



RESOLUTION 2021-09

Mandatory Legislative Amendments to the *Workplace Safety and Insurance Act* and/or WSIB Policy Documents Relating to *Bill 163, Supporting Ontario's First Responders Act (Post-traumatic Stress Disorder), 2016*

PREAMBLE

On April 5, 2016, Bill 163, *Supporting Ontario's First Responders Act (Post-traumatic Stress Disorder), 2016*, passed Third Reading. Bill 163 amended the *Workplace Safety and Insurance Act, 1997* to create a statutory presumption whereby Post-traumatic Stress Disorder (PTSD) diagnosed in first responders is presumed to be work-related, unless the contrary is shown. This rebuttable presumption was meant to facilitate access to workers' insurance benefits and treatment. The final version of Bill 163, which received Royal Assent on April 6, 2016, included the following police service workers:

- Police officers,
- Members of an emergency response team,
- Workers involved in dispatch,
- Special Constables, and
- Members of a police force, other than those described in paragraph 5, who perform work in a forensic identification unit or a Violent Crime Linkage Analysis System unit.

Bill 163 requires a PTSD diagnosis to be provided by a psychiatrist or psychologist in accordance with the DSM-5. For employers of first responders, it was understood that Bill 163 may lead to increased costs, in terms of both expanded benefit entitlements and loss of earnings benefit awards, but also potentially increased absences among the workforce.

To address some of these concerns, the Bill was clear that the presumption would be rebuttable and that employers of first responders could provide information to rebut the statutory presumption where the PTSD is not work-related.

As of January 1, 2018, workers are entitled to benefits for traumatic mental stress arising out of and in the course of the worker's employment.

The Workplace Safety and Insurance Board (WSIB) has released an Operational Policy Manual entitled, *Post-traumatic Stress Disorder in First Responders and Other Designated Workers* (the "PTSD Operational Policy Manual"). The PTSD Operational Policy Manual was published on-line as of September 7, 2018 and applies to all decisions made on or after September 1, 2018, relating to accidents on or after January 1, 1998.

The PTSD Operational Manual's policy statement is as follows:

If a first responder or other designated worker is diagnosed with post-traumatic stress disorder (PTSD) and meets specific employment and diagnostic criteria, the first responder or other designated worker's PTSD is presumed to have arisen out of and in the course of his or her employment, unless the contrary is shown.

Part 3 of the PTSD Operational Policy Manual expressly recognizes the operation of s. 14(7) in the Act, and expressly recognizes that, for all first responders:

The presumption may be rebutted if it is established that the employment was not a significant contributing factor in causing the first responder's PTSD.

Further, clear language was embedded in the Operational Manual that speaks to Return to Work (RTW) processes.

Return-to-Work overview and key concepts are found in WSIB Document number 19-02-07. Specifically, it indicates that a return-to-work process, "*consists of a series of activities and services which generally start as soon as the injury employer learns that a worker has suffered a work-related injury...*". Following are WSIB's key RTW principles that are routinely not employed in the case of a presumptive PTSD absence:

- *Appropriate and early RTW that maintains the dignity and productivity of a worker plays an important role in the worker's rehabilitation and recovery,*
- *Where recovery and RTW barriers occur, they must be addressed through early support and services,*
- *A worker's prospects for successful RTW in both the short and long term are often best achieved by maximizing opportunities for return to work with the injury employer, including retraining for a new job with that employer, and*
- *A worker should be offered programs that are of a high quality and practical, and the WSIB will provide the worker with meaningful input and choice in relation to the programs offered.*

Obligations in relation to RTW continues in WSIB Document number 19-02-08, RTW Co-operation Obligations. Specifically,

Injury employers are obliged to co-operate by:

- *initiating early contact with the worker,*
- *maintaining appropriate communication with the worker throughout their recovery,*
- *attempting to provide suitable work that is available and consistent with the worker's functional abilities (when an available job is identified as suitable for the worker, the injury employer is obliged to offer the worker the job), and*
- *giving the WSIB all relevant information concerning the worker's RTW.*

Workers are obliged to co-operate by:

- *initiating early contact with the injury employer,*

- *maintaining appropriate communication with the injury employer throughout the recovery,*
- *assisting the injury employer, as required or requested, to identify suitable work that is available and consistent with their functional abilities,*
- *giving the WSIB all relevant information concerning their RTW, and*
- *participating in all aspects of their RTW assessments and RTW plans.*

The current WSIB structure and processes within their own operational policy manual (OPM) impacts the effective management and operation of police services across Ontario.

