

DISCUSSION PAPER

1. TITLE

Recognition of Bursitis,¹ Tendinitis and Tenosynovitis² as Occupational Diseases

2. ISSUE

In 2000, the Description of Disease column of Schedule B of the *Workers Compensation Act* (“Act”) was amended to list specific forms of bursitis, tendinitis and tenosynovitis instead of listing each of these diseases generally. For instance, Schedule B now lists knee and shoulder bursitis, rather than just bursitis.³

This change unintentionally created an omission because bursitis, tendinitis and tenosynovitis are now no longer listed generally as recognized occupational diseases, in legislation or policy. Therefore, each time a worker makes a claim for one of these diseases in respect of a body part not listed in Schedule B, the disease must be recognized as an occupational disease by order in a specific case before adjudication of entitlement can proceed.

The order in a specific case method of occupational disease recognition is typically limited to claims involving rarely encountered or unique conditions. It requires a process that is cumbersome and administratively inefficient for handling claims in respect of commonly recognized occupational diseases such as bursitis, tendinitis and tenosynovitis.

3. GOALS IN ADDRESSING ISSUE

The goal of this project is to address the omission created by the amendments to Schedule B so that WorkSafeBC (“WCB”) will not have to go through a cumbersome process to recognize these more common occupational diseases.

¹ Bursitis is inflammation of the bursa that lies between a tendon and skin, or between a tendon and bone. Bursae are fluid-filled sacs or cavities near joints where tendons or muscles pass over bony projections. They assist movement and reduce friction between moving parts.

² Tendinitis is inflammation, irritation and swelling of a tendon, which is the fibrous structure that joins muscle to bone. Tenosynovitis is tendinitis accompanied by inflammation of the protective sheath that surrounds the tendon. “Tendinitis, Tenosynovitis” is listed as one category of occupational disease in legislation and policy because of their commonality.

³ Instead of tendinitis, tenosynovitis generally, Schedule B now lists hand-wrist tendinitis, tenosynovitis, and shoulder tendinitis in the Description of Disease column.

4. BACKGROUND

4.1 Law and Policy

The *Act* gives the WCB authority to compensate workers for occupational diseases. It establishes that three criteria must be met before compensation is provided to a worker:⁴

1. the disease in question is recognized by the WCB as an occupational disease;
2. the occupational disease is due to the nature of the worker's current or past employment; and
3. the worker is disabled from earning full wages as a result of the occupational disease.⁵

The *Act* sets out four methods by which the WCB may recognize an occupational disease.⁶

- by inclusion in Schedule B of the *Act*;⁷
- under section 6(4.2) of the *Act* as peculiar to or characteristic of a particular process, trade or industry;
- under the *ODR Regulation*; and
- by order dealing with a specific case.

The manner in which a disease is recognized is primarily based on the strength of medical and scientific evidence about the role of employment in causing the disease.

4.2 The 2000 Amendments

In 2000, the general forms of bursitis, tendinitis and tenosynovitis were removed from Schedule B and replaced with more specific forms of these diseases. The change was made because medical and scientific evidence supported a presumption of work-relatedness for these specific forms only. Other forms were not listed because the available evidence on causation fell short of the high standard required to warrant the granting of a presumption.

⁴ *Act* section 6(1).

⁵ Note, however, a health care benefit may be paid although the worker is not disabled from earning full wages.

⁶ Three of these methods are set out in the definition of "occupational disease" in section 1 of the *Act*. Section 6(4.2) of the *Act* sets out the fourth method of recognition.

⁷ See *Rehabilitation Services & Claims Manual*, Vol. II ("*RS&CM*"), at policy item #26.01: *Recognition by Inclusion in Schedule B*, which states that diseases and corresponding processes should be included in Schedule B where there is a substantially greater incidence of the particular disease occurring in relation to a particular process than in the general population.

There was no intent to strip bursitis, tendinitis and tenosynovitis of their status as listed, recognized occupational diseases;⁸ however, that is what technically occurred when they were removed from Schedule B. As noted in several Workers' Compensation Appeal Tribunal decisions, claims for bursitis, tendinitis and tenosynovitis that are not covered by Schedule B now require that the disease be recognized as an occupational disease by order dealing with a specific case.⁹

4.3 Frequency of Claims

On average, approximately 1,200 claims are accepted for bursitis, tendinitis and tenosynovitis each year. Statistics on acceptance of claims are not available according to adjudication method. However, a survey of case managers who specialize in repetitive strain injuries suggests that only 10-15 percent of accepted claims for bursitis, tendinitis and tenosynovitis are adjudicated under Schedule B.¹⁰

Therefore, claims for bursitis, tendinitis and tenosynovitis that are not covered by Schedule B are frequently accepted.

5. DISCUSSION

As an unintended result of the 2000 amendments, forms of bursitis, tendinitis and tenosynovitis falling outside of Schedule B are no longer specifically listed as recognized occupational diseases in legislation or policy. There was insufficient evidence to support application of the Schedule B presumption in respect of these diseases generally. However, this does not mean there was insufficient evidence to recognize bursitis, tendinitis and tenosynovitis as occupational diseases and permit adjudication of these claims on a case-by-case basis without the benefit of the presumption.

