2005

Employer Stakeholder Presentation

May 19, 2005

Agenda

- Introductions and Overview: John Slinger
- Background/ Overview of Key Recommendations: John Slinger
- Draft Protocol for Scheduling and Policy Development: Claire Marie Fortin
- Draft Protocol for Adjudication: Faye McIntosh-Janis
- Funding Occupational Disease in the Future: Rob Hinrichs
- Discussion
- Wrap up

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BACKGROUND/CONTEXT

John Slinger

Chief Corporate Services Officer

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Where we were....

- 1915 through '80's entitlement to occupational disease very limited
- A number of Royal Commissions, Weiler reports and an MOL Task Force raised concerns and were critical of how WSIB handled OD cases
- Occupational disease claims on a continuous upward trend since early '90's due to:
  - **increased awareness** of work relationship to causation
  - **demographics:** age cohort effect of baby boomers
  - **long latency periods maturing** causing numbers to grow
- WSIB & system not prepared for rapid increase of occupational disease claims
- SARNIA was a "wake-up call"

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Response action....

- Occupational Disease Response Strategy (ODRS) developed in response to volume of claims
- Community based response – all parties working together
- Increased claims adjudication staff
- Established occupational hygiene program
- Developed adjudication advice manual - COPD
- Established liaison office in Sarnia
- Additional funding for an OHCOW clinic in Sarnia
- Funded St Mike's Specialty Clinic
    - Claims more proactively managed

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BUT further response action required...

- What was still needed was an effective framework for consistent and timely adjudication and policy/schedule development

- The WSIB established the Occupational Disease Advisory Panel in 2001

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Status of Chair's Final OD Report

- Final OD Report prepared for FYI presentation to BOD April 2005, approved release
- Protocol prepared - how WSIB intends to use legal principles and scientific evidence to schedule, develop policy and adjudicate OD claims
- Final Report and protocol released April 29, 2005
- Presented to Worker stakeholder session May 12, 2005, Employer stakeholder session May 19, for discussion and input
- Return to BOD, June 9, 2005 for final decision

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Moving forward....

- The WSIB must move forward with the Final Report to address the increasing volumes of OD claims with clear and consistent direction

Benefits:

- Use of legal principles will lead to greater consistency and timeliness in adjudication
- Use of scientific evidence will result in fair and balanced policy and schedules
- Formalizing these principles will help workers, employers, the WSIB and partners to develop a common understanding of how the WSIB will develop policy, schedules, and adjudicate individual OD claims

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Where do we want to end up....

- Put in place an effective strategy to fund occupational disease appropriately
- More needs to be done by all parties in the system to promote effective health & safety measures in workplaces to prevent diseases
- Working together to eventually eliminate all occupational diseases

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Key Recommendations from Chair's Final Report

1. KEY LEGAL PRINCIPLES

- **Causation Test**
  - Test of "Significant Contribution" should be explicit in statement of legal principles
    - Significant if it falls outside the *de minimis range*
- **Burden of Proof**
  - Investigative, rather than adversarial
    - Responsibility of decision maker to investigate and obtain evidence needed to make a decision
- **Standard of Proof**
  - Balance of Probabilities
    - Is it more likely than not that the worker's employment was a significant contribution to the occupational disease
- **Benefit of the Doubt**
  - Where evidence for or against approximately equal, issue resolved in favour of the claimant
    - Benefit of the doubt applies toeach issue to be decided

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2. Role Of Evidence

- Different circumstances call for different kinds of evidence
  - For regulation or policy primary evidence would be scientific - epidemiology most persuasive, toxicology useful
  - Systematic scientific review - to evaluate and use occupational epidemiology and other research
  - For claims adjudication other types of evidence such as individual medical reports, employment history, third party observations, hygiene reports should be used
  - While scientific certainty not required for individual claims adjudication, decision maker must demonstrate some credible or plausible connection between employment and the disease
  - No scientific evidence bearing on a claim does not mean there is no relationship

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3. Establishing Causation - Bradford Hill Criteria

- 9 criteria used as a framework to assess the strength of evidence relating to causation
- Can also be used as guidelines for case-by-case adjudication
- Not all criteria needs to be met to establish causation

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4. Standards for Adjudicative Channels

- **Schedule 4 (Non-Rebuttable Presumption of work-relatedness)**
  - Strong and consistent epidemiological evidence that in virtually every case the disease occurrence is linked to a single cause and that cause is associated with an occupation, workplace or work process.
- **Schedule 3 (Rebuttable Presumption of work-relatedness)**
  - Strong and consistent epidemiological evidence supporting a multi-causal association with the disease, one cause being occupation.
- **Occupational Disease Policy**
  - Strong and consistent epidemiological evidence supporting a single or multi-causal association with disease, one cause being occupation. This can be used when Schedule 3 criteria met but process cannot be defined.
- **Case-by-Case Adjudication**
  - Inconclusive evidence as to whether an occupation is a definitive or likely cause of a disease
  - Where no scientific evidence exists bearing on the issue

