2.0 INTRODUCTION

The coverage theme is divided into three parts: (1) Occupational Disease, Schedule B and associated diseases and conditions; (2) Recognition of New Diseases, including stress, repetitive strain, allergies, psychological disability, women’s health, and ergonomics; and (3) Coverage for conditions which have multiple causes, both work and non-work related.

2.1 OCCUPATIONAL DISEASE, SCHEDULE B AND ASSOCIATED DISEASES AND CONDITIONS

2.1.1. Overall Response
As summarized in the matrix, independent employers and employer associations raised issues with regard to occupational disease and Schedule B more than any other stakeholder. Of 55 total submissions referring to these issues, 20 can be attributed to independent employers and 14 to employer associations. The majority were coded with medium intensity ratings (39/55). The issue was also raised by injured workers, consultants, municipal government, professional associations, union associations and unions but in smaller numbers.

2.1.2. Discussion
By and large the biggest concern among employer groups is that the diseases in Schedule B should only be caused by work-related conditions. Employer groups request the removal of tendonitis, tenosynovitis and bursitis from Schedule B and state that the Act should require Schedule B diseases to be reviewed every two years for continuing relevance. However, some employer groups suggest that Schedule B be removed from the WCB Act and that each claim for industrial disease is adjudicated on its merits in terms of medical evidence linking the disease to employment.

The labour movement is seeking broader coverage for areas that include the impacts of air quality, chronic stress, and medical conditions that cannot be directly related to an employment relationship. By allowing claims that are not directly work related, employers are concerned that it will be the system itself that encourages claims not specific injuries, introducing disincentives in returning to work.

Firefighters in particular are concerned with occupational disease and Schedule B because of the high incidence of these types of diseases within their profession. They would like to see Schedule B remain current, maintaining the present list and recognizing new diseases that are occurring as a result of long term exposure to cancer-causing chemicals.

It was noted by one union submission and an employer association that BC could benefit from an Occupational Disease Panel to research the work-relatedness of disease and to decide scheduling of occupational diseases, if given sufficient statutory power. One union submission suggests that the current WCB fund surplus is due to grossly under-compensated occupational disease claims.
Questions and Answers Related to (1) Coverage

GS: What diseases are out there that you think necessitate having agriculture, forestry and fishing included in Schedule B?

A: It came across in reading the provision that it focused on respiratory diseases like asbestos in mining. I am not a farmer or rancher but I assume that there are similar problems that could arise in other industries besides mining; i.e. breathing in of certain pesticides in agriculture, or certain types of bending, repetitive strain injuries, for hours at time like picking fruit or vegetables. It just surprised me that in a statute a lot of things are not there. Forestry and agriculture - and I don't think that implies that there are no occupational diseases in those industries. In forestry, and I take that to include working in pulp mill or saw mill, there are various types of chemicals that can negatively affect person over time. It is the same thing with repetitive movements overtime.

GG: You mentioned Schedule B and the relationship between occupation and disease and I assume you are saying you want to do away with that automatic presumption entirely. My understanding is that under section 6 of the Worker's Compensation Act it is just an understanding, it can be rebutted. Are you saying that the existing understanding is not be used adequately?

A: Schedule B is being applied differently than you have just described. i.e. Larry Evan's case, lawyer indicated that the claimant couldn't have the disease of pneumoconiosis because of length of time with employer so perhaps it isn't being applied as intended by the act. That may be the issue.

OE: You recommend that Schedule B is reviewed every 2 years– who should do that?

A: WCB should put together a panel of doctors who are specialists in the field of industrial disease who can determine what diseases are indeed caused by work.

GS: Schedule B – you accept silicosis should be on WCB. What about something like cedar dust asthma, it is not hereditary?

A: No, it isn’t but what I am getting at is with cases like that or with allergies– those should be adjudicated on own merit outside of schedule.

