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The following column from COCA appeared in the JOC

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Stress claim expansion could have major cost implications

View from the Board | Grant McMillan

The Council of Construction Associations has studied the proposed BC government legislation that would expand the acceptance of claims for Stress at work within the workers' compensation system.

COCA believes that this is a critical piece of proposed legislation that has major cost implications for the Budget of British Columbia and for the taxpayers and employers of BC.

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 BC and its public service agencies would see the largest increase in costs. These high costs would be passed on to BC 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 for Stress claims. Here are some of the problems:

* It is extremely difficult to separate the non-occupational causes of

Stress from the 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 the individual. Yet the causes of Stress may be related to the individual's medical condition, legal difficulties or financial hardships.

* Family tensions and problems are common causes of Stress but the relationship of these potential stressors to the alleged disability is also very hard to prove or disprove.

* Unlike other gradual onset diseases, there is no scientific or medical basis for evaluating the causation, nature and time of recovery from Stress.

* 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.

Public Service Unions and Stress

In 1974, under an NDP government in BC, then WCB Chairman, Terence Ison, wrote an important decision on stress claims.

Mr Ison, a former law professor and widely recognized authority on Workers Compensation law, determined that gradual onset stress should not be covered by Workers' Compensation. Mr. Ison wrote, in part, that

"For several reasons, we do not feel that recognition of exhaustion as an industrial disease would be practicable, or sound policy.

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. It has not traditionally been regarded as a compensable disability when a worker is engaged for a position which he subsequently finds is too much for him, or becomes run down through working excessive overtime, or for other reasons finds that the demands of the job have a debilitating effect."

Mr. Ison also rightly concluded 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? The answers may be obvious in some cases, but they would not be in others. Moreover the answers could not be determined in many cases without engaging in a kind of enquiry that many people would resent. For example, how could the Board determine the emotional significance of stress at work without enquiring into the domestic affairs and other aspects of the private life of the worker concerned?"

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

Changes to Stress Coverage

In the 1990s under a later NDP government, the acceptance of gradual onset stress claims expanded the Workers' compensation Board.

The primary users of the expanded acceptance of stress claims were the public sector unions.

This and other overly generous provisions added greatly to the costs of the Workers' compensation system, creating a major unfunded liability (debt).

In 2002, the new BC Liberal government changed the Workers Compensation act in order to make the system balanced and sustainable.

It was one of these legislative changes that established the requirement that a stress claim must be the result of a traumatic incident arising out of and in the course of employment.

The reversal of this 2002 legislation on Stress has been an ongoing objective of the public sector unions and their allies, the NDP.

Financial Impact

The costs for the proposed changes are potentially staggering.

The numbers shown below are for the cost of Stress claims from 2001 to 2010. During most of these years – from the period 2002 onward for new claims -- Stress claims were only accepted when the claim was the result of a traumatic incident at work.

The proposed amendment would blur the line between non-

occupational and occupational causes. Employers – especially the BC government itself – would end up paying for conditions that are not related to work.

The following data, from WorkSafeBC , indicates the magnitude of the costs that have been incurred on Stress claims.

These costs are only a small fraction of the future costs that will come if the proposed legislation broadens the acceptance criteria for Stress to include Stress claims with no specific incident.

2010 Payroll

BC Government: \$25 billion

Construction: \$6.4 billion

Stress Claim Costs: 2001-10

BC Government: \$27.88 million

Construction: \$2.7 million

The BC Government and Public Sector have about 4 times the payroll as compared to the Construction Industry.

The BC Government and Public Sector have about 10 times the costs for Stress claims.

Experience in Other Jurisdictions

The experience with expanded Stress legislation in Australia should serve as a warning for British Columbia.

The online newspaper, The Australian, has reported that:
"The federal workers' compensation scheme is battling a 30 per cent surge in mental stress claims, sparking union warnings that Wayne Swan's plan to reap \$1.5 billion in savings through a public service efficiency dividend will put unprecedented strains on the sector.