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5. Additional Recommendations Resulting from Public Consultation

- Advisory committee comprised of scientific, legal and policy experts to play oversight role in the area of occupational disease scheduling and policy
- Monitoring of occupational disease costs & development of alternative funding strategies
- Consideration of "lead case" approach

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Development of Draft Protocol for Policy Development and Adjudication

- Purpose:
  - To operationalize the principles of the Chair's Final Report
  - To guide the Medical and Occupational Disease Policy staff on a systematic approach to the review and weighing of scientific evidence for scheduling or policy development
  - To guide the Occupational Disease adjudication staff on a systematic approach to the application of legal principles and the review and weighing of all evidence in the adjudication of individual cases

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DRAFT PROTOCOL SCHEDULING AND POLICY DEVELOPMENT

Claire Marie Fortin

Director, Medical and Occupational Disease Policy Branch

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Draft Protocol
Developing Policy

- What is scientific evidence?
  - It is the information or data drawn from published peer-reviewed research that forms the basis of the work done by Medical and Occupational Disease Branch staff
    - From learned journals in epidemiology, statistics, medicine, occupational hygiene, toxicology and process engineering
  - To provide the best information or advice to WSIB adjudicators, Medical and Occupational Disease Policy Branch will use the "best evidence" approach to using and interpreting scientific evidence

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Draft Protocol
Systematic Scientific Review

- Always conducted to support policy development & adjudicative advice according to following steps:
  - Defining the research question
  - Conducting a literature search
  - Specifying the inclusion and exclusion criteria
  - Completing a qualitative review and data extraction

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Draft Protocol
Systematic Scientific Review

- Conducting a quantitative review
  - Meta-analysis, if appropriate
- Integrating qualitative and quantitative reviews
- Grading the evidence
  - Positive, limited, inconclusive, or no association
- Applying criteria for causation
  - Bradford Hill criteria
- Obtaining peer reviews
  - At least two external, independent reviewers

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Draft Protocol
Policy Development

- Systematic assessment of scientific literature always precedes policy development
- After scientific review:
  - Review of approaches of other worker compensation systems
  - Review current practice & adjudication experience
  - Review of Ontario's economic & industrial history
  - Consultation process with stakeholders
  - Proposal for WSIB Board of Directors, including review of implications of various options

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Draft Protocol
Policy Development

- Depending on content and thoroughness of scientific research, the scientist decides whether to proceed with:
  - Listing in Schedule 4
  - Listing in Schedule 3
  - Occupational disease policy development
  - Adjudicative support material
    - where information in any scientific advice becomes only one piece of evidence the adjudicator considers in deciding a claim

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Draft Protocol
The Adjudicative Support Model

Scientific information and technical support for adjudication can be provided in a variety of forms:

- Adjudicative Support Model binders
  - provide adjudicators with information on diseases, where no policy can be produced
  - sections include:
    - General Disease Characteristics – background information
    - Scientific Review – summary of scientific evidence
    - Adjudicative Advice – comprehensive reference tool
    - Program of Care

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Draft Protocol
The Adjudicative Support Model

- Claim file reviews
  - Gather and review of scientific evidence that would apply specifically to worker's unique situation
  - Only one piece of evidence used by an adjudicator
- Scientific opinions on specific questions
- Other resources
  - Overview documents
  - On-call help
  - Public access to Medical and Occupational Disease Policy Branch

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Before and After ODAP

- **What will be different in Medical and Occupational Disease Policy Branch?**
  - More clarity and transparency in the use of legal principles and scientific evidence which will enhance the policy development process

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Medical and Occupational Disease Policy Branch: Next steps

- **What happens next (If approved by the WSIB Board of Directors)?**
  - Develop policies to support the principles and concepts developed in the ODAP report including leading case and advisory process
  - Address remaining Occupational Disease Panel (ODP) Reports
  - Develop priority setting process for future scheduling and policy issues

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DRAFT PROTOCOL
LEGAL PRINCIPLES & SCIENTIFIC EVIDENCE IN ADJUDICATION OF OCCUPATIONAL DISEASE

Faye W. McIntosh-Janis
Director, Occupational Disease & Survivor Benefits Program

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Draft Protocol
Legal Principles - Determining the Contribution of Work to the Development of Disease

Legal principles

- the causation test
- the burden of proof
- the standard of proof
- the benefit of doubt
- "merits and justice"

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Draft Protocol
The causation test - "Significant contribution"