Where diseases are not listed as recognized occupational diseases in legislation or policy, they must be recognized by order dealing with a specific case for a claim to be accepted.¹¹ This method is commonly used where a disease has not previously been recognized due to weak or a complete absence of medical and scientific information linking the disease with employment. However, if the merits and justice of an individual claim warrant recognition of a disease as an occupational disease, the WCB may do so. Recognition of an occupational disease under this method is limited to the specific facts of the individual claim and no institutional memory or precedent is established.

⁸ As per recollection of representatives from Occupational Disease Services. This issue is not directly contemplated in any archived file materials.

⁹ See WCAT-2004-00486-RB, WCAT-2004-06783-RB, WCAT-2004-05384-RB and WCAT-2004-06288-RB.

¹⁰ A group of less than 40 case managers adjudicates all bursitis, tendinitis and tenosynovitis claims.

¹¹ See definition of "occupational disease" in section 1 of the *Act* and *RS&CM* policy item #26.04: *Recognition by Order Dealing with a Specific Case*.

The order dealing with a specific case approach is administratively inefficient with respect to claims for bursitis, tendinitis and tenosynovitis falling outside of Schedule B descriptions because they are not rare claims. They are very commonly encountered, and institutional memory regarding the recognition of these diseases as occupational diseases was already well established prior to the 2000 amendments. Further, recognition by order in a specific case requires the approval of a Client Services Manager which is time consuming, inefficient and cumbersome in respect of such frequently encountered diseases.

Adding bursitis, tendinitis and tenosynovitis to the *ODR Regulation* and associated policy¹² would restore these diseases to their previous status as listed, recognized occupational diseases while still affording the WCB discretion to adjudicate their connection to employment on a case-by-case basis.

Policy provides little guidance on when a disease should be recognized under the *ODR Regulation*, other than to note that a disease may be listed where it is sometimes due to the nature of a particular employment, trade or occupation covered by the *Act*, but it does not appear that it is more likely to occur in connection with that employment than elsewhere.¹³ When 15 diseases were added to the *ODR Regulation* in 1995, the then Chair of the WCB indicated this step was being taken because claims for the diseases had been accepted (by order dealing with a specific case) with sufficient frequency to warrant a higher level of recognition.

Based on the statistics provided above, bursitis, tendinitis and tenosynovitis are frequently accepted as occurring due to the nature of a particular employment, trade or occupation covered by the *Act*. Therefore, the rationale for adding diseases to the *ODR Regulation* is satisfied.

6. OTHER JURISDICTIONS

Ten Canadian provinces were surveyed to determine how they assess bursitis, and tendinitis, tenosynovitis as occupational diseases. The schemes for recognizing these diseases as occupational diseases vary from province to province. Unless legislation or policy provide otherwise, as set out below, claims are dealt with on a case-by case basis using general criteria for recognition of occupational diseases.

Ontario recognizes bursitis as an occupational disease by listing it in a schedule similar to Schedule B. New Brunswick recognizes bursitis of the prepatellar or olecranon bursa as an occupational disease by regulation.

Nova Scotia and Ontario recognize tenosynovitis as an occupational disease in a schedule similar to Schedule B.

¹² RS&CM policy item #26.03: *Recognition by Regulation of General Application.*

¹³ RS&CM policy item #26.03: *Recognition by Regulation of General Application.*

Saskatchewan and the Yukon both have policy that provides specific guidance on how to adjudicate repetitive strain injuries, including bursitis, tendinitis and tenosynovitis on a case-by-case basis.

7. OPTIONS AND IMPLICATIONS

Option 1: Status quo

Under this option, no amendment would be made to the *ODR Regulation*. In cases where a worker makes a claim for bursitis, tendinitis or tenosynovitis that does not fall under Schedule B, it would be necessary for the worker's disease to be recognized as an occupational disease by order in a specific case.

Implications

- There would be uncertainty about whether the WCB commonly recognizes these diseases as occupational diseases arising from employment activities.
- The decision-making process would be less efficient, more costly and less consistent given that individual Client Service Managers would have to review each claim in respect of these diseases.

Option 2: Add “Bursitis” and “Tendinitis, Tenosynovitis” to the *ODR Regulation*

Under this option, bursitis, tendinitis and tenosynovitis would be listed generally as recognized occupational diseases in the *ODR Regulation*, and policy would be amended to reflect this change. Draft changes to the *ODR Regulation* and policy are set out in Appendix A of this submission.

Implications

- There would be confirmation that the WCB is aware these diseases frequently arise as a result of employment activities; therefore, there would be increased transparency of decision-making.
- The decision-making process would be more efficient and consistent.
- The WCB would retain the ability to make a determination on the employment connection on a case-by-case basis.
- Adding these diseases to the *ODR Regulation* is expected to have no effect on claims costs.

8. CONSULTATION

Stakeholders are invited to provide feedback on the discussion paper, options, draft policy, and any additional comments that may be relevant to the issue.

