



SBCI UPDATE

June 2016

NEWSLETTER

MESSAGE FROM THE CHAIRPERSON

This my first message to you since assuming the position as Chair of SBCI at its May 2016 Board meeting. I am Superintendent of Business at Grand Erie DSB and am honoured to have the opportunity to become the Chair of SBCI.

The Co-operative's Annual General Meeting was held on April 8, at which time two past Chairs of SBCI stepped down from the Board. I take this opportunity to thank both Carolyn Bastien and Lynda Coulter for their dedicated and very valuable contribution to the SBCI Board and, by extension, to member school boards.

At our AGM, two new Directors were elected to fill the vacated places. These are Carole Audet, Directrice des ressources humaines at Conseil scolaire public du Grand Nord de l'Ontario and Jim Rowe, Senior Manager of Human Resources at District School Board Ontario North East. I welcome Carole and Jim to our Board of Directors.

Recently, CUPE has challenged whether school boards are legally permitted to send a copy of a WSIB Form 7 and other WSIB information to SBCI. We have just received legal opinion from Hicks Morley that school boards are able to send such information to SBCI, however, the Social Insurance Number should not be communicated. Hence, we have advised boards to obscure the SIN on every Form 7 and other forms. SBCI is taking steps to erase the SIN from

our Parklane database and all paper files.

Speaking of Parklane, this year, SBCI is jointly sponsoring a one-day Parklane User Group meeting on October 4, the day before the Schedule 2 Employers' Group Conference. Invitations have been sent out but if you missed receiving one, please contact Melissa Hewit, Melissa@sbci.org.

On June 30, SBCI will be facilitating a second meeting with COSHRO representatives to endeavour to determine collaborative initiatives with respect to Attendance Support issues. These meetings are intended to assist school boards in sharing information and developing common approaches to managing staff absences.

I am also very pleased to welcome Partha Chakraborty who has joined us as a Senior Programmer Analyst in the IT Applications department. Partha joins Rana Khalaf and her team.

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 jamie.gunn@granderie.ca or (519)756-6301 X281142.

Jamie Gunn
Chairperson

ACCESS TO SCHOOLS – OFF PEAK HOURS

As the school year draws to a close, it is timely to consider the matter of

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WSIB coverage for school staff who access school property during their time off work. In brief, such employees may be covered for a WSIB injury depending on the circumstances of the case. Two WSIB Policies apply: 15-02-02: In the Course of Employment, and 15-03-03: On/Off the Employer's Premises. In addition, WSIAT jurisprudence on the subject of volunteers is instructive.

WSIB POLICY 15-02-02: IN THE COURSE OF EMPLOYMENT:

WSIB Policy 15-02-02 states that these elements are key to making a finding that an accident is an acceptable WSIB accident: time, place and activity. School staff who access school property during their time off work would pass the place test (they are at their workplace), but not the time test (they are not on work

time). The Policy states that in that case, the **activity** element becomes the deciding factor “and the decision-maker focuses on all surrounding circumstances.”

WSIB POLICY 15-03-03: ON/ OFF THE EMPLOYER’S PREMISES:

WSIB Policy 15-03-03 states that these elements are key to making a finding that an accident is an acceptable WSIB accident: time, place, use of the accepted means for entering and exiting, and whether the performance of the **activity** at issue is “for the purpose of the employer’s business.”

WSIAT JURISPRUDENCE - VOLUNTEERS:

As per WSIAT jurisprudence, a school board may argue that the **activity** at issue was undertaken as a volunteer activity only (not as an employment activity), and thus an accident which resulted while performing the activity should not be covered for WSIB benefits. WSIAT Decision #855/15 provides a list of factors which would be relevant to drawing a conclusion regarding whether a person was performing an activity as an employee or as a volunteer, including:

- The relationship of the activity performed to the worker’s normal activity/routine;
- Any personal aspects to the activity;
- Whether the employer controlled or supervised the activity;
- Whether the accident was on employer controlled premises;
- Whether any equipment or tools were supplied by the employer;
- Whether the employer or a co-worker contributed to the injury;
- Whether the injury occurred in the process of doing something for the benefit of the employer; and
- Whether the injury occurred in the course of action taken in response to instructions from the employer.

WSIAT Decision #855/15 states that none of the factors is determinative,

and normally there is evidence for both sides to rely on.