GG: I’ll start with Schedule B – do I understand your position that Mr. Poirier to be that you would like Schedule B to be eliminated entirely or only with respect to those diseases that you say are not only – that could arise not only from work related activities but also from – as you described it - conditions of ordinary life?
A: I believe that Schedule B should be eliminated entirely AND that every claim should be adjudicated based upon its merits.

2.1.3 Recommendations

Recommendations from employer groups centered on tightening up Schedule B and/or removing it from the Act. They would like to see compensation based on individual merits and medical evidence linking the disease to employment. Further, many employers and employer groups would like to see soft tissue injuries such as tendonitis and bursitis removed from Schedule B and each claim adjudicated independently.

Both employer groups and injured workers recommend keeping Schedule B current and reviewed regularly. An occupational disease panel to study and verify work-relatedness for Schedule B was advocated by one union and an employer group. While one union submission called for re-examining regulations regarding the protection of workers exposed to infectious diseases, another submission from a union association suggested equipping workplaces with methods to prevent tobacco smoke exposure to employees and including passive tobacco emission in Appendix B, table 2 of the IH&S regulations.

Example recommendations

- Remove Schedule B from the Act. Base each claim for compensation on individual merits and medical evidence linking the disease to employment. EMA-020 [Pg 11]
- Remove repetitive stress injuries or cumulative trauma disorder claims from Schedule B and base adjudication on work-relatedness. Conduct regular reviews of Schedule B and review Schedule B when new medical knowledge warrants. EMA-043 [Pg 10]
- Verify schedules of occupational diseases scientifically. Establish an Occupational Diseases Scientific Advisory Council within the Board to review schedules annually and implement regulations. EMA-018 [Pg 1]
- Broaden the range of industrial diseases accepted by the WCB as legitimate claims. INJ-369 [Pg 1]
- Change Schedule B regulations to allow rebuttal regarding evidence of causation. Change the burden of evidence so that causation must be proved or disproved. Review relationship between heart disease and firefighting. MGS-005 [Pg 1]
- Include passive tobacco emission (a known carcinogen) in Appendix B, table 2 of the IH&S regulations. Equip workplaces with the best practical engineering methods to prevent tobacco smoke exposure to employees. UNA-019 [Pg 1]
- Establish an Occupational Disease Panel with the power to decide disease scheduling in Schedule B. Amend Schedule B to include “Where there is a greater incidence of a particular disease in a particular employment than there is in the general population.” UNI-012 [Pg 1]
- Re-examine regulations regarding the protection of workers exposed to infectious diseases. UNI-091 [Pg 1]
2.1.4 Quotes

- “The present practice of classifying disabilities according to cause makes no sense. It results in bureaucratic waste, excessive costs, injustice for many, and a failure to meet the human needs of those disabled by injury and disease.” UNI-012 [Pg 1]
- “We have some serious concerns about how the Board treats what is called the causation issue. An injury or disease must be work related before the Board will take responsibility for it. The experience of our members is that cases of occupational diseases, especially cancers, are treated by the Board in an overly technical manner.” PAS-001 [Pg 1]
- “The definition of “occupational diseases” in the Act does not accurately recognize the numerous types of diseases and other varieties of injuries cause by either exposure to the workplace environment or the repetitive nature of the job.” CON-005 [Pg 2]
- “The single biggest failure of our compensation system is the fact that the vast majority of occupational diseases and injuries remain uncompensated.” UNA-010 [Pg 1]
- “The current system of compensation for occupational diseases unfairly differentiates among types of disease by provided different levels of compensation to different occupational diseases. Workers with occupational cancer are denied compensation because of the economic test in Section 6(1) (a). Only through legislative amendments can the system be “modernized” to account for latency in cancer cases.” UNI-114 [Pg 1]
2.2 RECOGNITION OF NEW DISEASES: ergonomics, women’s health, repetitive strain, stress, allergies, psychological disability, soft-tissue injuries

2.2.1. Overall Response
The matrix shows that a large number of submissions from injured workers raise issues regarding the recognition of new diseases, 60 of a total 177, with 39 of those responses rating high intensities. The second largest groups, comprised of independent employers and employer associations, raise the issue with 38 and 26 responses, respectively. The responses from both of these groups are of mainly medium intensity. There are responses from all other groups, except for federal government and MLA, though in smaller numbers.