- Same meaning as "material contribution"
- Defined as "not trifling" so as to result in entitlement based on a tenuous or merely speculative workplace connection
- Defined as "having or likely to have influence or effect: important, weighty"
- Cannot equate with a certain percentage
- Can have other non-work-related factors of greater magnitude than the work contribution
- Use of common sense: "a robust and pragmatic approach to the facts"

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Draft Protocol
The burden of proof

- Not up to the worker or employer to prove his or her case
- Up to the adjudicator to assess the claim with the best available evidence
- WSIB is an investigative body, as well as a decision-making one
- Not acceptable to issue an adverse decision because of a claimant's submission of "insufficient evidence"

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Draft Protocol
The standard of proof

- Balance of probabilities, not the more stringent "beyond a reasonable doubt"
- "Is it more likely than not that the workplace exposures made a significant contribution to the development of the disease?"

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Draft Protocol
The benefit of doubt

- Section 119(2) of WSIA
- Operational Policy 11-01-13
- Only for decisions on specific issues
- Only where the evidence either way is approximately equal
- Not where there is only supposition for and against entitlement

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Draft Protocol
"Merits and justice"

- Section 119(1) of WSIA
- Operational Policy 11-01-13
- Similar claims are adjudicated in a similar manner
- Each participant in the system is treated fairly
- The decision-making process is consistent and reliable
- Policy is only a general framework for decision-making - it cannot be followed mechanically at the expense of the individual circumstances of a claim - it cannot "fetter discretion"
- Cannot disregard clear and unambiguous legislation

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Draft Protocol
Adjudicative channels

- Schedule 3 or 4
- WSIB Operational Policy
- Case-by-case adjudication

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Draft Protocol
Information gathering

- The worker's complete employment and exposure history
- The worker's medical history
- Non-occupational factors that are known as potential causes of the disease
- Information-gathering matrices for some diseases

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Draft Protocol
Schedules 3 and 4

- Purpose of the Schedules is to enable quick and efficient decisions where there is little, if any, doubt of a connection to work
- Schedule 4: cannot rebut the presumption - connection is conclusive if prerequisites in columns 1 & 2 are met - latency and exposure variation are irrelevant
- Schedule 3: can rebut the presumption - "Are the non-work factors of such importance that it is more likely than not that the employment was *not* a significant contributing factor in developing this worker's disease?"
- Rebuttal guidelines to be developed

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Draft Protocol
Adjudication with policy

- What policy or policies exist and should be considered?
- Does the claim fall within the application date of the policy?
- Do the facts of the claim fall within the framework established by the policy?
- Do exceptional circumstances exist?

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Draft Protocol
Adjudication where there is no policy

- Determine entitlement on the merits and justice of the claim without the benefit of any presumption
- The adjudicator's responsibility to gather information, including new scientific or technical information
- Information gathered must be reliable and complete enough to reach an informed decision
- Not bound to follow precedent

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Draft Protocol
Evaluating Scientific Evidence for Adjudication

Types of Scientific Evidence

- Occupational hygiene assessments
- Clinical review assessments
- Information provided by Medical and Occupational Disease Policy Branch
- Prior medical and other non-occupational factors
- The Bradford Hill criteria in adjudication

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Draft Protocol
Occupational hygiene assessments

- Current and retrospective historical assessments of the exposures in individual claims or clusters of claims
- Exposure information for the industry, occupation or workplace process
- Reconstruction of workplace processes, work histories and related exposures
- The goal of an assessment is to provide a comprehensive, scientifically supportable assessment of the worker's actual or potential exposure to hazardous materials in the workplace

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Draft Protocol
Clinical review assessments

- Occupational medicine consultants (OMCs) can review all the clinical information gathered in the claim
- Generally, OMCs provide advice on the compatibility between the reported clinical findings from the worker and the identified occupational exposures
- OMCs may comment on considerations relating to the medical condition or relating to outcome
- OMCs do not make entitlement decisions
- OMCs' opinions form part of the overall evidence available to the adjudicator when making the entitlement decision

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Draft Protocol
Medical & Occupational Disease
Policy Branch

- Medical and Occupational Disease Policy staff staff help the adjudicators understand the literature available on the disease-exposure relationship being claimed
- Medical and Occupational Disease Policy staff do not make entitlement decisions
- Medical and Occupational Disease Policy staff opinions form part of the overall evidence available to the adjudicator when making the entitlement decision

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Draft Protocol
Prior medical and other non-occupational factors

- Not relevant when Schedule 4 applies
- Relevant when an occupational connection is not apparent and WSIB policy or conclusive medical and scientific evidence does not exist
- Existence of prior medical or other non-occupational factor does not preclude entitlement - employment factors need not play a greater role than non-occupational factors
- Particularly relevant to claims with a pre-existing condition aggravated by a workplace exposure and claims with a lengthy latency period

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Draft Protocol
The Bradford Hill criteria in adjudication