WHEREAS it is widely accepted that the inherent nature of police work has a detrimental effect on the wellbeing of all members of police services. This impact was not recognized as impactful as it is today, and

WHEREAS the psychological impact of the nature of the work affects all members differently based on a series of factors including but not limited to; nature of the event(s), direct or indirect involvement in an event(s), compounding impact of years of providing essential community safety for the and presence or lack thereof of supportive internal supports, and

WHEREAS Post-traumatic Stress Injury (PTSI) is not solely a work-related issue as PTSD(I), which often occurs with other problems including one or more mental health concerns, difficulties at home or at work, relationship difficulties or the individual is at a higher risk of other medical disorders, and

WHEREAS there exists an inherent paradox with PTSI and the workplace. In PTSI, avoidance of an environment associated with a trauma is a key symptom, which may prevent a member from working and their absence from the workplace can impede their recovery, and

WHEREAS the current trend in WSIB management of PTSI claims is failing for all stakeholders involved as follows:

- Members are not receiving the most appropriate care at the earliest opportunity to speed their recovery. A member cannot be assessed by the WSIB approved specialty clinic in relation to this specific injury until six months have elapsed in some form of community treatment.
- WSIB Case management from the outset of the injury is not consistent with WSIB Operational Policies. There is no consistency on how a PTSI claim is processed from the outset to elevated care model. Locally-engaged mental health professionals may not be experienced to deal with a complicated work-related injury, and there is no set practice to manage this. This leads to case managers really becoming nothing more than “middle people” in a system that follows no clear path.

- Employers are not provided the appropriate voice at the outset to participate in the “rebuttable presumption”. This voice is rarely heard until at some point when there is a return-to-work discussion.
- Municipalities are left with increasing financial burdens caused by increasing WSIB Experience Ratings (formerly NEER surcharge) for Schedule 1 employers or increased operational budgets for Schedule 2 Employers. These financial burdens directly impact the efficient operations of police services and financial burden on the taxpayer.
- Set timelines for FINAL Loss of Earning Benefit Review (WSIB Document 18-03-06) is six years. This is at least twice as long as any LTD or STD benefit.
- Regardless of employee status (resignation/suspension/retirement) LOE benefits are uninterrupted until the Final LOE Benefit Review.

WHEREAS the current status quo cannot be sustained from both a financial and non-financial point of view. Note the comparisons between allowed claims for PTSD(I) claims and others. This recognizes that mental health injuries are far more complicated requiring a whole shift change in response, and

WHEREAS tragic injuries do occur, and no amount of prevention and planning can stop this, there is currently no transparent process that is consistently applied to cases that is both fair to the employee and employer, and

WHEREAS the current system allows for some employees who are in receipt of WSIB income replacement benefits are “better off” financially (i.e., earn more money) than those at work. Employers would benefit by transitioning a permanently injured worker to other work within or outside the organization within a prescribed timeline, and

WHEREAS notwithstanding that all first responders understand and appreciate the inherent risks associated with the work involved, employers expressly acknowledge that preventative action must be a priority to ensure resiliency and recovery of injuries, and that such response should be immediate, appropriate and transparent for all parties involved.

THEREFORE BE IT RESOLVED that the Ontario Association of Chiefs of Police calls on the Ministry of the Solicitor General in concert with the Ministry of Labour to create a working group tasked with recommending legislative amendments to the *Workplace Safety and Insurance Act* and/or WSIB policy documents and processes.

