A CALL FOR PRESUMPTIVE LEGISLATION:

POST-TRAUMATIC STRESS DISORDER, OCCUPATIONAL STRESS INJURIES, AND THE WELL-BEING OF THE WORKFORCE

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EXECUTIVE SUMMARY

The Newfoundland and Labrador Association of Public and Private Employees, NAPE, represents over 25,000 public and private sector employees in Newfoundland and Labrador.

Given the scope of its representation, NAPE is particularly well positioned to explain and advocate for the need for inclusive and comprehensive presumptive legislation that covers all workers in the province.

In the current position paper, we unpack the optimal parameters for presumptive legislation and explain why the proposed legislation would best meet the needs of workers and the greater population of Newfoundland and Labrador.

After a brief outline of available evidence and options, we propose a progressive and fair approach to presumptive legislations that responds to the needs of the people of Newfoundland and Labrador and positions the province as a leader in the field.

Indeed, we propose that Newfoundland and Labrador create the most comprehensive and inclusive legislation enacted in Canada to date.

Specifically, we recommend presumptive legislation that:

1. Includes mental health injuries resulting from chronic stress, either tied to operational or organizational stressors in the course of employment.

2. Recognizes that all psychological injuries, including chronic stress resulting from work-related activities, are occupational illnesses which can be caused by cumulative as well as single stressful events.

3. Gives the benefit of the doubt to the worker when a claim for compensation has been made, such that workers will not have to prove that the cause of their diagnosed disorder was their work to receive compensation benefits.

4. Limits the rebuttable presumption for any diagnosed psychological injuries for all workers exposed to traumatic events during the course of their employment to very specific ambiguous cases where there is ambiguity about the diagnosis being a major mental disorder, but not with regards to whether the trauma is directly or indirectly impacted by the worker's employment, or concerning the credentials of the professional making the diagnosis.

5. Recognizes and includes under presumptive coverage that work experiences wrap around into events and experiences outside of the work, and that workplace trauma can have direct or indirect implications for experiences of cumulative trauma, acute incidents, and chronic stress that individually and collectively can comprise mental health.

6. Covers mental health injuries that occurred prior to the date of the Bill's Proclamation.

In addition, we recommend that the government establish in compensation and health and safety law an employer's responsibility to develop an integrated and systemic approach to the prevention of stress and psychological injuries.

Further, we recommend this approach be grounded in the principles and procedures outlined in the National Standard of Canada on Psychological Health and Safety in the Workplace (CSA, 2013). Along with requiring education and various kinds of supports such as debriefing procedures and counselling options, employers in consultation with workers would establish health and safety committees, stakeholder representatives and unions, and primary prevention policies and programs all orientated toward creating healthier workplaces for employees.

INTRODUCTION

As one of the last provinces to do so, there is a clear need in Newfoundland and Labrador to introduce presumptive legislation for work-related stress injuries. Within workers' injury compensation law, the term Presumptive Legislation refers to the acceptance of injury claims based on a medical or psychiatric diagnosis without claimants having to prove the link between the disorder and a workplace event or exposure. While the benefit of doubt is given to the worker, the presumption is rebuttable in the sense that evidence can be presented to demonstrate a non-worked-related cause. With respect to legislation covering stress-related work injuries, the presumption policy in Canada has revolved mainly around the diagnosis of post-traumatic stress disorder (PTSD) within particular occupations believed to have a greater risk of PTSD. However, more progressive provinces have expanded their definitions to include other diagnoses and/or a wider spectrum of occupational groups—which we advocate is the preferred option for Newfoundland and Labrador.