- If scientific evidence does not exist to support a connection, must carefully review all available evidence
- Can use Bradford Hill criteria as a general guide, not an inflexible framework or exhaustive list
- Except for temporality, none of the criteria necessarily proves or disproves a relationship

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Funding Occupational Disease in the Future

Rob Hinrichs

Vice President and Chief Actuary

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Analyse Costs and Exposures First

- Random audit of previously denied claims
- Build an actuarial model to simulate claim incidences and costs
  - By claim status, benefit type, diagnosis, sector (including Schedule 2), rate group, and by year reported and paid
  - Include future costs based on Schedule-1 assumptions
    - collective experience of both occupational and other WSIB experience
- Incorporate industry exposures and latencies from other studies into simulation model
- Test reasonableness of assumptions by analyzing results from model

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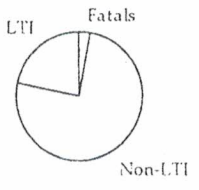
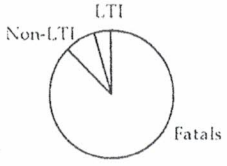
Statistics from 2004 OD Claims

- about $77 million paid in past awards in 2004 on 2004 OD claims alone

No. of Claims registered in 2004 (excluding PEIR)				
	12,085			
Distribution of registered claims by type				
Fatalities	381	3.2%		
Non-LTI	9,067	75.0%		
LTI	2,637	21.8%		
Adjudication of registered claims			$ million	
Allowed	5,517	45.7%	76.9	
Fatalities	184	3.3%	67.3	87.5%
Non-LTI	3,967	71.9%	6.3	8.2%
LTI	1,366	24.8%	3.3	4.3%





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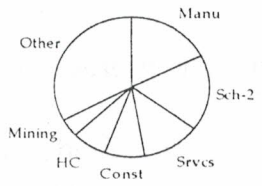
Statistics from 2004 OD Claims (cont'd)

No. of Claims registered in 2004 (excluding PEIR)

12,085

Distribution of registered claims by sector

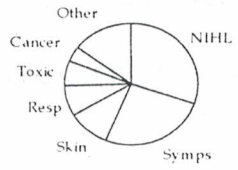
Manufacturing	2,162	17.9%
Schedule 2	2,065	17.1%
Services	1,471	12.2%
Construction	984	8.1%
Health Care	914	7.6%
Mining	488	4.0%
All Other Sectors (12)	4,001	33.1%



43.7% of which were LTI claims, and
55.9% were non-LTI claims of which 4 were fatalities

Distribution of registered claims by diagnosis

Noise Induced Hearing Loss	3,674	30.4%
Acute Symptoms	3,090	25.6%
Skin Conditions	1,209	10.0%
Respiratory	1,015	8.4%
Toxic Effects	819	6.8%
Cancers	491	4.1%
All Others	1,787	14.8%



Cancers are most costly claims (about 75% of total OD past awards and 94% of cancer claims $ from fatalities). By injury year, cancer claims costs have almost doubled in last 5 years.

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Occupational Disease Funding

- Based on work-related costs only
- Funding considerations
  - Incurred claims vs workplace exposures
    - multiple exposures, including outside province
  - Distribution of costs at Schedule 1, class/sector and rate-group levels vs distribution of funding at Schedule 1 or sector levels
    - collective liability
    - claim cost attribution, subrogation, accountability
  - Include in new claims cost (NCC) component of premium rate vs a new (5th) component of premium rate
    - if 5th component in premium rate –> impact on remaining costs in NCC component and experience rating expected cost
  - Separate OD fund vs part of insurance fund
    - if separate fund established –> change in Act and extra costs for additional administrative and payment system procedures, and reporting requirements
    - if part of insurance fund, report experience gain/loss of OD component