CONCLUSION:

School staff who access school property during their time off work, and who sustain an accident, may be covered by the WSIB, depending on the specific details surrounding the **activity** they were on site to perform.

If an accident occurs when a staff member is on school premises purely for personal reasons such as to meet someone for a social lunch, it is very unlikely that the accident would be accepted by the WSIB. If a staff member is performing an activity with a voluntary element, the accident may be accepted. A recent WSIB Appeals Resolution Officer level case stated that an accident which occurred to an ECE while setting up her classroom before the start of the new school year is allowed for WSIB benefits as such activity is customary, acceptable and necessary.

TIPS:

School boards should eliminate or at least minimize their risk regarding WSIB claims for staff who are off work for the summer and for other off-peak times. School boards should consider banning entrance to school properties for staff who are off work. As an alternative, school boards should consider limiting entry to a certain short time frame. During that timeframe, school boards should ensure that all safety precautions are taken such as ensuring that items pulled out for spring cleaning have been put away.

If/when staff are allowed entrance, it is prudent to have a sign-in process where the staff member is required to write the purpose of their visit, ideally in some detail, so that if the staff member suffers an accident, the basic facts regarding why the staff member was on site are clear.

MEDICAL MARIJUANA IN THE WORKPLACE

On July 21, 2000, in the case of R v. Parker, the Ontario Court of Appeal ruled that a total prohibition on marijuana possession was unconstitutional. In response, in 2001, Parliament introduced the Medical Marihuana [sic] Access Regulations (MMAR). Under these regulations, a person could obtain a “license to produce” which allowed a person to grow plants at home.

On April 1, 2014, the MMAR was replaced by the Marihuana [sic] for Medical Purposes Regulations (MFMPR). Under these regulations, a person must obtain an Authorization from a medical doctor and to be able to purchase marijuana from a licensed producer. These regulations prohibit growing marijuana in one’s own home.

The Canadian Medical Association’s position is that there is scant evidence regarding the effectiveness of marijuana for medical purposes and there is insufficient evidence regarding long term effects and interactions with other medications. It is for these reasons that an “Authorization to Possess” is given for the use of medical marijuana rather than a “Prescription.”

DUTY TO ACCOMMODATE:

As per the Ontario Human Rights Code and the Workplace Safety and Insurance Act, employers have a duty to accommodate disability to the point of undue hardship. Accommodating disability includes making accommodations relating to medications, and medical marijuana is treated like any other medication for this purpose.

Nevertheless, regardless of the type of medication a worker is taking, workers are not permitted to be unduly impaired at work. Workers must be able to perform their work functions in a safe and acceptable manner. If a worker cannot do so due to medication issues, either the medication, the dosage, the dosage

timing or job function will need to be changed – otherwise, the worker cannot return to work.

There are different strains of marijuana and it may be worth exploring with the worker's treating health care practitioner or a qualified pain specialist whether the employee can use a strain with a less hallucinogenic effect or some alternative pain management strategy when at work.

DUTY TO PROVIDE A SAFE WORKPLACE:

Under the Ontario Occupational Health and Safety Act employers are required to provide a safe workplace for all employees. Employers are required to identify hazards and take steps to minimize a worker's exposure to hazards. Hazards relating to marijuana may include risk to self and others due to impairment, and risks associated with secondhand smoke.

In the case of *Ivancicevic v. Ontario (Consumer Services)* (2011), the Ontario Human Rights Tribunal recognized that secondhand marijuana smoke poses a hazard but the case indicates that "reasonable accommodation" may not extend to providing a smoking area. Therefore, employers may have grounds for insisting that medical marijuana users do their smoking away from the workplace, so that co-workers would not be passively inhaling marijuana smoke.

MEDICAL MARIJUANA IN THE WSIB CONTEXT:

There is no specific WSIB Policy relating to medical marijuana use. The WSIB and the WSIAT generally allow entitlement for medical marijuana where there is medical support, the required Health Canada Authorization has been obtained and where other alternatives have first been explored.

WSIAT jurisprudence affirms the WSIB's right to monitor the ongoing use and effectiveness of the worker's medical marijuana treatment and to adjust the level of payment accordingly. In WSIAT Decision

#2311/14 the WSIAT found that medical marijuana entitlement should be denied as there was no evidence that the use of marijuana improved the worker's pain control or his ability to function. On the contrary, there was evidence that this worker's marijuana use was a roadblock in his participation in pain management, psychological counselling and LMR services.