In November 2017, the Minister responsible for both Workplace NL and the Public Procurement Agency, the Honourable Minister Sherry Gambin Walsh, requested a review of the "mental stress coverage in the worker's compensation legislation". The leader of the opposition party, Paul Davis, has repeatedly called for change to the mental health policy (Policy EN-18) to ensure that 'first responders' who experience occupational stress injury or trauma are covered (Davis, 2018). Although he uses the term 'first responders', Davis focuses his advocacy for a presumptive clause to the larger groups of public safety employees, firefighters, paramedics and police officers as well as correctional officers, dispatchers, support staff, health professionals, social workers, and other groups that can and do experience work-related trauma and occupational stress injuries. While appreciative of the expanded definition of occupational groups, the Newfoundland and Labrador Association of Public and Private Employees (NAPE) advocates that all workers, regardless of occupation, should be covered under a presumptive clause – not just public safety professionals or first responders.

Employees represented by NAPE cross a variety of occupational groups which interact with the public to diverse degrees and bear varying exposure to risk as part of their occupational experience and work environment. Within the public sector, NAPE members include those in educational support services and staff, correctional services, core government, hospital support, nursing and paramedicine, home care, laboratory and x-ray, social services, municipalities, highway snow clearing and maintenance, marine and air services, and group and youth care homes, among others. Private sectors employees represented are also varied and include those employed in companies such as Brinks Canada Limited, Canadian Blood Services, Country Ribbon Incorporated, Karwood Retirement Retreat, Labatt Brewery, Public Service Credit Union, Purity Factories Limited, and Safety Services Newfoundland and Labrador.

Although compensation policy needs to recognize that all workers may experience acute and unexpected trauma leading to mental health injury, there are particular occupational sectors represented by NAPE that are more vulnerable to mental health injury than others in light of their occupational expectations and responsibilities (Carleton et al., 2017a; Gates, Fitzwater, & Succop, 2003; Gillespie, Gates, Miller, & Howard, 2010; Gillespie, 2008; Papathanassoglou & Karanikola, 2018). These employees include public safety personnel such as those working in institutional corrections (e.g., correctional officers), community corrections (e.g., group home staff, probation), paramedics (e.g., EMTs), fire (e.g., volunteer or non), public security (e.g., sheriffs, conservation and wildlife officers), private security (e.g., Memorial University of Newfoundland Campus Security, Brinks operators), and those that support public safety personnel (e.g., court clerks, dispatchers, transcriptionists, administration) as well as occupations providing social services (e.g., social workers, health care staff),

physical health services (e.g., nurses, physicians, emergency response personnel, home care), and mental health services (e.g., psychiatric staff) or a combination of such (e.g., occupational health and safety officers). Those working in factories or other facilities may also have elevated risk (e.g., poultry/slaughterhouse workers; see Dillard, 2008). In recognizing the diverse potential for exposure to trauma, cumulative or acute, and other occupational realities that can result in mental health or occupational stress injuries, it is essential that provincial legislation surrounding compensation be inclusive of all workers and flexible enough to cover the variations in occupational experiences and environments—each with its own operational and organizational stressors (see NAPE Constitution, 2017; Ricciardelli, 2018).

The need for comprehensive provincial legislation that covers mental health injury is of particular importance for assuring equitable coverage and rights across all NAPE members. Currently, within NAPE, each bargaining unit has its own collective agreement which translates to significant variations in services and rights. Beyond the Employee Assistance Programs (EAP), few collective agreements provide substantial direct attention to mental health issues, while provisions dealing with injury are largely devoted to physical injury, in terms of pay, return to work, and short-term leave, again with few directing specific attention to mental health injury or stress. Moreover, mental health injury that can often result from physical injury, violence or trauma experienced in the course of occupational work is largely omitted from most collective agreements.

This is clearly not a problem unique to NAPE as most collective agreements have limited provisions for mental health injuries. However, for most non-unionized workers, and certainly those workers in more precarious forms of employment, there is little hope of gaining meaningful supports and rights. Overall, the responsibility falls to the province to recognize the universal yet unique needs of the full spectrum of workers for compensation for mental health injury, including occupational stress injury.