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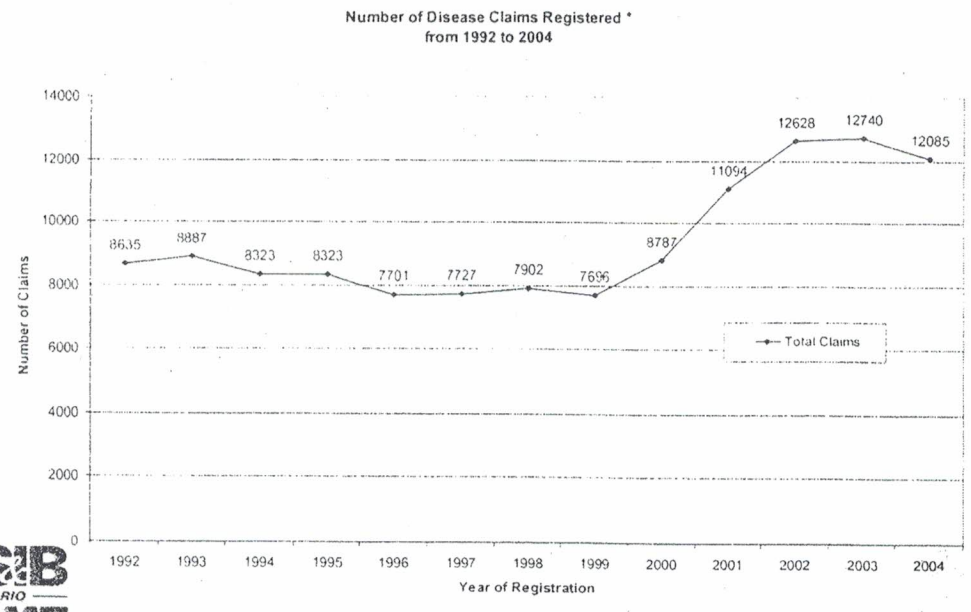
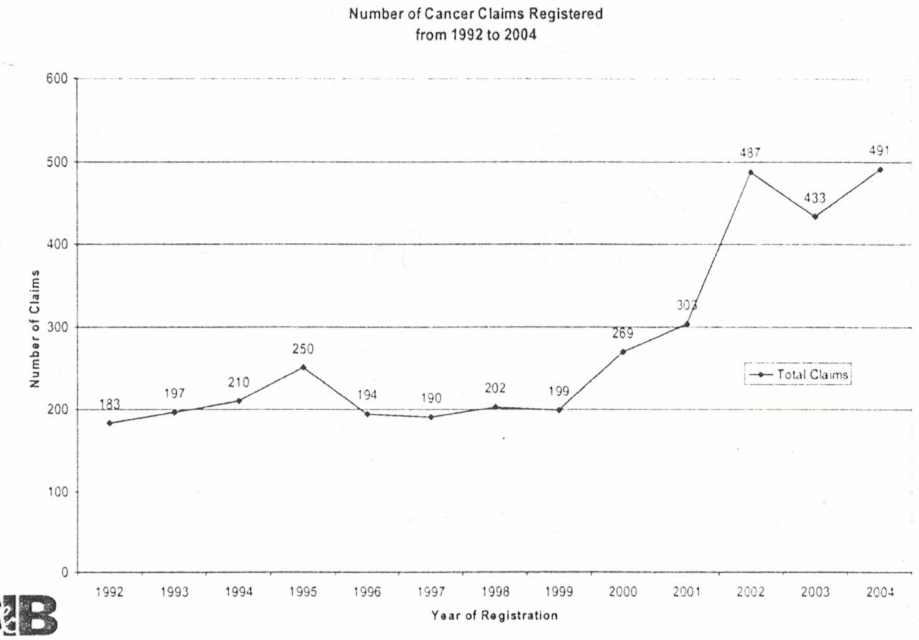
APPENDIX

Occupational Disease Claims Registered 1992 to 2004



Cancer Claims registered 1992 to 2004



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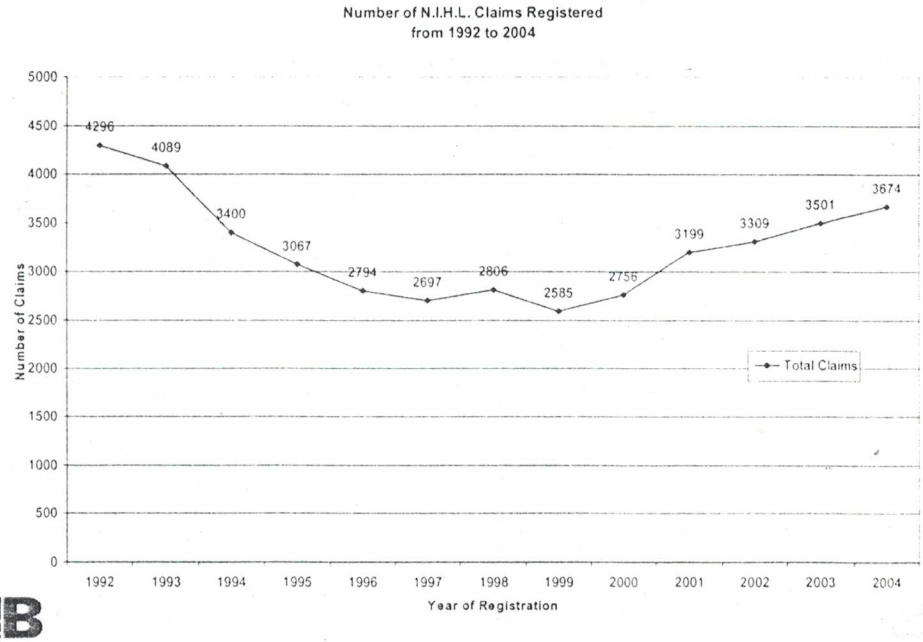
Noise Induced Hearing Loss Claims Registered 1992 to 2004