2.2.2. Discussion
Repetitive strain injuries are a common issue with workers who believe that that most employers are trying to get more work from fewer people, thereby increasing the pace of work and number of injuries. It is noted by one union that Schedule B, which requires both repetition and unaccustomed work in the case of tendonitis, is unsupported in medical literature and through the experience of injured workers.

Employers voice concerns over compensating workers for psychological impairment due to stress or chronic pain. Many believe that acceptance of stress-related claims should be limited to those that are the direct result of a traumatic incident at work, and furthermore that only short term claims be accepted. They recommend that stress, harassment, and psychological impairment claims are not matters for Workers’ Compensation but rather are Human Rights Legislation issues.

Conversely, workers seriously question this approach to stress claims and believe that many are subject to highly stressful work, often working long, erratic and unpredictable shifts. For workers suffering from psychological disabilities and workplace stress, the Workers’ Compensation system is frustrating and often overwhelming, given their condition. They also note that stress from dealing with the WCB causes further deterioration of an injured worker’s health.

Generally, proposed ergonomic regulations are considered puzzling. Stakeholders do not see a clear link between evolving technology and the need for regulations. Some submissions ask for compelling and reasoned justification before any regulatory initiatives are adopted. These submissions express the belief that if the facts do not clearly support a regulation, the minimum recommendation should simply be a guideline. Employers who don’t have injuries as a result of poor ergonomics are finding it costly to fund ergonomics claims.

Firefighters and nurses predominate as occupations with concerns in the area of recognizing new diseases and injuries. Firefighters are at a higher risk for some cancers, mainly due to their exposure cancer causing substances. Nurses are asking the Board to recognize the heavy, physical nature of nursing, particularly in light of recent funding cutbacks and increased workloads. Injured nurses believe that because of the nature of their injury, they are penalized for a delay in the onset of symptoms.
Concern is also raised over the long term health effects of indoor air pollution. The Commission is asked to consider recognizing the damaging effects of airborne hazards like rock dust, wood dust, formaldehyde, asbestos, and environmental tobacco smoke (second hand smoke). Another point raised for the Royal Commission to consider was the increased incidence of HIV infection by medical and prison personnel.

Questions and Answers Related to (2) Coverage

OE : Why are these claims not being accepted?  
A: Because of the criteria of the Act. Schedule B says it must be repetitive and unaccustomed. The adjudicator cannot accept it under an occupational disease; it has to be deal with under personal injury, AND it must be proven to have occurred at work.  
OE: Isn’t that the basis of the insurance--injuries at work?  
A: The problem is, the onus is on the worker to prove it happened at work, even if the worker’s job entails repetitive motion (e.g., a check-out cashier with carpal tunnel or tendonitis). These claims should be automatically accepted.  
OE: You’re saying that’s being deemed not to be work-related, nor something that is unaccustomed?  
A: I’m just saying what Schedule B says. Adjudicators are not accepting enough RSIs. With the backlog, there is probably a 6 to 8-month waiting period for an oral hearing.

OE: The whole issue of stress comes up a lot; and everybody recognizes we are living in very stressful times because of company downsizing and rightsizing; whatever they call it; what kind of program do you have in place when you are going through a downsizing?  
A: We have a system in place at Cominco that is called EFA: Employee Family and Assistance program; and that process is available to all of our employees and our past employees too. What that does is we have joint committee made up union and management representatives who deal with situations such as the stress situations; deal with loss situations; critical response situations; situations that deal with either a combination or strictly a situation that deals with problems that arise outside of work ...

