



June 28, 2017

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

**RE: Submission with respect to WSIB draft Operational Policy Paper: Document No. 15-03-14: Traumatic or Chronic Mental Stress (accidents on or After January 1, 2018)**

Dear **Secretariat**:

The **ORHMA** is writing to you responding to the Board's consultation document and proposed policy for traumatic or chronic mental stress in Ontario.

**Summary of core conclusions and recommendations:**

1. At the outset, while recognizing the prodigious scope of the Board's challenge, the paper explains that the proposed stress policy requires reconsideration and revision. **See Section A.**
2. It is strongly recommended that an ongoing review mechanism be instituted through both the Chair's CAGs and the normal consultative venues available to the Board. Through the CAG, a special sub-committee should be immediately struck and meet no less than twice a year to review implementation progress with the WSIB. At post-implementation Year 2 and again at Year 5 a comprehensive report should be prepared and publicly distributed, seeking stakeholder commentary and suggestion. **See Section B.**
3. The paper provides a history of the consideration of chronic stress in Ontario, showing this is not a new issue but rather one with an accumulated thirty (30) year history. **See Section C.**
4. The paper argues, with strong support from the **1999 British Columbia Royal Commission on Workers' Compensation**, that stress cases are distinctive from other WSI cases and require a distinctive legal treatment. **See Section D.**
5. The Board's proposed stress policy is critiqued resulting in the conclusion that it is not a workable template through which to distinguish work-related chronic stress from non-work-related chronic stress. A different approach is called for. **See Section E.**
6. The Canadian experience is reviewed, establishing that for four provinces that allow entitlement for chronic stress, *all* apply the "*predominant cause test*." The remaining provinces do not allow entitlement for chronic stress. The paper argues that Ontario has not presented a reasoned analysis for a distinctive approach and comments that the complexity of chronic stress cases does not vary from province to province. **See Sections F to I.**
7. It is argued that amendments to the WSIA allowed the Board to develop and implement a distinctive policy approach to chronic stress and construct a policy that provided "*different evidentiary requirements or adjudicative principles*" "*having regard to the different basis for and*

*the characteristics*" of chronic stress entitlement. That the Board chose not to do so may well lead to a clearer statutory directive in the future. **See Section J.**

8. The paper is sensitive to the need of the Board to not only get to the correct answer but to do so as quickly as possible to ensure that its rehabilitation mandate is not usurped. However, it cannot do so through an abdication of its adjudicative mandate. **See Section K.**
9. The paper examines the establishment and evolution of the "average worker test" and recommends its adoption as an adjudicative tool to allow claims but not to deny claims. **See Sections L and M.**
10. The paper presents a "complex chronic stress analysis" as a suitable investigative and adjudicative template for all cases that do not meet the average worker test. **See Section N.**
11. The paper examines the type of medical evidence required in chronic stress cases and concludes that while a DSM diagnosis is required in all cases, it is appropriate in some cases for that diagnosis to be provided by a non-psychiatrist health care professional. However, the Board is encouraged to develop a special stress disorder medical report to ensure it receives the necessary information to make an informed decision. For all cases considered under the proposed "complex chronic stress analysis," a comprehensive report from a psychiatrist or psychologist is required. **See Section O.**
12. A summary of the adjudicative steps and appropriate analytical template for chronic stress cases is set out. **See Section P.**

Yours truly,



Tony Elenis  
President & CEO  
Ontario Restaurant Hotel & Motel Association

CC: Elizabeth Witmer, Chair WSIB  
Thomas Teahen, President WSIB  
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