CONCLUSION:

Employers are obliged to treat medical marijuana like any other medication and any other potential hazard in the workplace. That means that employers should have policies regarding the use of prescription medications. These policies should define "impairment" and they should define disciplinary consequences for policy breaches. In addition, employers should do their utmost to try to accommodate medical marijuana use while protecting co-workers from passive inhalation.

WSIB VALUE FOR MONEY AUDIT OF SCHEDULE 2 OPERATIONS

On June 1, 2016, the WSIB released the Executive Summary of the Value for Money Audit (VMFA) prepared by Ernst & Young with respect to Schedule 2 operations at the WSIB. The audit was carried out during the period June-September 2015. During the audit Ernst & Young staff held meetings with a number of Schedule 2 employers and members of Schedule 2 Employers' Group executive. They also sent out a questionnaire to many Schedule 2 employers. Based on the results it was concluded that the "Schedule 2 insurance program has demonstrated value for money."

The audit report contained nine recommendations for improvement and these are summarized below:

- Recommendation 1: "The WSIB should define and document the end to end rate setting process. The documentation will ensure the organization has an understanding of the administration rate setting

process as well as support ongoing efforts across the WSIB to enhance succession planning." The way that Schedule WSIB Administration fees are calculated each year is complex and the Schedule 2 Employers' Group Executive and the WSIB will sit down to refine and document the methodology.

- Recommendation 2: "The WSIB should provide Schedule 2 employers with a user-friendly breakdown of the administrative rate methodology, possibly making it accessible on the WSIB's webpage and distributing it annually with the letters to employers of changes in the provisional and actual rates. Further the WSIB should work with Schedule 2 employers to identify value-added invoice cost descriptors and continue to build on electronic availability of invoice information through WSIB e-services." A working group has been established with WSIB staff and representatives of Schedule 2 employers with the objective of developing more detailed health care descriptors for invoices and greater clarity of start and end dates for invoices dealing with LOE benefits and Covered by Advances. It is hoped that real improvements will be ready by the end of December 2016.
- Recommendation 3: "The WSIB should conduct a review of its administrative rate setting formula and conduct an administrative expense study following completion of ACES technology implementation." The WSIB is hopeful that its new ACES disability management software will result in considerable cost savings for the WSIB. Consequently the WSIB will delay carrying out an expense study until the ACES computer system has been running for a while.
- Recommendation 4: "The WSIB should ensure that quarterly customer satisfaction surveys

include Schedule 2 employer responses that are proportional to the total population of Schedule 2 employers." Schedule 2 firm numbers account for approximately 10% of all claim costs and the WSIB will take steps to ensure that Schedule 2 employers are surveyed on a more regular basis.

- Recommendation 5: "The WSIB should work with Schedule 2 employers to define a set of key performance measures that will provide greater opportunity to compare individual employer performance both within and outside the Schedule 2 employer base." This will require work since the WSIB does not collect payroll numbers for Schedule 2 employers so it will be harder to compare performance and benchmarks without that information. The Schedule 2 Employers' Group will discuss this issue with the WSIB to see where it will go.
- Recommendation 6: "The WSIB should complete development of Schedule 2 funding risk performance measures." This recommendation is primarily addressed to private sector Schedule 2 employers to make sure that there is adequate security to pay for WSIB claims in the event that a Schedule 2 employer goes bankrupt.
- Recommendations 7 & 8: These are related dealing with the funding risk for certain shipping companies and dealing with Letters of Credit for private sector Schedule 2 employers.
- Recommendation 9: "The WSIB should continue to monitor growth in Section 63 agreement requests and approvals for administrative cost and fairness implications. Once finalized, the WSIB should post the Section 63 Agreement criteria on their website." A Section 63 agreement allows a Schedule 2

employer to reach a settlement with their worker to cover off future entitlement to LOE benefits, Loss of Retirement Income benefits and possibly a NEL award under certain circumstances. The WSIB reviews draft agreements and decides whether to approve them based on an assessment of fairness to the worker and other factors. The WSIB was concerned about an increase in the number of such requests and will carefully consider any requests received.