Unlike Davis' (2018) recommendation to accept the "best practices" as established by "the provinces of Nova Scotia, New Brunswick, Ontario and Alberta as the best course of action" we suggest that Newfoundland and Labrador should adopt legislation similar to that passed in Saskatchewan, which is the most inclusive legislation in that it covers ALL workers and the most comprehensive legislation in that it covers all forms of psychological injury in addition to PTSD.

We also suggest that Newfoundland and Labrador can improve on existing legislation to create the optimal policy for the people of the province and, as such, become a national leader in compensation legislation and progressive mental health policy.

Our objectives in the position paper are threefold:

1) To outline the need for the legislation, drawing on national information about occupational stress injury and mental disorders as well as provincial data about employee needs

2) To explain the current compensation legislation related to mental injury in the province and to reflect on how other provinces have implemented presumptive legislation; including both their successes and their shortcomings

3) To draw from what has been done in other provinces to present a list of considerations to inform the development of the 'best' presumptive legislation in Newfoundland and Labrador; a legislation designed to meet the needs of the population

UNDERSTANDING OF NEED

Research undertaken by the Canadian Institute for Public Safety Research and Treatment (CIPSRT) empirically supports and extends the claims put forth by Paul Davis that all emergency response and public safety personnel should be included, going beyond the typical triad of first responders (Fire, Paramedics and Police). In providing an empirically sound, and defensible assessment of current symptom prevalence for a range of mental disorders or operational stress injuries (OSIs) among Canadian Public Saftey Personal (PSP), Carleton and colleagues (2017a; 2017b) confirm that PSP symptom prevalence are much higher than those of the general population (see also Oliphant, 2016; Richardson, Darte, Grenier, English, & Sharpe, 2008).

The study, a response to the paucity of Canadian Public Safety Personnel mental health disorder research, was designed by academics from across the country in consultation with members of the CIPSRT Public Safety Steering Committee (PSSC) who provide national representation of Canadian PSP organization leadership. In March of 2017, the PSSC included representatives from the Canadian Association of Chiefs of Police (CACP), the Canadian Association of Fire Chiefs (CAFC), the Canadian Association for Police Governance (CAPG), the Canadian Police Association (CPA), the Correctional Service of Canada (CSC), the International Association of Firefighters (IAFF), the Paramedic Association of Canada (PAC), the Paramedic Chiefs of Canada (PCC), the Royal Canadian Mounted Police (RCMP), and the Union of Safety and Justice Employees (formerly the Union of the Solicitor General Employees; USGE).

The survey was administered from September 2016 to January 2017 to correctional service employees (community, administrative, and institutional), dispatchers/emergency call centre operators, firefighters (including volunteers), paramedics (e.g., EMTs, EMS personnel), and police (e.g., municipal, provincial, federal, border services, first nations), as well as the persons (civilian or uniformed) who support PSP (n=5813).

As such, several occupational groups represented by NAPE in Newfoundland and Labrador were included in this survey.

Using logistic regression models and post-hoc regression analyses, the prevalence study results reveal that 44.5% of Canadian PSP screened positive for one or more mental health disorders. The self-reported positive screens were much higher than the diagnosed epidemiological rate of 10.1% for any mental disorder in the general population (Statistics Canada, 2012).

Approximately 23% of PSP participants screened positive for posttraumatic stress disorder, 26% for major depressive disorder, 15% for generalized anxiety disorder. There were also statistically significant differences across PSP categories; specifically, correctional workers, RCMP (i.e., federal police), and paramedics were more likely to screen positive for most mental disorders than municipal/provincial police or firefighters.

