



## **Psychological Injury:**

### **Final Policy Decision and Supporting Rationale**

January 2019

## **I – Introduction:**

On October 26, 2018 the post-traumatic stress disorder (PTSD) legislative presumption for frontline or emergency response workers became effective in Nova Scotia. To ensure clarity and transparency, draft revisions were made to the WCB's *Policy 1.3.9 Psychological Injury* to acknowledge the PTSD presumption for front-line or emergency response workers.

In November 2018 the WCB Board of Directors invited stakeholders to comment on the draft revisions to *Policy 1.3.9*. In particular, on November 20, 2018 the WCB posted the document "[Program Policy Background Paper: Minor Revision to Policy 1.3.9 – Psychological Injuries](#)" to its website and e-mailed it to key stakeholders. Stakeholders were asked to share their feedback by January 11, 2019. The minor changes to acknowledge the PTSD presumption were the only changes to the policy under consideration.

The remainder of this report provides:

- key issues raised by stakeholders during consultation;
- the rational for why the WCB did or did not revise the draft policy in response to stakeholder submissions received as a result of the consultation; and
- the WCB's final policy in Appendix A.

## **II - Issues Raised During Consultation:**

In addition to a few general inquiries, the WCB received 3 submissions in response to the consultation, one from an injured worker association and the other from a labour organization and one from the Nova Scotia Department of Labour and Advanced Education (LAE). The 2 organizations raised issues related to:

- The type of presumption approved by the Legislature to address PTSD claims from front-line and emergency response workers; and
- Access to medical professionals who meet the qualifications to diagnose PTSD.

In its submission, LAE supported the draft changes to *Policy 1.3.9*.

When considering the feedback from stakeholders the WCB identified a further opportunity to clarify the policy by making a minor administrative change. This will be discussed in the following section of the paper.

## **III – Stakeholder Feedback, Analysis, and Response:**

### **#1: The type of presumption approved by the Legislature to address PTSD claims from front-line and emergency response workers.**

#### **Analysis and Response:**

Section 10(1) of the *Workers' Compensation Act* (the "Act") states:

Where, in an industry to which this Part applies, personal injury by accident arising out of and in the course of employment is caused to a worker, the Board shall pay compensation to the worker as provided by this Part.

The submission by the injured workers' association expressed concern that the wording of the PTSD presumption in the *Act* did not appear to grant a stronger presumption than the presumption for all workers in Section 10 (4) of the *Act* which states:

Where the accident arose out of employment, unless the contrary is shown, it shall be presumed that it occurred in the course of employment, and where the accident occurred in the course of employment, unless the contrary is shown, it shall be presumed that it arose out of the employment.

The PTSD presumption in Section 12A (2) *Act* reads as follows:

(2) Subject to subsections (3) to (5), where a front-line or emergency response worker is diagnosed with post-traumatic stress disorder by a prescribed diagnostician, the post-traumatic stress disorder is, unless the contrary is shown, presumed to have arisen out of and in the course of the worker's employment in response to a traumatic event or a series of traumatic events to which the worker was exposed in carrying out the worker's duties as a front-line or emergency-response worker.

The injured workers' association believes the inclusion of the phrase "...unless the contrary is shown..." in Section 12A (2) means the presumption is "rebuttable" and therefore some of these workers will be required to prove their PTSD is work-related. They further believe this is contrary to the original intent of the presumption and therefore request that the following language be inserted after the "notwithstanding" paragraph in the policy to make it "'irrebuttable':

For further clarification, a front-line or emergency response worker diagnosed with post-traumatic stress disorder does not have the burden of proving a causal connection between the diagnosis and the workplace.

The WCB believes the language in Section 12A (2) of the *Act* means these workers don't have to prove a causal connection between their PTSD diagnosis and their workplace. For example, a fire fighter would not be required to identify a specific fire/s or rescue/s they performed that resulted in their PTSD. Instead, they must establish they were a front-line or emergency response worker and have a diagnosis of PTSD from a psychiatrist or registered psychologist on or after October 26, 2013. If this is the case, their PTSD is presumed to be work-related. The WCB would not, unlike in claims by non-first responder/emergency response workers, seek evidence of a causal connect between the fire fighters work activities and their PTSD diagnosis.