OE: Have you heard of other cases such as yourself having problems?  
A: Some but I was a dirty worker and didn’t know what exposure could do – we all thought that we were Superman. Pentachloraphenol was sold under about 48 trade names AND it is now banned in over the counter sales completely. Up until 72 it had all the dioxins in it. Finally in 1985 they figured out how to do a urinalysis. In many cases – you asked if anybody else had been affected – your chronic problems really come into play after about 15 years.

OE: What changed the relationship with your employer after 11 or 12 years?
A: I think it was a change in leadership and a change in approach to contracting out and saving money. There was more work and fewer people. It created discrepancies.

GS: Do you have any medical advice from your GP stating the stress you developed was work-related?
A: Yes. He informed LTD and supported me. The psychological exam came to the same conclusion.

OE: Have you had similar instances of nervous breakdowns before in your life.
A: No.

GG: Mr. White, what kind of activities do librarians do that can cause injuries?
A: After the morning book drop, there may be 4 to 5 thousand books to be put back in place. This requires opening the books, lifting them to the scanner, closing them, AND setting them down. A counter is in place to keep track of how many books per minute a person can do. They are required to do at least 30 to 35 per minute.

GG: What kind of ergonomic solutions do you see?
A: We have suggested putting bar codes on the outside of the books so they don’t have to be opened, and putting the scanners in the counter, like they do in grocery stores, so the books don’t have to be lifted.

OE: I’m not sure why they can’t be forced to do that. As a worksite, they fall under the auspices of the WCB, don’t they?
A: Yes. We’ve had the WCB in five times. Each time, they agree with us, but there has been no enforcement for compliance.

GG: I’m wondering whether the rationale for repetitive and unaccustomed is an attempt to distinguish between workplace and outside activities. We’ve heard from health care workers who say that what they do at work is the same as they do at home, so how can they be anything but accustomed?
A: That’s correct. If the job is looked at, and is seen to be unaccustomed, there’s another test under schedule 27(33). These tests are usually ignored. Basically, it’s the decision of the adjudicator. That’s why I’ve included section 15 (with natural causes). A lot of the wording is natural causes. The workplaces, procedures, ergonomics, AND equipment are not properly investigated by adjudicators.

GG: It’s certainly a very interesting issue.
2.2.3 Recommendations

Independent employers recommend compensation for work-caused conditions only. Employers and employer association would like to change legislation allowing claims only when stress occurs as an acute reaction to a traumatic workplace event. One employer association suggested to pro-rate repetitive strain and chronic stress claims based on tenure with the company.

According to independent employers, proposed ergonomic regulations are impractical, intrude into labour relations, and should be deleted, adding that the WCB has ample existing regulations for worker safety. Injured workers recommend the Royal Commission accept mental illness, chronic pain, and clinical depression as compensable. Another injured worker submission suggests that the WCB develop an ethical and moral epidemiological approach to occupational asthma, allergies, chemical/biological over-exposures and known poisoning incidents, and compensate injuries from both chemical and biological hazards in the workplace. With regard to repetitive strain injuries, one injured worker advocates recognizing repetitive strain injuries as cumulative, rather than a one-time incident. One interesting suggestion for stress prevention was endorsed by a union submission. It called for a holistic approach and felt the WCB should implement employer programs like Tai Chi in the morning, support groups and wellness education.

