



SBCI UPDATE

March/April 2016

NEWSLETTER

MESSAGE FROM THE CHAIRPERSON

After the Co-operative's Annual General Meeting on April 8, I will step down as Chair, though I will continue on in my capacity as director of SBCI. I have very much enjoyed my time as Chair of the Co-operative and feel privileged to have had that opportunity.

In early March, SBCI issued its annual Absence Study, extending the years covered from 2010-11 to 2014-15. The number of boards participating in 2014-15 has increased from last year's 51 to 55 boards. Ideally, this will become a province-wide study with all 72 boards participating.

The purpose of the 2010-15 Absence Study is to provide participating school boards with a year-to-year comparative analysis of sick leave utilization (paid and unpaid). SBCI produces the Absence Study to ensure you understand the magnitude of absenteeism at your school board year-to-year, including the differing demographic perspectives, the trending, the effect that the changes to the sick leave plan have had on absenteeism, as well as the impact on the costs to your school board. The annual study, in addition to showing the school board impact, also looks at the overall provincial trending which reveals significant increasing costs. SBCI is acutely aware that school boards understand that student success is supported through the regular attendance of staff within a healthy work environment.

SBCI would like to remind school boards that the individual reports issued are the property of the school

boards, and SBCI is bound by confidentiality and cannot share the contents of these reports outside of the participating school boards, without consent. Each school board however, may decide how they wish to share their individual reports. This past week, as has been broadly publicized, the media was able to obtain information from a school board's report.

At this time it is important to acknowledge and appreciate that the management of absenteeism is not an easy process but clearly an issue that continues to raise significant concerns. As your co-operative, SBCI continues discussions with school boards to determine whether improved Attendance Support Programming and management strategies can be initiated. These discussions are also occurring at a broader, collective school board level.

SBCI is hopeful that these collective discussions will lead to improved focus and support for school boards.

As usual in these Messages, I am able to welcome new staff to SBCI. This time, I am very pleased to welcome Chandra Spence as the Director of Health & Safety Services. Chandra joins us with a wealth of experience in H&S both in the private sector and in the BPS. We welcome Chandra to SBCI and to Ontario school boards.

I am delighted to welcome Anna Sequeira who has joined us as Attendance Support Consultant. For many years, Anna was responsible for workers' compensation and attendance support at Halton Catholic DSB.

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I am also very pleased to welcome Lindsay Tonelli who has joined us as a Bilingual Assistant in the Data Management department. Lindsay joins Melissa Hewit and her team and will be responsible for ensuring that our Parklane database is kept up-to-date and accurate.

If you have any questions, comments or ideas regarding the Co-operative, please give me a call or send me an email. Our aim is always to improve the services that we provide to you. I can be reached at maura.quish@wcdsb.ca or (519)578-3660 X2368.

Maura Quish
Chairperson

2014-15 SBCI HEALTH & SAFETY AWARDS

As in the past four years, SBCI recognizes good performance by school boards in Health and Safety. Our awards recognize the best statistical performance and most improved. The winners for 2014-15 are:

Best statistical performance, based on frequency rate for the small, medium and large categories:

Small sized Board

Conseil scolaire catholique Franco-Nord

Medium sized Board

Catholic DSB of Eastern Ontario

Large sized Board

Waterloo Region District School Board

Most improved statistically, based on a three year average for the small, medium and large categories of school boards:

Small sized Board

Northeastern Catholic DSB

Medium sized Board

Lambton Kent District School Board

Large sized Board

Waterloo Region District School Board

The awards were announced at the SBCI Annual General Meeting on April 8.

This was a great way to recognize and promote the wonderful work accomplished at all our school boards. Congratulations!

EMPLOYERS' REPORT OF INJURY/DISEASE (FORM 7) – THE FOUNDATION FOR USEFUL OCCUPATIONAL INCIDENT DATA AND FINANCIAL REPORTING

It is very important that we receive a copy of the Form 7 reports from member school boards on a timely basis. When a member school board

sends a Form 7 report to SBCI it is entered into our Parklane database. If the WSIB approves the claim for health care and/or lost time benefits then SBCI matches the cost information provided by the WSIB to the claim by the claim number.

Key information contained in the Form 7 allows us to track Health & Safety trends by school board, by employee groups, by types of incident, by age group etc. The SBCI Health & Safety Department provides each member school board with a quarterly report showing the number of Health Care and Lost Time claims that have occurred, the employee groups that are having the injuries, the types of injuries and other relevant data. The data is analyzed for trends and the results are communicated to the membership to assist in planning remedial action and future Health & Safety training initiatives.