There may be instances where the WCB will be presented with (e.g. by an employer), or happen upon, evidence that does not support the work-relatedness of a PTSD claim. The WCB agrees that the inclusion of the phrase "...unless the contrary is shown..." means the WCB is required to consider this evidence. If the evidence is strong enough to "rebut" (refute, disprove) the presumption of work-relatedness, we would be required by law to deny the claim. The WCB Board of Directors cannot, through policy, change the meaning of terms or requirements in the *Act*. This would result in a policy that is inconsistent with the *Act*.

## **#2: Access to medical professionals who meet the qualifications to diagnose PTSD**

### **Analysis and Response:**

As specified in Section 10 of the *Act*, the WCB provides benefits and services to workers who experience a work-related injury. As discussed above, the *Act* and *General Regulations* (the “*Regulations*”) state that where a front-line or emergency response worker is diagnosed with PTSD by a psychiatrist or registered psychologist the PTSD is, unless the contrary is shown, presumed to be work-related.

The submission by the labour organization expressed concern about front-line or emergency response worker access to medical professionals that meet the requirements to make a PTSD diagnosis. In particular they expressed concern that claims could come to the WCB before the worker is examined by a psychiatrist or registered psychologist. They suggested that “suspected cases” of PTSD in front-line or emergency response workers be treated as “bona fide” claims until the worker is examined by a psychiatrist or registered psychologist.

**The WCB believes its import to emphasize that front-line or emergency response workers are NOT required to have a diagnosis of PTSD from a psychiatrist or registered psychologist before making a claim.** If a front-line or emergency response worker believes they are suffering from PTSD, the WCB encourages them to make a claim as soon as they can. Once we receive the claim, we can make arrangements for the worker to see a psychiatrist or registered psychologist for an assessment and diagnosis. While the WCB understands that access to psychiatrists or registered psychologists in the province can sometimes be challenging, we have the ability to expedite access to these health professionals. Also, we are taking steps to expand the number of available service providers with expertise in psychological injury through a new service contract with psychologists.

That being said, the WCB cannot provide benefits and services (e.g. health care, earnings replacement) until it is determined a worker has a work-related injury. For front-line or emergency response workers making a PTSD claim this means (as required by the *Regulations*) obtaining a diagnosis from a psychiatrist or registered psychologist<sup>1</sup>. A policy that allowed a claim to be accepted under the PTSD presumption without a diagnosis from a psychiatrist or registered psychologist would be inconsistent with the *Act* and *Regulations*. The Board of Directors cannot approve policy that is inconsistent with the *Act* or *Regulations*.

### **Additional clarification**

As noted previously, when considering the feedback from stakeholders the WCB identified a further opportunity to clarify the policy by making a minor administrative change. The policy currently reads:

The WCB will consider claims for compensation under the Nova Scotia *Workers’ Compensation Act* when the condition results from stress that is a reaction to one or more Traumatic Events and the specified criteria outlined below are satisfied.

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<sup>1</sup> All workers making a claim for psychological injury, not only front-line or emergency response workers making PTSD claims, must obtain a diagnosis from a psychiatrist or registered psychologist.

More specifically, the WCB will consider claims for compensation in respect of:

An acute response to one or more Traumatic Event(s) which involves witnessing or experiencing a event(s) that is objectively traumatic. Due to the nature of some occupations, some workers, over a period of time may be exposed to multiple traumatic events. If the worker has an acute reaction to the most recent traumatic event, entitlement may be considered even if the worker may experience these traumatic events as part of the employment and was able to tolerate the past traumatic events. Possible examples would include **a paramedic who develops Post Traumatic Stress Disorder after responding to a number of fatal traffic collisions**, or a drugstore pharmacist after multiple robberies.

In light of the new section added later in the policy that acknowledges that PTSD claims from front-line or emergency response workers (which includes paramedics) will be adjudicated under the presumption in Section 12A of the Act, this example is unnecessary. The presumption means the number of traumatic events a front-line or emergency response worker is exposed to is not relevant to the adjudication of their claim. Therefore the example has been removed. The section now reads as follows:

An acute response to one or more Traumatic Event(s) which involves witnessing or experiencing an event(s) that is objectively traumatic. Due to the nature of some occupations, some workers, over a period of time may be exposed to multiple traumatic events. If the worker has an acute reaction to the most recent traumatic event, entitlement may be considered even if the worker may experience these traumatic events as part of the employment and was able to tolerate the past traumatic events. An example is a drugstore pharmacist after multiple robberies.