The table below shows the prevalence rates of mental disorder symptoms among Canadian public safety personnel:

Positive Screening Percentages for Recent Mental Disorders Based on Self-Report Measures

	Gen	Total Sample	Mun /Prov Police	RCMP	Correctional Workers	Fire	Paramedics	Call Centre
PTSD	**~1.1-3.5**	**23.2**	19.5[d]	30.0[a]	29.1[a]	13.5[b]	24.5[c]	18.3[d]
Major Depressive Disorder	**~7**	**26.4**	19.6[b]	31.7[a]	31.1[a]	20.2[b]	29.6[a]	33.2[a]
Gen. Anxiety Disorder	**~3**	**18.6**	14.6[b,c]	23.3[a]	23.6[a]	11.7[b]	20.5[a]	18.0[a,c]
Social Anxiety Disorder	**~6.7**	**15.2**	10.0[b]	18.7[a]	18.3[a]	11.0[b]	20.0[a]	16.9[a]
Panic Disorder	**~1.6**	**8.9**	5.9[b]	12.0[a]	12.2[a]	5.1[b]	10.3[a,c]	7.6[b,c]
Alcohol Use Disorder	**~7-25**	**5.9**	5.8[c]	3.9[a]	6.8[b,c]	8.0[b]	6.1[b,c]	7.2[b,c]
Any other self-reported[1]		**1.7**	–[5c]	1.6[a]	4.0[b]	–[5a,c]	1.9[a]	–[5a,b,c]
Any mood disorder[2]		**29.0**	21.3[b]	34.7[a]	35.3[a]	22.4[b]	32.0[a]	36.1[a]
Any anxiety disorder[3]		**30.3**	23.7[c]	37.3[a]	37.9[a]	19.4[b]	33.9[a]	32.2[a]
Any mental disorder[4]	**10.1**	**44.5**	36.7[b]	50.2[a]	54.6[a]	34.1[b]	49.1[a]	48.4[a]
	Mental Disorder Count							
0		**58.2**	65.9	52.7	48.4	67.7	52.9	55.7
1		**15.1**	13.8	14.8	16.7	13.2	19.4	13.9
2		**8.7**	8.0	8.1	10.9	8.7	7.4	12.4
3 or more		**18.0**	12.3	24.4	24.0	10.4	20.4	17.9

Carleton and colleagues (2017a) also found that public safety personnel reported both higher rates of chronic pain and the pain lasting years longer on average, in comparison to rates found in the general population (see tables for self-reported chronic pain prevalence percentages and locations among PSP, and their perceived cause of the chronic pain).

Chronic Pain Prevalence Percentages and Locations[1,2]

	Gen ~	Total Sample	Mun /Prov Police	RCMP	Correctional Workers	Fire	Paramedics	Call Centre
Any Chronic Pain	**18.9**	**40.2**	35.9	43.4	**45.4**	35.3	44.1	36.7
	Chronic Pain Locations							
Lower back	**22.3**	**24.0**	22.1	26.5	**26.1**	18.4	28.9	20.2
Shoulder	**6.1**	**17.6**	14.7	19.6	**18.5**	15.7	21.5	15.3
Neck	**5.4**	**16.8**	15.4	17.8	**21.0**	12.3	18.1	17.3
Arm	**2.2**	**11.1**	10.6	12.5	**12.6**	6.7	12.5	13.3
Leg	**7.2**	**14.3**	12.7	15.7	**16.5**	11.3	15.0	17.3
Hand	**2.8**	**10.9**	9.8	12.0	**13.6**	7.2	12.0	13.3
Foot	**3.4**	**12.6**	11.8	14.9	**15.4**	7.6	12.2	13.7
Headaches	**6.2**	**15.2**	14.4	16.0	**18.5**	9.1	18.8	15.7
Other	-	**7.1**	5.7	8.8	**6.8**	5.2	9.1	6.5

1 PSP indicates public safety personnel; RCMP, Royal Canadian Mounted Police.
2 Nonmutually exclusive chronic pain locations.
3 Only calculated for respondents who reported experiencing any chronic pain, more days than not, that lasted longer than 3 months.
Different numbered superscripts indicate that public safety personnel categories differ from one another at 0.05 only. Differences across categories were tested using logistic regression models for prevalence. *P ≤ .05; **P ≤ .01; ***P ≤ .001