BE IT FURTHER RESOLVED that this review and resulting recommendations (at a minimum) includes:

- A complete overhaul of the Caser Management System within this injury class to include mandatory return to work services and occupational therapists in every RTW case. Clearly understood and shared goals should be embedded in every discussion to promote progress and allocate appropriate resources. Goals have clear metrics and milestones that force clarity and forward motion in the claim and to measure progress, and

- One universal approach to early detection and intervention, to process of care and access for clear PTSI management/return to work and optimizing care between community and specialty healthcare providers, and
- Adoption of a results-focused accountability system at all stages of case management and treatment. Independent evaluation of treatment effectiveness every three months, and
- Alignment of payment of WSIB income replacement benefits with industry standard long-term disability plans for case management and duration. The income replacement benefit be reduced to a percentage of full pay – similar to short- and long-term disability plans – so that there is an incentive to return to work. The percentages could be staged so that it is decreases as time elapses, and
- Establish that a worker who reaches eligibility for a full, unreduced pension, will no longer be entitled to LOE benefits, and
- Establish a formal process that allows the employer to bring an objection forward at the onset of the claim and for a summary hearing process by which employers may make submissions regarding the presumptive entitlement to benefits for PTSD claims as set out in s. 14(7) of the Act, and
- Establish that a worker who has reached MMR, but is unable to work with the employer due to limitations and restrictions, is deemed to have the employment severed, subject to the terms of the *Employment Standards Act, 2000*; and
- Establish mandatory transition counselling and process for members and their families as they transition to new work.

AND BE IT FURTHER RESOLVED that this review and recommendations working group invite active participation from Ontario Association of Chief of Police, Police Association of Ontario/Toronto Police Association, Ontario Senior Officers Association, Ontario Association of Police Services Boards, Association of Municipalities of Ontario, Fire Services, Paramedics, WSIB, and CAMH.

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Addendum

Table 1: All PTSD Claims Registered by Police Officers between Jan 1, 2016 and Nov 30, 2020

Schedule	Claim Status	Registration Year					Total
		2016	2017	2018	2019	2020	
1	Allowed	31	55	46	47	42	221
	Denied	<5	<5	<5	7	<5	15
	Other	<5	0	<5	5	16	28
2	Allowed	182	279	375	406	287	1,529
	Denied	20	23	42	27	31	143
	Other	17	37	90	96	161	401

Table 2: Allowed Lost Time Claims (excluding PTSD Claims) Registered by Police Officers between Jan 1, 2016 and Nov 30, 2020

Schedule	Claim Status	Claim Type	Registration Year					Total
			2016	2017	2018	2019	2020	
1	Allowed	Lost Time	66	75	77	71	54	343
2	Allowed	Lost Time	846	983	1,008	1,068	664	4,569

Table 9: Allowed Lost Time PTSD Claims Registered by Police Officers Percentage on Benefits at 3, 6, 12, and 24 months (as at the first day of the reporting month)

Schedule	Measure	Reporting Year	
		Jan 1, 2019 - Dec 31, 2019	Jan 1, 2020 - Nov 30, 2020
1	Claims On Benefits at 3 Months	96.00%	84.62%
	Claims On Benefits at 6 Months	77.50%	77.78%
	Claims On Benefits at 12 Months	68.09%	78.38%
	Claims On Benefits at 24 Months	50.00%	62.50%
2	Claims On Benefits at 3 Months	67.37%	73.40%
	Claims On Benefits at 6 Months	72.45%	70.74%
	Claims On Benefits at 12 Months	58.16%	69.60%
	Claims On Benefits at 24 Months	51.13%	50.92%

Table 10: Allowed Lost Time Claims (excluding PTSD Claims) Registered by Police Officers between Jan 1, 2016 and Nov 30, 2020
Percentage on Benefits at 3, 6, 12, and 24 months (as at the first day of the reporting month)

Schedule	Measure	Reporting Year	
		Jan 1, 2019 - Dec 31, 2019	Jan 1, 2020 - Nov 30, 2020
1	Claims On Benefits at 3 Months	12.38%	13.19%
	Claims On Benefits at 6 Months	8.05%	9.05%
	Claims On Benefits at 12 Months	5.25%	5.90%
	Claims On Benefits at 24 Months	3.80%	3.92%
2	Claims On Benefits at 3 Months	11.72%	14.77%
	Claims On Benefits at 6 Months	8.18%	10.11%
	Claims On Benefits at 12 Months	5.36%	6.44%
	Claims On Benefits at 24 Months	3.28%	4.12%

Table 7: Allowed PTSD Claims Registered by Police Officers between Jan 1, 2016 and Nov 30, 2020 with Return-to-Work Referrals and Closures as at December 31, 2020