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Ontario Occupational Health Services Network

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Ontario Occupational Health Services Network

Occupational Disease Response Strategy 1998:

- To prevent occupational disease in the future, and
- Timely compensation and assistance to workers and survivors affected by occupational disease today

- **Three Pillar Approach**
  - Building the Foundation
  - Partnerships
  - Community Action

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Pillar 1 - Building the Foundation at the WSIB

- Quadrupled adjudication staff in Occupational Disease program to 77 claims adjudicators
- Staff trained to recognize occupational disease issues
- Re-engineered adjudication processes for occupational disease claims. This included:
  - Case conferences - including medical experts
  - Development of adjudicative advice series - e.g., COPD
  - Developed clear service delivery standards and performance expectations.
- Program for Exposure Incident Reporting (PEIR) created
- Occupational hygiene program to develop historical exposure matrix for adjudicating numbers of claims from individual workplaces and building trades

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Pillar 2 - Partnerships

- Occupational Health and Safety Council of Ontario (OHSCO) - working group on occupational disease
- Sector Interagency Groups with WSIB, MOL and SWAs and Minister's Action Groups - e.g., needlestick injuries /infectious diseases in health care and noise induced hearing loss in mining
- Occupational health curriculum for doctors, nurses, nurse practitioners
- WSIB Supports:
  - 5 Occupational Health Clinics for Ontario Workers (OHCOW)
  - Specialty Clinic in Occupational Disease at St Michael's Hospital
  - Centres of Research Expertise - musculo-skeletal injuries at Waterloo and occupational disease (non-malignant) at U of T
  - Cancer Care Ontario surveillance project
  - Research Advisory Council funding for occupational disease and hygiene studies

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Pillar 3 - Community Action

- WSIB invited to community and industry clinics:
  - Sarnia
  - Kitchener
  - Hamilton
  - Kingston
  - Peterborough
  - Owen Sound
- WSIB liaison offices in Sarnia, Kitchener and Peterborough
- Outreach to community physicians
- Community information sessions in Marathon and Manitouwadge with USWA and MoL to address miners' silica concerns

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Community Action (Cont'd) Establishing the Network

- As occupational diseases were uncovered in communities, primary care physicians needed more information about how to diagnose and prevent
- There were difficulties in linking expert resources to individual primary care physicians
- The MoH&LTC has been funding community health centres (CHCs) for 30 years, but more recently is moving to establish family health teams (FHTs) across the whole health system.
- FHTs will be groups of physicians and nurses, just like CHCs
- Therefore, in June 2003, WSIB brought representatives of the CHCs, the newly emerging FHTs, OHCOW, LAMP, St. Mike's, representatives of the Ministries of Health and Labour, to address the challenges and explore the concept of a network throughout Ontario

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Ontario Occupational Health Services Network (OOHSN)

- The OOHSN is comprised of the first tier of health care delivery, backed up by two tiers of consultants and experts
  - **Tier One: Primary Care Providers**
    - Family doctors, specialists – diagnosis and ongoing treatment
  - **Tiers Two and Three Support Primary Care Providers**
    - **Tier Two: Occupational Health Clinics – OHCOW and LAMP**
      - Focused on determining if diseases/injuries are caused by work exposure
      - Provide workplace hygiene and ergonomic assessments and advice on prevention
      - Do not provide ongoing treatment; refer back to family physician
    - **Tier Three: Specialized Diagnostic Services**
      - Specialty program at St. Michael's Hospital in Toronto serving the entire province with many occupational medicine specialists
      - Dedicated to handling complex cases and referrals from other specialists