Perceived Cause of Chronic Pain[1,2]

	Total Sample	Mun /Prov Police	RCMP	Correctional Workers	Fire	Paramedics	Call Centre
Injury related to active duty	**40.2**	39.6	54.4	24.5	29.2	50.5	11.0
Injury related to work other than active duty	**9.6**	10.2	7.3	11.6	11.6	9.4	7.7
Injury not related to work	**16.2**	18.9	8.5	20.8	19.4	14.8	27.5
Non-injury-related disease (e.g., osteoarthritis)	**11.2**	10.0	7.8	14.8	11.3	12.1	23.1

Unfortunately, such recent, robust, and empirically based measures of mental disorders and wellbeing among other occupational groups in Canada represented by NAPE are not available, to our knowledge. Thus, data presented here are largely limited to what is available, that of PSP groups. Future research, however, is intended on other occupational groups represented by NAPE.

Concerning also are the rates for suicidal ideation and planning documented by Carleton and colleagues (2017b). A history of suicidal attempts was reported less frequently by municipal, provincial police, RCMP, and firefighters in comparison to rates reported among the general population and military, while correctional workers, paramedics and call centre operators/dispatchers more frequently reported a history of suicidal attempts in comparison to rates reported by general population and military samples (Carleton et al., 2017b).

Overall, over the past year, 10.1 percent of the sample reported suicidal ideation, 4.1 percent reported suicidal planning, and 0.3 percent suicidal attempt(s). While, lifetime suicidal ideation was 27.8 percent, suicidal planning was reported at 13.3 percent and 4.6 percent of PSP had attempted suicide. The highest reported rates for lifetime suicidal ideation were among paramedics at 41.1 percent, then correctional workers at 35.2 percent, and 28.7 percent for call centre operators.

The table below shows suicidal ideation, plans, and attempts among Canadian PSP:

Prevalence of Past-Year and Lifetime Self-Reported Suicidal Behaviour

	Gen	Total Sample	Mun /Prov Police	RCMP	Correctional Workers	Fire	Paramedics	Call Centre
	Past-Year							
Suicidal Ideation	**~5.8**	**10.1**	8.3	9.9	11.0	8.5	15.4	9.5
Suicidal Planning	**~2.2**	**4.1**	3.4	4.1	4.8	2.7	7.1	2.5
Suicidal Attempt	**~<1.0***	**0.3**	0.2	0.2	0.4	0.3	0.9	0.4
	Lifetime							
Suicidal Ideation	**~11.5-14.1**	**27.8**	20.5	25.7	35.2	25.2	41.1	28.7
Suicidal Planning	**~4.1-5.1**	**13.3**	8.9	11.2	20.1	8.8	23.8	13.6
Suicidal Attempt	**~1.0-4.0***	**4.6**	2.1	2.4	8.1	3.3	9.8	8.6

MENTAL HEALTH POLICY AND COMPENSATION LEGISLATION IN NEWFOUNDLAND AND LABRADOR

Current compensation legislation in Newfoundland and Labrador presents substantial barriers to workers seeking compensation assistance for workplace psychological injuries or mental disorders. Prior to March 2018, only medically diagnosed acute psychological injuries arising from a demonstrable workplace trauma were compensable and only if "medical evidence from the treating physician" confirms the mental stress resulted "from the traumatic event" (WorkplaceNL, EN-18, Revision #1, 2016). This policy, introduced in June 1999, basically limited "coverage under the Workplace Health, Safety, and Compensation Act (the Act) to mental stress that develops as an acute reaction to a sudden and unexpected traumatic event occurring in the course of employment" (WorkplaceNL Bulletin, March 2018). Said another way, only acute traumatic events that were considered beyond the scope of the inherent risks tied to day-to-day job expectations were potentially covered by the Act and only if there was no reason to attribute the event as "traumatic to a worker because of a pre-existing psychological condition" (EN-18, Revision #1, 2016). The act also excluded claims based on chronic and cumulative experiences of trauma or where the claimant experienced a gradual onset of symptoms of mental stress.