Schedule	Measure	Total
1	Claims with Return-to-Work Referrals	118
	Claims with Return-to-Work Closures	79
	by Return-to-Work Closure Outcomes	
	Employed With Injury Employer	41
	Compensable Medical	22
	Non-claim Related	5
	Cancelled Referral	<5
	Employable	<5
	Employed With New Employer	<5
	Full Recovery No RTW	<5
	Refused Employment Offer	<5
	Other	<5

Schedule	Measure	Total
2	Claims with Return-to-Work Referrals	600
	Claims with Return-to-Work Closures	345
	by Return-to-Work Closure Outcomes	
	Employed With Injury Employer	203
	Compensable Medical	97
	Non-claim Related	12
	Cancelled Referral	11
	Employed With New Employer	8
	Declined Suitable Work No RTW	<5
	Employable	<5
	Full Recovery No RTW	<5
	Full Recovery No RTW	<5
	Medical Impairment	<5
Other	<5	

Table 8: Allowed Lost Time Claims (excluding PTSC Claims) Registered by Police Officers between Jan 1, 2016 and Nov 30, 2020 with Return to Work Referrals and Closures as at December 31, 2020

Schedule	Measure	Total
1	Claims with Return-to-Work Referrals	29
	Claims with Return-to-Work Closures	23
	by Return-to-Work Closure Outcomes	
	Employed With Injury Employer	17
	Cancelled Referral	<5
	Non-claim Related	<5

Schedule	Measure	Total
2	Claims with Return-to-Work Referrals	371
	Claims with Return-to-Work Closures	304
	by Return-to-Work Closure Outcomes	
	Employed With Injury Employer	259
	Compensable Medical	23
	Cancelled Referral	8
	Non-claim Related	5
	Declined Suitable Work No RTW	<5
	Employed With New Employer	<5
	Medical Impairment	<5
	Non-cooperation	<5
	Other	<5

Table 11: Allowed PTSD Claims Registered by Police Officers between Jan 1, 2016 and Nov 30, 2020 Benefit Costs and Costs Covered by Advances as at December 31, 2020

Schedule 1	Registration Year					Total
	2016	2017	2018	2019	2020	
LOE Benefit Costs						
Payment Year 2016	\$ 551,178					\$ 551,178
Payment Year 2017	\$ 1,414,495	\$ 853,236				\$ 2,267,731
Payment Year 2018	\$ 1,185,513	\$ 2,191,520	\$ 837,427			\$ 4,214,460
Payment Year 2019	\$ 1,037,645	\$ 1,569,746	\$ 1,804,320	\$ 1,149,767		\$ 5,561,478
Payment Year 2020	\$ 928,022	\$ 1,299,475	\$ 1,367,250	\$ 1,807,418	\$ 1,002,098	\$ 6,404,263
Total	\$ 5,116,853	\$ 5,913,977	\$ 4,008,997	\$ 2,957,185	\$ 1,002,098	\$ 18,999,111
Other Benefit Costs	\$ 1,479,221	\$ 1,606,263	\$ 1,081,753	\$ 705,506	\$ 153,577	\$ 5,026,319
Total Claim Benefit Costs	\$ 6,596,075	\$ 7,520,240	\$ 5,090,750	\$ 3,662,691	\$ 1,155,675	\$ 24,025,430