The data from Form 7s is also vital for school board financial reporting. The incident data in combination with the WSIB costs are used in the production of Health & Safety/WSIB annual reports for each member school board and the development of Peer Group averages and comparisons. The annual reports contain recommendations on how each school board may improve their Health & Safety results and reduce their WSIB claim duration and costs. The claim information and WSIB costs are also used by our actuarial staff to prepare financial liabilities calculations for the Superintendent of Business at each member school board so that they may include this liability information in their financial statements as required. Finally we look at the cost trends and current claims for each school board to help provide a WSIB budget figure for the next fiscal year to assist in budget forecasting.

When we receive Form 7 reports on a regular basis, we can then produce Health & Safety reports and Financial reports that are complete and on time. When we are missing Form 7s then our individual school board reports may be delayed and Peer Group comparisons in the annual reports

may be less accurate. Please help us to give you the best possible information by sending us a copy of the Form 7 reports electronically to data-entry@sbc.org. If you are uncertain of how that can be done, please contact Sylvie David at ext. 224 or email Sylvie@sbc.org to request assistance. Thank you

WSIB RATE FRAMEWORK FOR SCHEDULE 1 EMPLOYERS: UPDATE

In January 2013, the WSIB released Douglas Stanley's WSIB Rate Framework Consultation Discussion Paper which laid the ground work for the WSIB and stakeholders to consider how the WSIB's experience rating systems for Schedule 1 employers (NEER, CAD-7 and MAPP) could be improved.

In an undated letter to stakeholders posted on the WSIB's website, Chair Elizabeth Witmer and then President and CEO David Marshall wrote that the reform is to be "a revenue neutral exercise" and the focus is to be on "improving fairness in the premium rate setting process."

More specifically, the letter states that the WSIB's objective for the reform is to ensure that: "everyone is paying their fair share of workplace coverage"; there is "a reasonable balance between premium rate stability and responsiveness"; and that "stakeholders can easily understand and engage."

On December 1, 2015, the WSIB provided a presentation on its proposed new experience rating system based on its work to date which incorporates its responses to stakeholder feedback.

It should be noted that the proposed new system would not directly affect Schedule 2 employers.

Change from "Rate Group" to "Rate Class" with "Risk Bands":

As an overview, the WSIB plans to eliminate the current 155 Schedule 1 rate groups replacing them with 34

rate classes. An employer's premiums would fall between the minimum and maximum premium for its rate class.

Within the 34 rate classes, there will be sub-groups called "risk bands." An employer is allocated to a risk band based on its accident history and factors such as size of the employer's payroll. Each rate class will have 42 to 83 different risk bands.

The current total number of classifications is 1,500. Under the proposed new system there will be a total of nearly 2,500 classifications.

The determination of an employer's appropriate risk band will be continually assessed and re-determined over time. However, an employer will not be able to move up or down more than three risk bands per year. From one risk band to the next the difference is a 5% change (up or down) in premiums.

Experience Rating Details:

The proposed new system will use a six year window for experience rating. The most recent three years' costs will have a more significant impact on employer premiums than the first three years' costs (66.6% weighting for the most recent three years; 33.3% rating for the earlier three years).

Unlike the current system, the proposed new system will not have regard for the future costs of claims. Rather, only costs already incurred (plus administrative fees and unfunded liability costs) will be used to determine an employer's premiums, in general. Exceptions relate to SIEF claims, fatality claims and poorly performing employers.

The proposed new system would retain a degree of cost relief for pre-existing conditions (SIEF relief) in spite of the fact that earlier the WSIB planned to abolish SIEF relief. The proposed new system would ensure that fatality claims have a significant impact on employers regardless of the actual cost of the fatality. And the proposed new system will likely add a surcharge for employers with a number of years of very poor

performance compared to other employers in the rate class.

School Board Specific Details:

The proposed new system would eliminate rate group 810 and put school boards into a classification called "Class T - Education." Therefore, school boards would be in the same rate class as private schools and colleges and universities even through very different risks attach to the different types of employers in the rate class.

While the proposed new system is designed to be revenue neutral overall, it may have significant financial impacts on individual employers or rate classes. However, as always, when premiums are set, good performance will be rewarded and poor performance will be penalized.

Implementation Details:

It is expected that the WSIB's proposed new system would be effective January 1, 2019 at the earliest.

Further details are available on the WSIB's website. SBCI will continue to keep you informed of any significant developments with respect to this subject.