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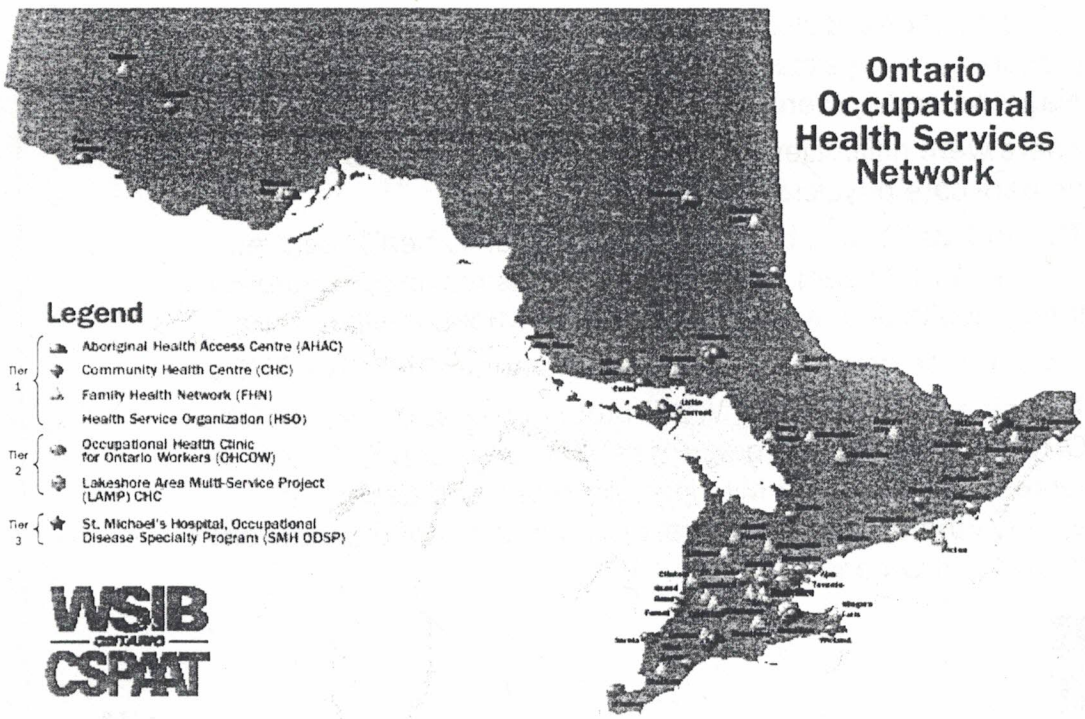
OOHSN: Three Tiers Working Together



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How the Network Partners Work Together

- **Primary care**
  - Education and awareness for physicians
  - Enabling occupational health best practices through education and tools
  - Links primary care to expertise below
- **Consultant and Specialist Back-up to Primary Care**
  - **Occupational Health Clinics**
    - Provides expert assessments for workers and workplaces
    - Provides occupational health promotion/prevention advice
    - Partners with primary care for better information and co-ordination
  - **Specialized Diagnostic Services**
    - Provides specialized diagnostic and treatment programs
    - Experts who can provide insight into complex cases
    - Provides most current, evidence-based best practices
    - Link with universities to provide training for occupational health experts
    - Telehealth/medicine; primary care physicians can be linked directly to an occupational physician or other experts at OHCOW, LAMP or St. Mikes

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Occupational Health Initiatives Developing as a Result of OOHSN

- **Prevention at the community level**
  - Based on earlier recognition of patient populations, CHCs in Merrickville, Kingston, Toronto, Niagara Falls and Sault St Marie are launching occupational health promotion projects aimed to reduce specific ODs like dermatitis, asthma and noise-induced hearing loss.
- **Prevention linkages**
  - Primary Care Teams are linking through nurses and health promoters with occupational health and safety system partners at the community level

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Occupational Health Initiatives Developing as a Result of OOHSN

- **Sault Ste. Marie & District Group Health Association** - the Group Health Centre – provides 75% of primary care in region
  - 3 month project to identify the occupational health needs, resources, with Network partners, design and deliver a plan to reduce occupational disease in SSM, focus on noise induced hearing loss
- **Niagara Family Health Network**
  - Focus on workplace dermatitis and its prevention
- **St. Michael's** helping 7 primary care initiatives to develop best practices - develop standards for delivery of occupational medicine in Network
- **North Kingston CHC**
  - Mapped small employers in North Kingston and developed outreach strategy to assist in the prevention of occupational asthma

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New Initiative Grants to the Ontario Occupational Health Services Network (2005)

- Grant to St. Mikes Specialty Clinic
  - (Information package development) $180,000
- Grants to Primary Care Pilots $450,000
- Grants to Universities (training physicians in occupational health - University Champions) $210,000
- Grants to Universities (to provide occupational health experience for nurses - Nursing Externships) $115,000

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Program for Exposure Incident Reporting (PEIR)