Current rates of successful compensation claims in Newfoundland and Labrador (as well as Nova Scotia) suggest that the vast majority of workers with work-related psychological disorders are either not filing for compensation or are unsuccessful when they do (Aversa & Hall, forthcoming). To exemplify, in Newfoundland and Labrador, from 2006-2014, in a comparison of police officers, correctional officers, nurses and social workers, only nine stress claim external appeals were accepted for 2006, 2007, 2008, 2010, 2013 and 2014. None of the successful claimants were from corrections or policing while recent data on both police and corrections suggests very high rates of PSTD and other disorders in these two occupations (Carleton et al., 2017a; 2017b; Ricciardelli et al., 2018). Limited and unofficial statistics provided by NAPE reveal that a correctional officer represented in the last few years had a claim for PTSD coverage denied by WorkplaceNL and they too withdrew after the first level of the appeal process for a different reason. Finally, a youth home worker did have a PTSD claim accepted by WorkplaceNL, however, it was appealed by the employer numerous times. This led to WorkplaceNL discontinuing their coverage which was later reinstated after, with NAPE support, an external appeal hearing (NAPE communication, May 2, 2018).

The revised Stress policy, effective March 2018, expands the scope of legislative coverage by extending the definition of a traumatic event beyond one acute incident. Now, cumulative exposure to traumatic events in the workplace and traumatic events that are not 'horrific', including threats where physical violence is believed to be a plausible outcome, are to be considered when assessing mental stress claims. In addition, the requirement for an event to be outside the inherent risks of the job is removed, although the event must occur during the course of employment (i.e., not outside of work).

The onset of symptoms after the event(s) is more realistic, as delayed onset of symptoms is now acceptable for compensation eligibility; however, persons who experience a gradual onset of symptoms remain ineligible.

Perhaps relatedly, diagnostic requirements for compensation eligibility have become streamlined, such that prior to submitting a traumatic mental stress claim, the claimant must receive a clinical diagnosis using the criteria put forth in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) of Posttraumatic Stress Disorder or associated conditions.

The diagnosis must come from a physician, nurse practitioner, psychologist or psychiatrist, however, Workplace NL retains the ability to seek further assessment, from a psychiatrist or psychologist, in "complex cases" (Workplace NL, 2018a, Appendix 1). Thus, to be eligible for compensation, workers are still required to demonstrate that a traumatic event(s) occurred at work and that the diagnosed psychological problem is caused at least in part by the workplace event.

As such, if a worker's history indicates the slightest past or current mental health issues, these issues can be taken as evidence to exclude or to greatly reduce the available compensation.

Although these revisions show progress, our assessment is that they are insufficient and still fail to meet the needs of all workers. By requiring that workers prove specific workplace links to their injury, whether a single event or cumulative events, they place unnecessary harm on the worker seeking compensation, discouraging reporting and early intervention, while also sustaining the stigma for claimants or persons experiencing trauma in any of its forms.

PRESUMPTIVE LEGISLATION: REFLECTING ON WHAT HAS BEEN DONE IN DIFFERENT PROVINCES

Stress-related presumptive legislation in Canada was first introduced in the province of Alberta on December 10, 2012, covering police officers, firefighters and paramedics for diagnosed PTSD (WCB Alberta, 2018). The legislation was similar to many laws emerging in other countries such as the United States and Australia that emphasize covering the triad of so-called 'first responder occupations' based on arguments that incumbents of said positions had higher rates of traumatic experiences and PTSD. The evidence was and remains mixed in supporting those claims as exposure to trauma and symptoms consistent with PTSD and other mental disorders are found across other occupational groups outside of this triad of first responders (Carleton et al., 2017a; 2017b; Ombudsmen Ontario, 2012).

