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The following column from COCA appeared in the Journal of Commerce

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Stressed worker legislation could have massive impact

View from the Board | Grant McMillan

A "sleeper" issue is working its way through the B.C. Legislature.

The B.C. Liberal government has introduced amendments to the Workers' Compensation Act that would broaden the acceptance of stress claims.

In 2002, it was the B.C. Liberals, who changed the same legislation to require that there be a precipitating incident in order for a stress claim to be acceptable.

The legislation required, among other things, that the mental stress be "an acute reaction to a sudden and unexpected traumatic event arising out of and in the course of the worker's employment."

This new legislation – which essentially wipes out the previous requirement quoted above – has gone forward with no meaningful consultation and no research on what has been done in other jurisdictions.

The Council of Construction Associations (COCA) has studied the proposed legislation that would expand the acceptance of claims for stress at work, within the workers' compensation system.

The association believes that this is a critical piece of proposed legislation with major cost implications for the taxpayers and

employers of B.C.

We believe that this proposed legislation deserves a careful re-evaluation.

The proposed amendment would accept claims for stress that are of gradual onset – with no traumatic incident.

The Government of B.C. and its public service agencies would see the largest increase in costs.

These high costs would be passed on to B.C. taxpayers for years to come.

Stress claims are currently accepted only if the worker had a traumatic event at work.

There are significant problems with expanding the criteria.

First and foremost, it is difficult to separate the non-occupational causes of stress from occupational causes.

It is especially difficult given the wide variety of laws that protect the privacy of the individual and in particular the medical, legal and financial records of an individual.

Yet, the causes of stress may be related to the individual's family problems, physical condition, legal difficulties or financial hardships.

The whole issue of deciding a stress claim is made very difficult because – unlike other gradual onset diseases – there is no scientific or medical basis for evaluating the causation, nature and time of recovery from stress.

In short, the science on the causes of stress is far from settled.

The workers' compensation legislation and case law on gradual onset stress is also far from settled.

Various jurisdictions have a wide range of provisions concerning the acceptance or non-acceptance of stress claims.

In 1974, under an NDP government in B.C., then Workers Compensation Board chairman, Terence Ison, wrote an important

decision on stress claims.

Ison, a former law professor, determined that gradual onset stress should not be covered.

He wrote, in part, that "Almost every occupation involves some physical and emotional demands... These matters often involve judgment both by employers and by workers, though to some extent they are regulated in labour legislation."

He added that "claims of this kind would be extremely difficult to adjudicate. For example, how could the Board conclude that the emotional stress resulted from work without considering whether it resulted from other causes; and how could this be decided without going back perhaps as far as childhood history?"

No one has yet answered these major concerns about expanding coverage for stress.

This column is the first of two parts that looks at how the broadening of acceptance for stress claims will impact the construction industry. Look for Part Two in the next edition of the Journal of Commerce.

Grant McMillan is the president of the Council of Construction Associations (COCA), which represents the interests of 16 construction associations in B.C. on WorkSafeBC matters. Grant is also a member of the Journal of Commerce Editorial Advisory Board.

The JOC article is available online at:

<http://www.joconl.com/article/id49537/--stressed-worker-legislation-could-have-massive-impact>