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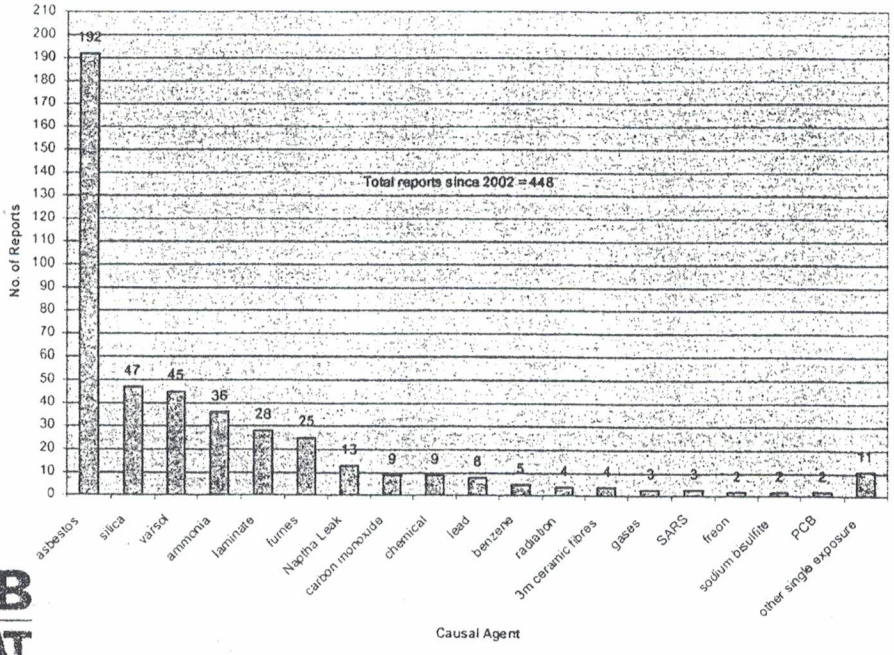
Program for Exposure Incident Reporting Reports Construction Sector (March 2005)



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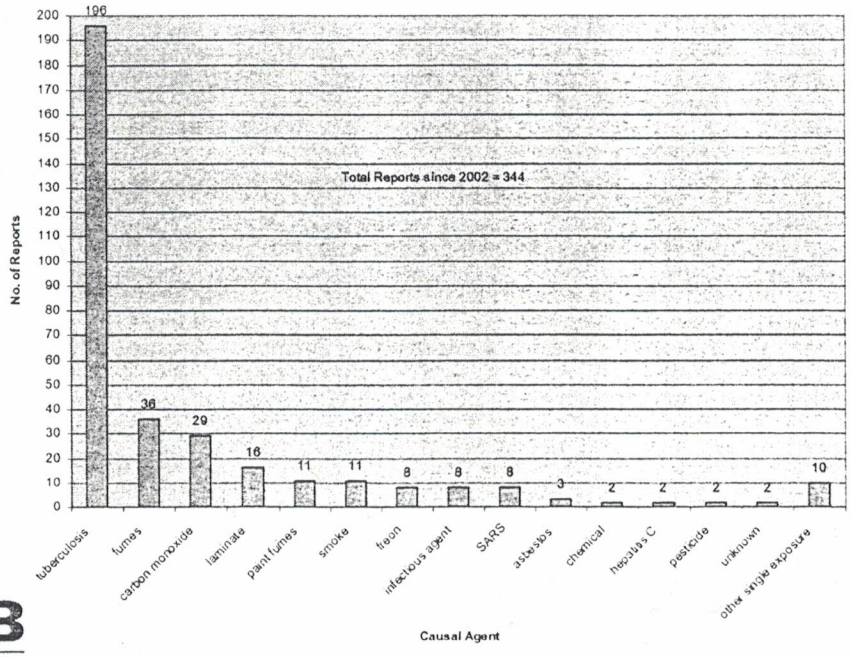
Program for Exposure Incident Reporting
Reports from Services Sector (March 2005)



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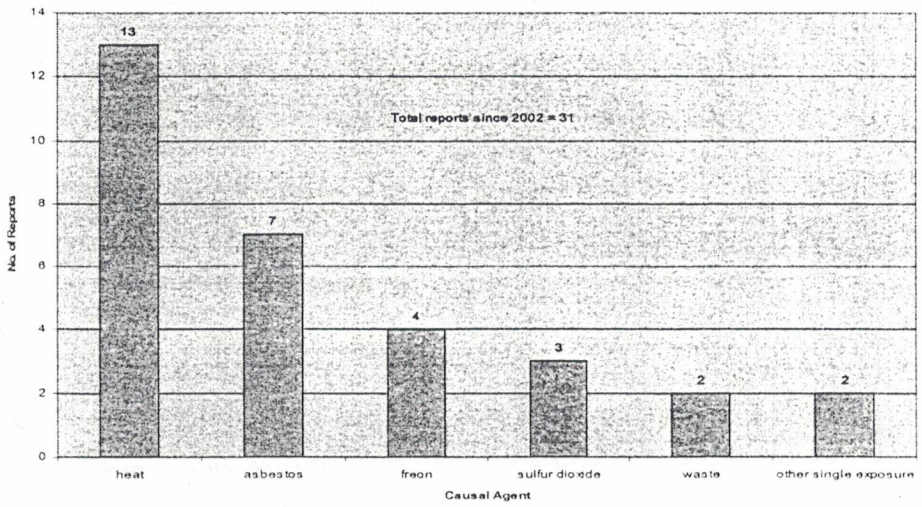
Program for Exposure Incident Reporting
Reports from Primary Metals Sector (March 2005)



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