New figures from Comcare - which runs the federal workers' compensation scheme for all of the government's departments and most of its authorities, as well as for some big national firms - reveal that the cost of mental stress claims has soared from \$53 million in 2008-09 to \$70m in 2010-11, while the incidence of the claims has risen by 30 per cent over this time." (December 8, 2011)

The Journal of Law and Medicine (Australia, May, 2007, author Rob

Guthrie)), discusses "The Australian Legal Framework for stress claims."

The scope and expense of the Stress legislation in Australia is indicated by this Abstract summary:

"Work-related stress claims in all Australian jurisdictions are the most expensive form of workers compensation claim. This is due to the lengthy period of absence from work which is a feature of stress-related claims."

Further cause for concern with the Australian experience is contained in the media release from Comcare --a statutory authority of the Australian Federal Government established under the Safety, Rehabilitation and Compensation Act 1988 (SRC Act). Comcare administers the federal workers' compensation scheme.

In July 21, 2011, Comcare issued a media release titled "Mental stress claims on the increase". Following are excerpts from that release:

"Recent analysis by Australia's federal work health and safety regulator, Comcare, has found that since 2006-07, there has been a 54% increase in mental stress claims, as a proportion of total accepted claims. While injury claims have fallen over the same period, Comcare is concerned at the growing proportion of mental stress claims. The Comcare figures reveal that over the last 12 months, mental stress claims accounted for almost 22% of all serious claims that involved one week or more time off from work."

The Australian experience should be a cause for careful, detailed research and analysis before any change is made to BCs legislation on Stress.

Reasons for Retaining the Current Coverage for Stress

1. The time which may have passed between the "cause" and the "effect" and the number of intervening events make it difficult to attribute a mental condition to a particular set of circumstances.
2. There is a great deal of Subjectivity within the notion of "stress"; there may be no clear relationship between the "stressors" and the reaction.
3. There is a lack of clinically established criteria and the standards for diagnosis of "stress."
4. Stress is Multifactorial, interactive and dynamic and therefore difficult to categorize.
5. Individuals respond differently to stress. .d6. There are difficulties

to establishing what is "normal or abnormal" with respect to stress reaction.

7. There is an unknown relationship between stress and disability.

8. Preexisting and concurrent factors are difficult to separate.

9. The importance of individual "motivation to cope" in stress cases is not clearly understood.

10. There is poor inter-rater reliability of stress assessments due to lack of clinical standards.

11. There is a potential for misinterpretation of clinical data by the legal system and for harm to the clients.

12. There is a poorly understood, interactive relationship between job dissatisfaction and stress in the work place.

COCA Recommendations

We believe that the draft amendments -- which do not appear to have been thoroughly researched -- will lead to misinterpretation, misunderstanding and rapidly increasing costs to all of those who fund the workers' compensation system.

We strongly recommend that the government initiate a study on the issue of compensation for Stress. In our view, this study should closely examine:

what is being done to compensate for Stress in other jurisdictions within Canada as well as in the United States, Great Britain and Australia;

what medical and scientific evidence on Stress has been examined by these other jurisdictions;

what legal opinions exist on the necessity and advisability of providing workers' compensation coverage for gradual onset Stress;

what administrative tribunals have issued rulings on workers' compensation coverage for gradual onset Stress;

what court cases have been decided on the requirement, if any, for workers' compensation coverage for gradual onset Stress;

what the experience has been in any jurisdictions that have extended coverage to include gradual onset Stress;

what financial impact has resulted from any inclusion of gradual onset Stress.

The draft legislation that is now before the BC legislature has major negative financial implications and COCA strongly believes that the legislation should not proceed until these questions have been examined and answered.

The JOC article is available online at:

<http://www.joconl.com/article/id49489/--stress-claim-expansion-could-have-major-cost-implications>