Section of the OBA. The Workers’ Compensation Section includes counsel for employers; counsel for injured workers, both in a unionized and nonunionized environment; and neutral lawyers who work at the WSIB and the Workplace Safety and Insurance Appeals Tribunal (“**WSIAT**”). Our members represent injured workers and employers at the WSIB, before the WSIAT and with private insurance claims and this submission has been developed with input and consensus from both employer and worker counsel.¹

Overview

We commend the WSIB for their important work on setting out the objectives and framing of the draft Policy.

We recommend that the draft Policy address in more detail WSIB’s proposed approach to key areas in the processing and adjudication of occupational disease claims. More specifically, we recommend

¹ Our neutral members do not get involved in policy development within the workplace insurance system.



two fundamental improvements to the draft Policy: (1) to increase transparency, the WSIB should articulate and consult with stakeholders on the level of evidence necessary to schedule a disease or create an operational policy; and (2) in terms of research and analysis, the WSIB should recognize a more important role for different types of evidence.

For the purposes of the public consultation, this submission focuses on the proposed sections in the Draft Policy and we have provided commentary where we see further development and consultation on the framework to assist in achieving the identified objectives.

Comments

The draft Policy addresses one of the most important elements of Ontario's workers' compensation system, which has a major human and financial impact for workers and employers. We strongly agree that a transparent and meaningful policy framework is needed for the guidance of the stakeholders and WSIB itself, as stated in the third bullet under the framework.² This is vital for the WSIB to carry out its statutory mandate.

We are also in agreement on the overall importance of basing policy on research findings within the context of the legal test for causation. This is subject to the right of both workplace parties to provide additional evidence from other sources, which we address later in this submission.

i. Legal Framework for Recognition of Occupational Disease

For both employers and workers, the legal framework is at the heart of the draft Policy. This is because the *Workplace Safety and Insurance Act* ("the **Act**") has provided significant direction and guidance to WSIB in addressing occupational disease. The Act establishes several categories within which occupational diseases may be addressed. These range from an irrebuttable presumption of work-relatedness in Schedule 4, to a rebuttable presumption in Schedule 3, to diseases adjudicated pursuant to WSIB policies and finally to adjudication on a case-by-case basis ("the **Categories**"). The

² Draft Occupational Disease Policy Framework – Consultation Paper, "Introduction", which states "The framework: ...facilitates the creation of clear and updated policy guidance to support timely and consistent decision-making, and to help the WSIB fulfill its legislative obligations to workers, and to survivors of deceased workers who experience an occupational disease due to the nature of their employment".



way in which the WSIB allocates a specific health condition into one of the four Categories is of course a vital matter to employers and workers in Ontario.

We agree with how the WSIB has framed these Categories in the draft Policy. In particular, we believe the Categories reflect the scientific evidence relevant to each type of case while allowing for adjudicative flexibility in cases where evidence may be non-specific or not clearly defined.

The key issue that we do not see addressed in the draft Policy is what specific approaches the WSIB will be taking to determine whether a health condition goes into Schedule 4 versus Schedule 3 versus a policy or disablement. For example, are there specific excess risk ratios in epidemiological studies which might provide guidance?

The OBA recommends that the WSIB provide a clearer approach on how it intends to determine whether a health condition goes into Schedule 4, Schedule 3, a policy or disablement. Worker and employer advocates and organizations will not necessarily agree on the specifics, but without any guidance, we are left with no indication as to what result will come from WSIB's reviews of various health conditions.

ii. Occupational Disease Policy Development

Both the worker and employer advocates in our Section welcome the articulation by WSIB of guiding principles for policy development. This is important for transparency.

However, we do not agree with proposed Principle 2 (policy development will be consistent with the WSIB's strategic direction). Policy development must be fundamentally based on the legal principles in the Act and the best available evidence, not on whether the approach is consistent with the strategic direction of the WSIB.

The OBA recommends that the draft Policy be amended to remove Principle 2.

iii. Occupational Disease Policy Issue Identification Sources

The relationship between a disease, or group of diseases, and an occupational risk factor(s) are identified a number of ways. When identified issues are targeted for further investigation, they stem from a number of sources, which have been set out in the draft Policy.



The employer and worker members of our section agree on the main sources of issue identification as proposed in the draft Policy. Of particular importance is the identification of a cohort of claims with a single employer or within an industry. This tends to be the main way that both employers and workers discover that there may be a problem.

iv. Research and Analysis

In the research and analysis stage, the draft Policy places a high value on systematic literature reviews. Generally speaking, these reviews tend to relate to specific exposures, e.g., risk ratios for various levels of exposure to radon, asbestos, benzene, etc. While such reviews are valuable, both the worker and employer members of our section would like the WSIB to recognize a more important role for workplace-based research and multiple/combined exposures, which are not well addressed by systematic reviews.

We recommend that both workplace parties reserve the right to bring forward evidence from frontline situation in various workplaces and sectors.

v. Monitoring of Evidence and Updating Policy Guidance

The draft Policy states that WSIB will continually monitor developments within the scientific evidence that may be relevant to understanding the relationship between occupational risk factors and disease outcomes.

While the OBA agrees with requiring WSIB to continually monitor the development of the science, we recommend that it should also include the monitoring of other key information, especially emerging trends in disease among workers with occupational exposures.

vi. Consultation

The OBA supports the need for consultation on proposed policy changes. With the benefit of stakeholder consultation, clear and updated policy guidance will be of benefit to all interested parties.



Conclusion

We appreciate the opportunity to provide this submission in response to WSIB's Draft Occupational Disease Policy Framework. The OBA looks forward to opportunities to continue to engage with WSIB and to provide the insights from both workers and employer representatives.