Stakeholder comments will be accepted until **February 14, 2007**. When responding, please provide your name, organization, and address. Comments may be sent by mail, fax or e-mail to:

By mail: Renee Teleske
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WorkSafeBC's governing body, the Board of Directors, will consider the options expressed by stakeholders before it adopts any amendments to the current policies.

Please note that all comments become part of the Policy and Research Division's database and may be published, including the identity of organizations and those participating on behalf of organizations. The identity of those who have participated on their own behalf will be kept confidential according to the provisions of the *Freedom of Information and Protection of Privacy Act*.

APPENDIX A
DRAFT AMENDMENTS

Workers Compensation Act

Occupational Disease Recognition Regulation

[includes amendments up to B.C. Reg. 499/2003]

Occupational diseases

1 Pursuant to section 1 of the *Workers Compensation Act*, the Workers' Compensation Board recognizes the following diseases as occupational diseases:

Bronchitis
Bursitis
Campylobacteriosis (diarrhea caused by Campylobacter)
Carpal Tunnel Syndrome
Chicken Pox
Cubital Tunnel Syndrome
Disablement from vibrations
Emphysema
Epicondylitis (lateral and medial)
Food poisoning
Giardia Lamblia infestation
Head lice (Pediculosis Capitis)
Heart Disease
Hepatitis A
Herpes Simplex
Hypothenar Hammer Syndrome
Legionellosis
Lyme Disease
Meningitis
Mononucleosis
Mumps
Plantar Fasciitis

APPENDIX A
DRAFT AMENDMENTS

Radial Tunnel Syndrome
Red Measles (Rubeola)
Ringworm
Rubella
Scabies
Shigellosis
Staphylococci infections
Stenosing Tenovaginitis (Trigger Finger)
Streptococci infections
Tendinitis, Tenosynovitis
Thoracic Outlet Syndrome
Toxoplasmosis
Typhoid
Vinyl Chloride induced Raynaud's Phenomenon
Whooping Cough
Yersiniosis

[am. B.C. Reg. 188/2000, s. 2; 499/2003.]

Effective date

2 This regulation is effective 30 days after first published in the Gazette.

This regulation is published in the B.C. Gazette Part II for April 6, 1999.

Note: this regulation repeals B.C. Reg. 470/94

APPENDIX A

DRAFT AMENDMENTS

REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II

#26.03 *Recognition by Regulation of General Application*

The Board may designate or recognize a disease as an occupational disease “by regulation of general application” (section 1). In these circumstances, the Board designates or recognizes a disease as an occupational disease but without specifying that it is peculiar to or characteristic of a particular process, trade or occupation. The desired institutional memory is thus less specific. The Board has designated or recognized the following as occupational diseases by regulation:

- Bronchitis
- Bursitis**
- Campylobacteriosis (Diarrhea caused by Campylobacter)
- Carpal Tunnel Syndrome
- Chicken Pox
- Cubital Tunnel Syndrome
- Disablement from Vibrations
- Emphysema
- Epicondylitis (Lateral and Medial)
- Food Poisoning
- Giardia Lamblia Infestation
- Head Lice (Pediculosis Capitis)
- Heart Disease
- Herpes Simplex
- Hypothenar Hammer Syndrome
- Hepatitis A
- Legionellosis
- Lyme Disease
- Meningitis
- Mononucleosis
- Mumps
- Plantar Fasciitis
- Radial Tunnel Syndrome
- Red Measles (Rubeola)
- Ringworm
- Rubella
- Scabies
- Shigellosis
- Staphylococci Infections
- Stenosing Tenovaginitis (Trigger Finger)
- Streptococci Infections
- Tendinitis, Tenosynovitis**
- Thoracic Outlet Syndrome

APPENDIX A

DRAFT AMENDMENTS

Toxoplasmosis
Typhoid
Vinyl Chloride Induced Raynaud's Phenomenon
Whooping Cough
Yersiniosis

It is important to distinguish between designation or recognition of an occupational disease under section 6(4.2) where a particular process, trade or occupation is specified or by regulation of general application, and the addition of a disease to Schedule B under section 6(4.1). Where the Board concludes that a disease is more likely to occur in connection with a particular employment covered by the *Act* than elsewhere, it may be added to Schedule B (see policy item #26.01). On the other hand, where the Board concludes that a disease is sometimes due to the nature of a particular employment covered by the *Act*, but it does not appear that the disease is more likely to occur in connection with that employment than elsewhere (it is not something specific to that employment), the Board may designate or recognize the disease under section 6(4.2) where a particular process, trade or occupation is specified, or by regulation of general application without the rebuttable presumption afforded by inclusion in Schedule B.

Several of the above contagious diseases are not likely to be “. . . due to the nature of any employment in which the worker was employed . . .” except for hospital employees, or workers at other places of medical care.

The authority under the *Act* to designate or recognize a disease by regulation under sections 6(4.1) and 6(4.2) rests with the Board of Directors.

EFFECTIVE DATE: March 22, 2004, as to deletion of reference to “serum hepatitis” and “infectious hepatitis” and addition of “Hepatitis A”.

APPLICATION: To all decisions on or after March 22, 2004.