Overall the WSIB VFMA of Schedule 2 operations contained some useful recommendations to address practical aspects of administration but no sweeping changes to the operations of Schedule 2. This is a good thing as Schedule 2 employers have the opportunity to save a great deal of money compared to Schedule 1 employers if the Schedule 2 employer has a strong accident prevention program and an effective RTW process. We will keep you informed of any significant developments flowing from the VFMA.

SENDING FORM 7s TO SBCI

Earlier this year some CUPE reps at several school boards had questioned the authority of school boards to send

Form 7 reports to SBCI without the worker's consent. SBCI requested a legal opinion from Hicks Morley with respect to this issue. The legal opinion confirmed that school boards are entitled to send a copy of their Form 7s to SBCI as their legal representative with respect to WSIB cases and that doing so does not violate the Workplace Safety and Insurance Act nor the Municipal Freedom of Information and Protection of Privacy Act.

In the legal opinion it was noted that Social Insurance Numbers (SIN) are only to be used for income tax purposes and that while the WSIB needs a worker's SIN for tax purposes, SBCI does not need it. It is requested that school boards please

delete SINs from Form 7s and other forms like Form 9 or Form 6 that you may send to SBCI. It is permissible to black out the SIN with a dark marker or with a computer program. SBCI is working with Parklane on a feature that will allow school boards to push a button to produce a version of the Form 7 without SIN that can then be sent to SBCI electronically. This update to Parklane should be ready in the near future.

If you have more questions on this topic please speak to your SBCI Claims Manager.

2016 SCHEDULE 2 EMPLOYERS' GROUP CONFERENCE

On October 5 & 6, 2016, the Schedule 2 Employers' Group will host its 27th annual conference and trade show. There will be four excellent keynote presentations and 35 varied breakout sessions around the central theme of "Creative Approaches to Workplace Challenges"

The keynote speakers and topics are as follows:

1. Tom Teahen, President and CEO of the WSIB speaking on "WSIB: A Bridge Back to Work."
2. Diane Dyck, Disability Management Expert will speak on "Disability Management Programs: Employer Challenges turned Opportunities."
3. Linda Duxbury, Professor is going to speak on "Work Life Balance: Rhetoric Versus Reality"
4. Dr. Bill Howatt, Physician will speak on the topic: "Do we have a Mental Health Crisis or a Coping Crisis."

The breakout sessions will deal with the following topics: PTSD, Medical Marijuana, Bill 132 OHS Harassment amendments, Absences Related to Interpersonal Conflict, Chronic Diseases and the Impact on Benefit Plans, Health Risk Assessments, Drug and Alcohol Testing in the Workplace, Actuarial Liability Calculations for WSIB Claims, Accommodation for your Non-

Occupational Cases, Benchmarking your Health and Safety Program, Mental Health and RTW and many more.

The speakers will be an interesting cross-section of lawyers, physicians, academics, Ergonomists, Health and Safety Professionals, Private Investigators and HR professionals. The conference provides great information, good networking opportunities all at a very reasonable cost. For the most current information please check the conference website www.s2egroup.com on a regular basis.

SBCI BOARD OF DIRECTORS

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Judi Goldsworthy
Jamie Gunn (Chair)
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Roger Richard
James Rowe
Mary Lynn Schauer

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, Manager, HR and Administration
Lily Li, Executive Assistant
Melissa Hewit, Manager, Data Management
Sylvie David, Bilingual Data Management Assistant
Micheline Desjardins, Bilingual Data Entry Clerk
Audrey O'Connor, Data Entry Clerk
Lindsay Tonelli, Bilingual Data Management Assistant
Rana Khalaf, IT Manager
Partha Chakraborty, Senior Programmer/Analyst
Anwar Khalil, Programmer/Analyst
Gavin King, Programmer/Analyst

DATES OF BOARD OF DIRECTORS MEETINGS

August 15, 2016
October 28, 2016
December 16, 2016
February 3, 2017
March 3, 2017
April 7, 2017 (AGM)
May 12, 2017

SBCI STAFF

Brian Brown, Chief Executive Officer
Lynn Porplycia, Chief Operating Officer
Raazia Haji, Manager, Actuarial Department
Joe Huang, Actuarial Analyst
Justin Lee, Actuarial Analyst
Gary Stoller, Actuarial Consultant
Christopher James, Senior Claims Manager & Lawyer
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