July 7, 2017

Consultation Secretariat  
Workplace Safety and Insurance Board  
200 Front Street West  
Toronto ON M5V 3J1

Response to the WSIB Consultation on the Draft Chronic Mental Stress Policy

Sent Via email: consultation-secretariat@wsib.on.ca

Introduction
The Council of Ontario Construction Associations (COCA) is a federation of construction associations representing more than 10,000 general and trade contractors operating in the industrial, commercial, institutional and heavy civil segments of the construction industry and who work in all regions of the province and employ approximately 400,000 workers. COCA is committed to working with the senior management of the WSIB and with officials in the Ministry of Labour and the provincial legislature to ensure that Ontario’s workers’ compensation system is sustainable, addresses the needs of both employers and workers effectively and efficiently and serves as a competitive advantage for attracting new business investment and jobs to the province. COCA is the largest and most representative voice for the non-residential construction industry in Ontario.

Since its formation in 1975, COCA has continuously and actively engaged in issues that could be broadly classified as “WSIB Reform”, and these matters have always been among this organization’s very highest public policy priorities. In the conduct of this work, it is COCA’s practice to work with our own members to develop solutions that support success in the construction industry and also to work with other industry associations to ensure the alternatives that we develop on our own fit into a more holistic approach that meets the needs of compensation system and the broader economy.

With regard to WSIB issues, COCA is an active and leading member of the Ontario Business Coalition (OBC) and we support the submissions made by that organization. We also work closely with the Office of the Employer Adviser and we support the submissions made by that organization.

We are pleased to provide this response to the WSIB’s draft policy addressing claims for chronic mental stress.

CMS – A Different Type of Condition Requires Different Test
Currently, the WSIB uses the “significant contribution” test to consider all claims. COCA submits that chronic mental stress is a very different type of condition from a physical injury or an occupational disease and requires a different test.

www.coca.on.ca
Unlike physical injuries which are the result of a single event such as a slip, trip or fall in many cases, or the result of a series of repeated near identical movements as in the case of repetitive strain injuries, chronic mental stress has many causes. Normal life is full of stressors including such things the death of a loved one, a sick child, marital breakdown, interpersonal problems, a stock market loss, financial pressures. For some, there may be a family history of mental illness. Other causes include bullying and harassment both inside and outside the workplace. These various stressors which can originate both inside and outside the workplace have an accumulative effect over time that can result in chronic mental stress.

Unlike physical injuries, chronic mental stress is invisible which makes it significantly more challenging to detect and diagnose with accuracy. It cannot be observed by medical instruments or scientific testing. An accurate diagnosis can only be made after hours of consultation and evaluation by a highly trained and experienced mental health specialist.

In the case of occupational diseases, the connection to the workplace is usually very clear. The proven existence of a toxin in the workplace is clearly the cause of a particular disease such as in the case of asbestos and mesothelioma.

So the connection between a physical injury or an occupational disease with the workplace is fairly straightforward to establish. This is not the case however with chronic mental stress. Identifying the existence of one or more workplace stressors and then when they are found to exist, establishing the extent to which the workplace stressors contributed to a worker’s chronic mental stress condition is extremely challenging and takes a highly trained mental health professional.

Because of these factors, we submit that a different test is required and we recommend the “Average Person” test for consideration.

The Causation Test
In the wake of the decisions made by the WSIAT in the three appeals generally referred to as the “trilogy cases” the government had no choice but to act and direct the WSIB to provide entitlements for chronic mental stress claims. In so doing, the government delegated the authority to determine the test to be applied to chronic mental stress claims to the WSIB. The government did not put the test in the legislation or require it to be in a regulation, they gave this policy-making power to the WSIB. In this regard, there are only two choices, “significant” or “predominant”. In its draft policy, the WSIB chose the “significant” test.
There are currently four provinces in Canada in which the workers compensation systems provide entitlements for chronic mental stress. The provinces with the most experience are British Columbia and Alberta. Both have chosen to use the “predominant” cause test. Given the experience and success in dealing with chronic mental stress claims in these provinces, it is perplexing why the WSIB took a different course and chose the “significant” test. COCA strongly recommends the WSIB change its thinking in this regard and use the “predominant” test.

The WSIB does not provide wage replacement, medical treatments and return to work services as part of a universal care system. The WSIB provides benefits for workers who have become sick or injured as a result of workplace causes. As discussed earlier in this paper, chronic mental stress is multifactorial; it is usually the result of many stressors. In the view of COCA, it is not appropriate for the WSIB to provide benefits for chronic mental stress claims which the workplace stressors are not the predominant cause.

Diagnosis
The WSIB’s draft policy requires that a diagnosis for chronic mental stress must be a Diagnostic Statistical Manual for Mental Disorders (DSM) diagnosis. These manuals are updated from time to time and the current edition is called DSM 5. We are led to believe that a DSM 6 may already be in the works. For clarity and consistency of diagnosis, we recommend that the WSIB specify in their policy the most recent edition of the DSM.

These DSM manuals require special training to use. We strongly recommend that the WSIB’s policy addressing chronic mental stress claims require that health care professionals making DSM diagnoses for the purpose of WSIB claims have specialized training in the use of the required DSM, e.g. DSM 5.

Further, the draft policy requires that the DSM diagnosis must be made by an appropriate regulated health professional. This would open up the ability to make a diagnosis for the purpose of WSIB claims to family doctors and possibly other health care professionals. Other provinces whose compensation systems provide benefits for chronic mental stress require that the diagnosis must be made by a psychiatrist or a psychologist. These provinces recognize that a complex condition such as chronic mental stress must be diagnosed and treated by a health care professional with special training in this field. It is our strong preference that a diagnosis for the purpose of a WSIB claim should be made by a psychiatrist or psychologist.