## Appendix A – Final Policy 1.3.9R



**NUMBER: 1.3.9R**

Effective Date:	October 26, 2018	Topic:	<b>Psychological Injury</b>
Date Issued:	<b>XXXXX 2019</b>	Section:	Entitlement
Date Approved by Board of Directors:	January 31, 2019	Subsection:	General

### PREAMBLE

The purpose of this policy is to establish criteria for the individualized adjudication of psychological injury claims under the *Nova Scotia Workers' Compensation Act*.

### DEFINITIONS

1. The “DSM” is the most current edition of the Diagnostic and Statistical Manual of Mental Disorders, which is a compendium of psychiatric diagnoses produced by the American Psychiatric Association. The manual codes and describes all recognized psychiatric diagnoses and is regarded as the definitive work on the subject. (Source: The Canadian Health Care Glossary).
2. “Traumatic Event(s)” is defined as a direct personal experience of an event or directly witnessing an event that is:
  - Sudden;
  - Frightening or shocking;
  - Having a specific time and place; and
  - Involving actual or threatened death or serious injury to oneself or others or threat to one’s physical integrity.
3. “front-line or emergency-response worker” means front-line or emergency-response worker as defined in Section 12A(1)(a) of the *Workers' Compensation Act* and Section 41 of the *Workers' Compensation General Regulations*.

4. The “traumatic event(s)” must be assessed using an objective standard, which is a legal standard based on conduct and perceptions external to a particular person. The objective standard used is the reasonable person standard, which is considered an objective standard because it does not require a determination of what the individual was thinking. Rather it is based on a hypothetical person who exercises the degree of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own and others’ interests. The reasonable person acts sensibly, does things without serious delay, and takes proper but not excessive precautions<sup>2</sup>.

Examples of Traumatic Events may include, but are not limited to:

- A direct personal experience of an event that involves actual or threatened death or serious injury;
- An actual or threatened violent physical assault;
- Witnessing or experiencing a horrific accident;
- Witnessing or being involved in a hostage taking; and
- Witnessing or being involved in an armed robbery.

## **POLICY STATEMENT**

The WCB will consider claims for compensation under the Nova Scotia *Workers’ Compensation Act* when the condition results from stress that is a reaction to one or more Traumatic Events and the specified criteria outlined below are satisfied.

More specifically, the WCB will consider claims for compensation in respect of:

An acute response to one or more Traumatic Event(s) which involves witnessing or experiencing an event(s) that is objectively traumatic. Due to the nature of some occupations, some workers, over a period of time may be exposed to multiple traumatic events. If the worker has an acute reaction to the most recent traumatic event, entitlement may be considered even if the worker may experience these traumatic events as part of the employment and was able to tolerate the past traumatic events. An example is a drugstore pharmacist after multiple robberies.

### **Criteria for Traumatic Onset Stress**

Claims for psychiatric or psychological injuries resulting from Traumatic Events may be compensable if all of the following four criteria are satisfied:

- I. There must be one or more Traumatic Event(s) as defined herein;
- II. The Traumatic Event(s) must arise out of and in the course of employment;
- III. The response to the Traumatic Event(s) has caused the worker to suffer from a mental or physical

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<sup>2</sup> Black’s Law Dictionary, Ninth Edition, 2009

- condition that is described in the DSM; and
- IV. The condition is diagnosed in accordance with the DSM and by a health care provider being either a psychiatrist or a clinically trained psychologist registered with the Nova Scotia Board of Examiners in Psychology.

Notwithstanding the criteria listed above, a claim for a psychological injury that is post-traumatic stress disorder (PTSD) by a front-line or emergency response worker will be adjudicated under Section 12A of the *Workers' Compensation Act* and Sections 40 – 45 of the *Workers' Compensation General Regulations*.

### **Non-Compensable Work-related Events**

Mental or physical conditions are not compensable when caused by labour relations issues such as a decision to change the worker's working conditions; a decision to discipline the worker; a decision to terminate the worker's employment or routine employment related actions such as interpersonal relationships and conflicts, performance management, and work evaluation.

### **APPLICATION**

This policy applies to all decisions made on or after October 26, 2018 pursuant to the *Nova Scotia Workers' Compensation Act*.

### **REFERENCES**

*Workers' Compensation Act* (Chapter 10, Acts of 1994-95), Section 2, Section 12A.  
*Workers' Compensation Act General Regulations*, Sections 40 – 45.

The most current edition of the *American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders*