

Legal Implications of Bill 163: Presumptive Entitlement for First Responders with PTSD

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Agenda

- Definition of PTSD
- Causes of PTSD
- Before and After the Amendments
- First Responders
- Case Studies
- Reducing the Risk of PTSD

Definition of PTSD

- A condition where symptoms evolve in the aftermath of an extreme traumatic stressor that overwhelms the individual's coping capabilities
- Can result from direct or indirect trauma

PTSD Legal Definition

- Section 14(1): “posttraumatic stress disorder” means, subject to subsection (15), posttraumatic stress disorder, as described in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), published by the American Psychiatric Association
- Section 14(15) applies the DSM-4 description to pending claims and appeals, and new claims made before October 6, 2016.

DSM-5: PTSD Criteria

- Exposure to actual or threatened death, serious injury, or sexual violence
- Intrusion (re-experiencing the trauma)
- Avoidance
- Negative alterations in cognitions and mood
- Marked alterations in arousal and reactivity
- Duration of the disturbance (more than 1 month)
- Clinically significant distress or impairment in social, occupational, or other important areas of functioning
- Not attributable to physiological effects of substance use or other medical condition

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Common Causes of PTSD

- Exposure to sudden or unexpected death of others
- Witnessing or participating in rescues to prevent death or injury
- Highly emotional events
- Extreme fatigue, weather exposure or hunger
- Extended exposure to danger or emotional/physical strain
- Exposure to environmental hazards

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Before the Amendments

- First responders had to prove that their PTSD was related to the job to be eligible for coverage under the *Workplace Safety and Insurance Act*

Now – Presumption of work-relatedness

If a First Responder is diagnosed with PTSD by a psychologist or psychiatrist it is **presumed** that PTSD is work-related

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Rebuttable Presumption

Section 14(6): the posttraumatic stress disorder is presumed to have arisen out of and in the course of the worker's employment, unless the contrary is shown.

Difficulties of Disputing a PTSD Claim

- Complexity of diagnosis of PTSD
- Need for expert evaluations
- What will be considered a "traumatic event" for a PTSD claim?

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Costs of PTSD Claims

- Claims for mental illness are some of the most expensive
- Municipal employers are Schedule 2 employers under *WS/A*. Pay all the costs of a claim.
- Nature of disputing a presumption means increased costs for managing and appealing claims.

PTSD: First Responders

First Responders are:

- Full-time, part-time and volunteer firefighters.
- Fire investigators
- Police officers
- Members of an emergency response team
- Paramedics, emergency medical attendants, and ambulance service managers
- Workers in a correctional institution
- Workers in a place of secure custody or place of secure temporary detention
- **Workers involved in dispatch**

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Key Features of the Amendment

- PTSD diagnosis from psychologist or psychiatrist
- No entitlement if PTSD caused by employers decisions or actions re. employment (change to work, discipline, etc.)

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Case Studies

1791/12

M. Keil

- Police officer assaulted and subsequently investigated for sexual assault by PSB & SIU.
- While off work exhibited signs of PTSD.
- Officer felt better and returned to work when cleared of the allegations.
- Stress in this case involved primarily an employment situation.

Case Studies

1700 12

M. Crystal

- Paramedic attended horrific fatal accident involving dismembered bodies.
- Entitlement granted.

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Case Studies

1098/13

E. Smith

- Federal correction officer.
- One prisoner regularly tied ligatures around her neck.
- Officers received instructions not to go in to cell.

Case Studies

1098/13

E. Smith

- Prisoner died.
- Worker did not witness events but had to clean up unit where death occurred.
- Entitlement granted.

Case Studies

1879 11

B. Kalvin

- Worker sworn at by Supervisor.
- Inappropriate but not objectively traumatic.
- Entitlement denied

Case Studies

1786/12 I

S. Martel

- Workload issues.
- Being reprimanded by Supervisor.
- No sudden and unexpected traumatic event.
- Mental stress related to employment issues by the Employer.
- Entitlement denied.

Summary of Case Studies

- Requirement for traumatic event
- Cumulative effects of employment relationship or hazardous workplace does not warrant entitlement
- Nature of workplace and position important in determining entitlement

Bill 163 – Miscellaneous

- Bill 163 also amended the *Ministry of Labour Act*
- The Minister may direct employers of first responders to provide information to the Minister relating to the employer's plans to prevent work-related PTSD.
- Employers of first responders are required to provide this information
- No obligation to have a plan

Reducing the Risk of PTSD

- Know your workplace
- Know your resources
- Create a policy
- Educate your management and employees

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