Example recommendations

• Compensate work-caused conditions only. Have medical experts review Schedule B to align it with the original intent of the Act. Change the legislation to allow claims only when stress occurs as an acute reaction to a traumatic workplace event. Remove tendinitis, tenosynovitis and bursitis from Schedule B and adjudicate them on their own merits. IEM-106 [Pg 1]
• Compensate stress only when attribute to a specific, traumatic incident or accident in the workplace. Exclude conditions such as chronic stress, chronic pain and other natural diseases that cannot be conclusively validated as work-related. EMA-027 [Pg 11]
• Pro-rate repetitive strain and chronic stress claims based on tenure with the company. EMA-047 [Pg 3]
• Delete ergonomics: Ergonomics regulations are impractical and intrude into labour relations. WCB has ample existing regulations for worker safety. IEM-101 [Pg 2]
• Develop an ethical and moral epidemiological approach to occupational asthma, allergies, chemical/biological over-exposures and known poisoning incidents. Compensate injuries from both chemical and biological hazards in the workplace. INJ-014 [Pg 1]
• Accept mental illness as a compensable injury when reasonable evidence confirms that it resulted from abusive treatment of the worker in their place of employment. INJ-150 [Pg 3]
• That chronic pain syndrome and clinical depression be recognized as an effect of long term and permanent injuries. INJ-319 [Pg 1]
• Address prevention of stress in an holistic approach. Implement programmes to deal with stress (e.g. T’ai Chi in the morning with the employer, support groups, wellness education, etc.) UNI-004 [Pg 1]
• Recognize repetitive Strain Injuries as cumulative, rather than a one-time incident. UNI-008 [Pg 1]
2.2.4 Quotes

- “Concern over the trend to compensate psychological impairment from a stressful workplace or chronic pain should not be a matter for workers’ compensation.” IEM-106 [Pg 1]
- “Nurses need fair adjudication of claims for soft tissue injuries, that perhaps are not reported on the day of the injury. How many more nurses will be injured and WCB claims following, before the employer will deem the much needed changes as a priority.” UNI-012 [Pg 1]
- “I find it shameful that I have not received trauma counseling for that serious head injury. Instead of WC assisting me to carry on so I could be useful to my family, myself and society they used cheating, lying and dirty tricks to cause hardship to my family and to myself.” INJ-096 [Pg 2]
- “But I think that because of this type of injury [HIV – needle stick injuries] something has to be in writing…” INJ-286 [Pg 1]
- “Regarding Accumulated stress/burnout, Decision 102 says that the Board will not accept these claims because the worker may just need a vacation. We seriously question this approach to stress claims.” PAS-001 [Pg 1]
- “The WCB Act should be changed to acknowledge our societal gender roles as women. The nature of our jobs in long term care encompasses much of what we do at home. The similarity of job and home life adds to the difficulty in proving where Soft Tissue (STI) and Repetitive Strain injury (RSI) occurred.” INJ-120 [Pg 3]
- “I believe that having ergonomic regulations entrenched in the Industrial Health and Safety Regulations will significantly lower injuries in health care….We need appropriate ergonomic legislation for protection. We need appropriate ergonomic legislation for prevention.” MEP-007 [Pg 1]
- “Repetitive Strain Injuries, in today’s high-tech workplace, are what asbestosis was to the mining industry.” UNI-016 [Pg 3]

2.3 WORK RELATED VS. NON-WORK RELATED INJURIES

2.3.1. Overall Response
The work related vs. non-work related issue deals with injuries that can have multiple causes from activities both on and off-the-job. In adjudicating these claims, the WCB also considers off-the-job activities to determine a percentage of compensation or denial of claim, if it is deemed non-work related. From the matrix, the group with the largest response to work related vs. non-work related issues is injured workers (37/71). These responses were almost evenly split into medium and high intensities. The second largest group responding to this particular issue are the independent employers (16/71).

2.3.2. Discussion
As in Section 2.2 above, the main areas of concern are repetitive strain injuries and stress claims. Employers argue that everyone lives with stress at home and at work and therefore, stress claims as such should not be compensable under the WCB. In addition, there are many off-the-job activities that can cause or intensify repetitive strain injuries (sports, typing, gardening). Therefore, it is difficult to prove where the injuries occur or when they begin.
Employers are concerned about escalating costs. Assumed employer responsibility for a claimed disability, if no other cause can be found, adds to the burden on the employer.

Another concern raised by employers is the aging workforce. As more of the population matures, employers reason that age-related disabilities and systemic diseases are showing up on WCB statements as accident costs.