Schedule 2	Registration Year					Total
	2016	2017	2018	2019	2020	
LOE Benefit Costs						
Payment Year 2016	\$ 87,285					\$ 87,285
Payment Year 2017	\$ 794,915	\$ 249,278				\$ 1,044,193
Payment Year 2018	\$ 636,809	\$ 744,356	\$ 187,639			\$ 1,568,804
Payment Year 2019	\$ 1,077,018	\$ 1,210,525	\$ 504,389	\$ 256,749		\$ 3,048,680
Payment Year 2020	\$ 1,570,828	\$ 963,785	\$ 1,070,466	\$ 745,292	\$ 25,236	\$ 4,375,606
Total	\$ 4,166,855	\$ 3,167,944	\$ 1,762,494	\$ 1,002,041	\$ 25,236	\$ 10,124,569
Covered by Advances						
Payment Year 2016	\$ 1,672,338					\$ 1,672,338
Payment Year 2017	\$ 5,229,730	\$ 4,160,174				\$ 9,389,903
Payment Year 2018	\$ 4,181,679	\$ 8,795,002	\$ 4,954,518			\$ 17,931,199
Payment Year 2019	\$ 3,211,601	\$ 6,585,427	\$ 10,825,255	\$ 7,681,804		\$ 28,304,087
Payment Year 2020	\$ 2,995,675	\$ 5,565,062	\$ 8,834,249	\$ 14,853,622	\$ 6,925,848	\$ 39,174,456
Total	\$ 17,291,023	\$ 25,105,665	\$ 24,614,022	\$ 22,535,426	\$ 6,925,847.79	\$ 96,471,983
Other Benefit Costs	\$ 5,716,561	\$ 7,751,445	\$ 8,122,430	\$ 4,973,770	\$ 1,197,213	\$ 27,761,420
Total Claim Benefit Costs	\$ 27,174,439	\$ 36,025,054	\$ 34,498,946	\$ 28,511,236	\$ 8,148,297	\$ 134,357,972

Table 12: Allowed Lost Time Claims (excluding PTSD Claims) Registered by Police Officers between Jan 1, 2016 and Nov 30, 2020 Benefit Costs and Costs Covered by Advances as at December 31, 2021

Schedule 1	Registration Year					Total
	2016	2017	2018	2019	2020	
LOE Benefit Costs						
Payment Year 2016	\$ 108,756					\$ 108,756
Payment Year 2017	\$ 22,439	\$ 181,741				\$ 204,180
Payment Year 2018	\$ 441	\$ 88,777	\$ 237,331			\$ 326,549
Payment Year 2019	\$ -	\$ 13,575	\$ 251,727	\$ 228,926		\$ 494,227
Payment Year 2020	\$ 6,223	\$ 19,620	\$ 107,399	\$ 69,919	\$ 130,282	\$ 333,443
Total	\$ 137,859	\$ 303,712	\$ 596,457	\$ 298,845	\$ 130,282	\$ 1,467,155
Other Benefit Costs	\$ 134,206	\$ 157,381	\$ 425,734	\$ 121,348	\$ 49,604	\$ 888,272
Total Claim Benefit Costs	\$ 272,065	\$ 461,093	\$ 1,022,192	\$ 420,193	\$ 179,885	\$ 2,355,427

Schedule 2	Registration Year					Total
	2016	2017	2018	2019	2020	
LOE Benefit Costs						
Payment Year 2016	\$ 38,453					\$ 38,453
Payment Year 2017	\$ 30,370	\$ 39,708				\$ 70,078
Payment Year 2018	\$ 57,810	\$ 7,180	\$ 58,359			\$ 123,350
Payment Year 2019	\$ 53,743	\$ 967	\$ 44,098	\$ 61,081		\$ 159,890
Payment Year 2020	\$ 49,853	\$ (70)	\$ 214,601	\$ 71,980	\$ 113,181	\$ 449,545
Total	\$ 230,230	\$ 47,785	\$ 317,058	\$ 133,061	\$ 113,181	\$ 841,315
Covered by Advances						
Payment Year 2016	\$ 1,888,150					\$ 1,888,150
Payment Year 2017	\$ 1,287,619	\$ 2,576,709				\$ 3,864,328
Payment Year 2018	\$ 758,065	\$ 1,361,845	\$ 2,630,965			\$ 4,750,874
Payment Year 2019	\$ 454,107	\$ 854,625	\$ 1,665,518	\$ 3,358,629		\$ 6,332,879
Payment Year 2020	\$ 257,619	\$ 639,878	\$ 983,627	\$ 1,809,545	\$ 3,207,779	\$ 6,898,448
Total	\$ 4,645,560	\$ 5,433,057	\$ 5,280,110	\$ 5,168,174	\$ 3,207,779.29	\$ 23,734,679
Other Benefit Costs	\$ 2,746,124	\$ 2,947,466	\$ 2,899,224	\$ 2,453,210	\$ 1,009,623	\$ 12,055,647
Total Claim Benefit Costs	\$ 7,621,913	\$ 8,428,308	\$ 8,496,393	\$ 7,754,445	\$ 4,330,583	\$ 36,631,642