MEDICAL OPINIONS AND EXPERT MEDICAL EVIDENCE IN WSIB CASES

On January 29, 2016, the Injured Workers Consultant Community Legal Clinic submitted a 200-page report to the Ontario Ombuds Office on behalf of the Ontario Federation of Labour (OFL) and the Ontario Network of Injured Workers Groups (ONIWG). As the *Toronto Star* reported, this report "blasts WSIB for ignoring the medical advice provided by doctors treating injured workers in favour of so-called 'paper doctors' who have not seen the patient directly." The report asserts that "the resulting clawbacks in medical benefits are having a 'devastating effect'."

It is timely for employers to focus on the other side of the issue and to highlight the other side when interacting with employees, union officials, health care practitioners, the WSIB, the Appeals Tribunal and government officials in order to temper the effect of the OFL and ONIWG advocacy activity.

As arbitrator G. T. Surdykowski wrote in *Providence Care, Mental Health Services v. OPSEU* (2011): "In the ideal world doctors would have perfect knowledge of the relevant medical matters, their patients, and their patients' workplaces... and would be completely objective... But that is not the real world." To that criticism, one could add, in an ideal world, experts would confine their professional opinions to matters within their expertise.

In 1994, in *R. v. Mohan*, the Supreme Court of Canada wrote that "There is a danger that expert evidence will be misused and will distort the fact-finding process. Dressed up in scientific language which the jury does not easily understand ... this evidence is apt to be accepted by the jury as being virtually infallible and ... [taken] as having more weight than it deserves." The court outlined the following factors as key in determining whether an expert's opinion ought to be regarded by the decision maker: relevance, necessity, absence of an exclusionary rule and a properly qualified expert.

In 2015, in *White Burgess Langille Inman v. Abbott and Halliburton Co.* the Supreme Court of Canada built on the *R v. Mohan* decision and wrote that the decision maker must be able to use its "informed judgement" and not simply decide on the basis of an "act of faith" in the expert's opinion. The court wrote that the following elements should be added to the factors outlined in *R v. Mohan*: "in the case of an opinion based on novel or contested science or science used for a novel purpose, the reliability of the underlying science for that purpose" should be regarded. The court added that expert witnesses are expected to be impartial, independent and free of bias and "at a certain point, expert

evidence should be ruled inadmissible due to the expert's lack of impartiality and/or independence."

A number of WSIAT decisions have taken issue with expert evidence presented before the Vice Chairs or Panels. The following is a sample of critiques and comments the WSIAT has made regarding expert evidence:

- The medical expert has acted as an advocate rather than medical expert (Decision #667 13);
- It appeared that the assessor had not read or considered the relevant material (Decision #403 12 R);
- The WSIAT declined to place much weight on the opinion of a Doctor in Decision #1624 14 since the Doctor was not a specialist in the relevant field, he saw the worker only one time and that was more than six years after the onset of the injury, the Doctor's conclusions were based on a misapprehension that there was a close temporal relationship between the change in duties and the onset of symptoms, many of the assertions in the report were unsupported and the conclusions were not well explained, and medical literature did not support a causal link between the increased work duties and the syndrome at issue;
- The WSIAT found that individuals who were presented as expert witnesses in WSIAT proceedings did not meet the Supreme Court of Canada's test for experts (Decision #1748 13 I, and Decision #858 13 I2);
- Decision #128 13 I acts as a reminder that the WSIB and the WSIAT are investigatory bodies, unlike a civil court, for example. It is for this reason that the WSIB and the WSIAT can and do obtain expert evidence when they feel that they require such assistance.

A review of the legal landscape shows clearly that the UFL/ONIWG submission in favour of a blank cheque type of approach to experts is out of sync with the laws of governing the use of experts in the Canadian legal system.

Therefore, when School Boards are faced with "expert" evidence which does not appear to bear the hallmarks of reliability, School Boards should be aware of the fact that they are well advised to contest reliability and they are well within their legal rights to do so.

When contesting "expert evidence" appropriate remedies may include:

- Requesting further existing expert evidence which has not been placed on file, such as Doctor's chart notes, surgery report or MRI;
- Requesting an expert review, such as a WSIB Doctor's review, a WSIB Occupational Hygienist review, a WSIAT Medical Assessor review;
- Obtaining an expert review, such as a medical file review, an IME, an Occupational Hygienist review.