Workers contend that the workplace has changed and the tasks required are often highly repetitive. As well, many workers believe that their workloads have increased and this adds to the risk of injury. Consequently, increased workloads and a greater emphasis on efficiency are increasing stress in the workplace. Many workers are experiencing stress-related illness that they consider work-related.

2.3.3 Recommendations

Employer associations would like the WCB to include off-duty activities when assessing the extent of injuries and exclude compensation for conditions such as chronic pain and chronic stress that arise from multiple causal factors or may be purely subjective. Independent employers recommend the exclusion of diseases or condition that occur normally in the general population of those associated with aging. One injured worker suggests that the WCB recognize previous injuries as having an effect on a current injury rather than being seen as an “underlying cause” of a current injury.

Example recommendations

- Exclude diseases or conditions normally occurring in the general population or associated with age. IEM-120 [Pg 1]
- Recognize previous injuries as having an effect on a current injury rather than being seen as an “underlying cause” of a current injury. INJ-319 [Pg 1]

2.3.4 Quotes

- “With an aging work force, many time and age related disabilities and systemic diseases are showing up on WCB statements as accident costs.” IEM-143 [Pg 1]
- “As the WCB expands to become part of the social net, and is compensating for lifestyle and aging situations, it puts the employer in a difficult position in hiring older workers.” IEM-048 [Pg 3]
- “Some workers cannot of will meet standard expectations and are held accountable for their lack of performance by their employer. While this is never pleasant, most workers are mature and stable enough to take this in stride. Some are not and choose to file claims for work induced stress.” IEM-137 [Pg 1]
- “Human service is stressful. Even though we give training and options to staff to reduce day-to-day stress, some employees do not cope well.” IEM-214 [Pg 1]
2.4 OVERALL SUMMARY

With regard to coverage, concern centers around repetitive strain injuries, stress-related illness, and occupational disease. These types of disorders are cumulative and difficult to diagnose and adjudicate. As many of the conditions can also have multiple causes, the task of attributing them solely to the workplace becomes even more complex.

As Schedule B is used as a guideline in adjudicating many of these disorders, it has come under criticism. Employers feel that the Schedule is too inclusive and many have called for its elimination from the Act. They would like to see these claims adjudicated on their individual merit and are asking for a clear link between an occupational disease or illness before it is added to the Schedule. The Schedule is considered "dated" and there was a more general consensus from stakeholders that called for the regular review of the Schedule to ensure that it remains current with emerging diseases and conditions.

With the changing nature of work and the workforce, there has been an increase in repetitive strain injuries. While employers contend that repetitive strain can be caused by activities while off-the-job, workers reply that with employers asking for more work from fewer people, the pace of work increases and so do the injuries. Some employers have suggested that the increase in strain injuries is related to the aging workforce. Under definition in Schedule B, claim acceptance for tendonitis requires both repetition and unaccustomed work, requirements that are not supported in medical literature and through the experience of injured workers.

In an effort to reduce repetitive strain injuries, WCB’s proposed ergonomic legislation have been met with lukewarm approval. Employers feel that implementing the regulations will be costly and of little benefit. Those employers who don’t have injuries from poor ergonomics are finding it expensive to fund ergonomic claims. Conversely, workers are calling for more ergonomic considerations in their workplace in the hope that it will reduce injuries. There is some worker dissatisfaction with the WCB handling of ergonomic inspections and orders.

Another result of the changing workplace is the increase in stress-related claims. In this area, employers want compensation paid only for stress that can be attributed to a traumatic workplace event and on a short-term basis. Workers question this approach, noting that many occupations are highly stressful and that working long, erratic and unpredictable hours can add to the condition. For workers suffering from these disorders, the whole compensation system can be extremely frustrating, if not overwhelming.

Firefighters are particularly concerned with occupational disease due to the volume of chemical exposure in the workplace and an increase in the number of birth defects in children of firefighters. There are also concerns raised by workers and unions over the long-term effects of exposure to indoor air pollution such as rock and wood dust, formaldehyde, asbestos, second-hand smoke, and workplace HIV exposure.