The WSIB has told us that there are not enough psychiatrists and psychologists available to Ontarians to provide the services that will be required in a timely way to treat workers suffering from workplace chronic mental stress effectively. We know that the WSIB has considerable experience dealing with
mental health issues and should have a good understanding of the capacity the province’s capacity in this area. We take them at their word on this matter. This should, however, in no way reduce the absolute need for a sound diagnosis. For the integrity of the compensation system, the WSIB must insist on an accurate diagnosis and has a responsibility to place some limits and requirements on and to provide proper guidance to family doctors making these diagnoses. The WSIB has a responsibility to inform family doctors of their expectations with regard to the level of detail expected in the diagnosis to be submitted to the WSIB. Here is our advice with regard to chronic mental health diagnoses made by a family doctor:

- The diagnosis must not be made in a typical 10-minute visit with a family doctor but should be the product of at least two hours of intensive examination and investigation
- The diagnosis submitted by the family doctor to the WSIB must not be in the form of a typical; family doctor’s one or two-page note; the diagnosis must be in the form of a thorough and detailed report
- The diagnosis must be made by an experienced family doctor who has received special training in making DSM diagnoses
- Recognizing that life is full of stress and that chronic mental stress is almost always multifactorial, the diagnosis must identify workplace and all other stressors in the workers life
- The WSIB must develop a template to assist doctors in making a diagnosis and in providing all the information necessary to make the connection to the workplace
- The WSIB should develop a cognitive abilities form (like the functional abilities form for physical injuries) that describes if the worker has the cognitive abilities to return to work and to work with his/her colleagues
- The family doctor making the diagnosis should include a treatment plan

**Return to Work**
The WSIB’s draft policy addressing chronic mental stress claims appears to rely heavily on the agency’s and employers’ success in getting workers suffering from physical injuries back to work. There is no denying that the WSIB’s success in this area is quite remarkable. However, the reliance on return to work efforts for chronic mental stress cases and expecting the same results as for physical injuries is unrealistic. It fails to recognize the characteristics of mental illness. Mental illness very different from a physical injury and healing takes a very different process.

It will be very difficult to return a worker suffering from chronic mental stress back to the same workplace with the same colleagues. In larger companies with multiple locations and departments this may be possible. The worker can be accommodated by transferring her or him to another plant or office where the workplace stressors do not exist or by transferring him or her from a production role to an administrative position. However, with small, single location employers (most employers) this
will not be possible. Providing accommodated work may not be possible. We believe that chronic mental stress cases will be high cost and long duration.

**Fairness to Employers**
Everyone in Canadian society suffering from debilitating stress and anxiety should have access to care and the treatment they need to get them back to a full and healthy state. Ontario has a comprehensive public healthcare system that covers mental illness. Ontario’s WSIB provides wage replacement and medical treatment only for workers who become sick or become injured as a result of workplace causes. The diagnosis of a worker claiming to be suffering from chronic mental stress caused by workplace stressors must be accurate and there must be a strong connection made to the workplace. Under the draft policy there is an extraordinary opportunity for inaccurate diagnosis with a weak workplace connection. It is unfair to burden employers with the costs of wage replacement and treatment for a worker suffering from chronic mental stress that is not predominantly caused by the workplace. The WSIB is not yet a universal healthcare plan for mental health issues; we have public health care for that.

**Summary of Recommendations**
In summary our recommendations are as follows:

- The WSIB should use the “Average Person” test in considering chronic mental stress claims
- Our strong preference is to require a diagnosis in accordance with the most current DSM and made by a psychiatrist or psychologist
- Accepting that there may not be a sufficient number of psychiatrists and psychologists, the diagnosis must be made by a family doctor specially trained to make a chronic mental stress diagnosis in accordance with the most current edition of DSM
- The causation test must be “predominant cause” not “significant cause”.

**Closing**
This is the section of any normal submission to the WSIB where we would say something like “We appreciate the opportunity to provide our advice on this open and transparent consultation and we thank you for the thoughtful consideration that will be given to our views.” However, that is not the case with this consultation.
Because we have become used to much better from the WSIB, we feel compelled to comment on the consultation process, hopefully in a way that is received as constructive and that will restore the high consultation standard of excellence stakeholders have become accustomed to with the WSIB.

With the WSIAT trilogy decisions in the rear view mirror, the WSIB should have seen chronic mental stress coming and have been better prepared for the Bill 127 amendments to the WSIA. However, it appears the WSIB was caught off guard and unprepared. The WSIB departed from its normal policy consultation process, provided a flimsy, vague and poorly developed draft policy, provided no policy options or alternatives from which to choose and support, provided no explanations about the choices made in the draft policy, e.g., “significant” versus “predominant” and imposed a short deadline for feedback. In short, this policy consultation is a disappointment and not up to the WSIB’s normal high standard. We have come to expect better.

We fear this consultation process will produce a weak policy direction that will result in many claims being approved where workplace stressors were not significant contributors. Further we believe that a policy that allows entitlements for chronic mental stress claims that do not have legitimate workplace causes will remove from employers the ability to implement workplace prevention measures. All this will result in further erosion of confidence in the system.

We know the WSIB can and will do better going forward.

Respectfully,

Ian Cunningham
President
Council of Ontario Construction Associations