And employers are well advised to keep these sections of the Workplace Safety and Insurance Act (1997) at hand so that they can bring these sections to the attention of the WSIB in appropriate circumstances:

Board request for health examination:

35. (1) Upon the request of the Board, a worker who claims or is receiving benefits under the insurance plan shall submit to a health examination by a health professional selected and paid for by the Board.

Employer request for health examination:

36. (1) Upon the request of his or her employer, a worker who claims or is receiving benefits under the insurance plan shall submit to a health examination by a health professional selected and paid for by the employer.

Reports re health care:

37. (1) Every health care practitioner who provides health care to a worker claiming benefits under the insurance plan or who is consulted with respect to his or her health care shall promptly give the Board such information

relating to the worker as the Board may require.

(2) Every hospital or health facility that provides health care to a worker claiming benefits under the insurance plan shall promptly give the Board such information relating to the worker as the Board may require.

Report re functional abilities:

(3) When requested to do so by an injured worker or the employer, a health professional treating the worker shall give the Board, the worker and the employer such information as may be prescribed concerning the worker's functional abilities. The required information must be provided on the prescribed form.

On January 30, 2016, the *Toronto Star* recorded the WSIB's response to the OFL/ONIWG submission: the WSIB spokesperson stated that the WSIB "maintains quality assurance programs" and where there is a disagreement a party can appeal. A fuller response would have been "the WSIB's decisions are subject to the scrutiny by the WSIAT and the courts." The WSIAT and the courts will not allow a blank cheque approach to expert evidence – and rightly so.

PARKLANE UPDATES

We would like to pass along some important updates from Parklane that you should be aware of. If you would like to discuss any new features or if you would like to learn how to run some useful reports through Parklane please don't hesitate to contact Sylvie David at Sylvie@sbc.org or at extension 224.

Updating your Parklane System - Leap Year

Keeping your system up to date ensures you are not missing very important updates, fixes and new features! Please ensure you have updated your system as soon as possible as the **January update** also

includes a revised calendar to accommodate the leap year.

Added Features

Time Markers – NEW

Parklane has a new feature called Time Markers to the following modules:

- Incident Reporting
- Disability Management
- Work Accommodation

Time Markers will assist you in tracking and reporting the time you spend working on your cases within Parklane.

Check out the Guides and Tutorials page for a tutorial on using and setting up your [time markers](#).

Central Access

If you haven't seen the features of Central Access, including those just recently added, click on the link below to view. For a tutorial of the features of Central Access, click [here](#).

Here are *additional* features that have been added to Parklane:

- Chronology shows an employee's complete history of activity
- View and access all document links and folders from all modules for an employee
- View and access all general comments from all modules for an employee

View and edit outstanding review dates from all modules for an employee.

SBCI BOARD OF DIRECTORS

Carolyn Bastien
Ronald Bender
Lynda Coulter
Judi Goldsworthy
Jamie Gunn (Vice-Chair)
Janice McCoy
Deirdre Pyke
Maura Quish (Chair)
Roger Richard
Mary Lynn Schauer

DATES OF BOARD MEETINGS

**AGM – April 8, 2016
May 6, 2016**

SBCI STAFF

Brian Brown, Chief Executive Officer
Lynn Porplycia, Chief Operating Officer
Raazia Haji, Manager, Actuarial Department
Joe Huang, Actuarial Analyst
Gary Stoller, Actuarial Consultant
Justin Lee, Actuarial Student
Christopher James, Senior Claims Manager & Lawyer
Figen Dalton, Claims Manager
Dave Kersey, Claims Manager
Mary Luck, Claims Manager
Kelly Melanson, Claims Manager
Robert Orrico, Claims Manager
Susan Postill, Claims Manager
Chandra Spence, Director, Health & Safety Services
France Germain, Health & Safety Consultant
Michelle Montgomery, Senior Health & Safety Specialist
Louise Ellis, Director Attendance Support Services
Kathleen Gratton, Attendance Support Consultant
Anna Sequeira, Attendance Support Consultant
Zahra Haji, Manager of Finance
Karen Bertrand, Accounting Clerk
Erin McLennan, Executive Assistant
Lily Li, Executive Assistant
Melissa Hewit, Manager, Data Management
Sylvie David, Bilingual Data Management Assistant
Lindsay Tonelli, Bilingual Data Management Assistant
Micheline Desjardins, Bilingual Data Entry Clerk
Audrey O'Connor, Data Entry Clerk
Rana Khalaf, IT Manager
Anwar Khalil, Programmer/Analyst
Gavin King, Programmer/Analyst