Addressing this controversy about occupational specific risk, Manitoba was the next province to introduce legislation in June 2015 (WCB MB, 2015). However, the law extended PTSD presumption to all workers – that is, as long as any worker was exposed to a particular traumatic work related event and/or cumulative traumatic events and could demonstrate a PTSD diagnosis, the link would be presumed unless proven otherwise by the employer or commission (WCB MB, 2016). In a review of compensation statistics, Manitoba found that 89 percent of the 2000-2014 disallowed PTSD claims were from occupations other than the police, firefighters and paramedic, including child protection workers, social workers, nurses, institutional correctional staff, probation and parole, and mental health workers. Manitoba's

PTSD legislation was also part of a Five-Year Plan for Workplace Injury and Illness Prevention launched in 2013 which committed Manitoba to improving supports, resources and coverage for workers who routinely face traumatic events as part of their work in an effort to reduce work-related PTSD (WCB MB, 2016).

Unfortunately, rather than following Manitoba's lead, a year later on April 5, 2016, Ontario passed Bill 163, "Supporting Ontario's First Responders Act, which again limited PTSD "presumptive coverage" to selected occupations adding correctional officers and youth workers to the usual first responder triad of police officers, firefighters, and paramedics. Unions representing excluded groups, with particular reference to nurses, criticized the legislation for failing to follow the example set by Manitoba and include all workers in the legislation (ONA). These invaluable concerns were and are backed by considerable evidence that occupations other than police, paramedic and fire can have high rates of trauma and high rates of PTSD (Skogstad et al., 2013; Carleton et al., 2017a; 2017b; Ricciardelli et al., 2018). As previously noted, we reemphasize here that a range of workers in health care, social services, retail, child protection, and other sectors who interact with the public or work in precarious environments can be regularly exposed to disturbing situations and materials, while also facing the risk of workplace violence (O'Brien, 1998; Ricciardelli, 2018; Ricciardelli et al., 2018).

Reflecting some of these concerns and a concerted effort by unions and professional associations, Bill 151, a private members bill to further amend the presumptive legislation, was introduced Ontario in September 2017, to include presumptive coverage for PTSD for probation and parole officers, bailiffs, regulated health professionals, and front-line workers and healthcare professionals who are involved in the delivery of healthcare services (Legislative Assembly of Ontario, 2017). However, fully inclusive coverage across all worker remains only a hope in Ontario.

While Ontario continues to debate whether to extend PTSD coverage to other occupational groups, the province of Saskatchewan passed presumptive legislation in December, 2016 which not only included all workers but also covered all trauma-related psychological injuries including depression and anxiety disorders (Saskatchewan WCB, 2016). This is particularly important because exposure to trauma does not only correlate with PTSD diagnoses, it can have other co-morbid or independent diagnoses that are just as debilitating and negatively impact employee wellbeing (Auxemery. 2017; Gnam, 1998). The original proposed legislation, introduced as a private members' bill by the NDP, was initially limited to only PTSD and first responders. The Saskatchewan Minister of Labour argued that although most of the trauma cases may be expected among first responders, it was decided after looking at other jurisdictions and the evidence that there was no justification for defining trauma around one particular set of occupations (Canadian Press, 2016; Saskatchewan, 2016). Moreover, it was contended that changes made to the prior legislation that made coverage expand across all workers would not require any increases in employer contributions, which was then explained in a Saskatchewan government communication:

While the majority of workers experiencing such injuries are first responders such as police officers, firefighters and medical professionals, the legislation applies to all workers in Saskatchewan. The government recognizes that anyone can be exposed to traumatic situations at work and that seeking help for psychological injuries can be daunting. The legislation was changed to reduce barriers and expand coverage (Saskatchewan, 2016).

The public statements made by the Saskatchewan government emphasized that a key rationale was to reduce the stigma of reporting trauma-related mental health injury so that more people will report and seek help (Saskatchewan, 2016). This particular argument about the need to reduce the stigma to increase reporting and early intervention, is essential to understanding the value of presumptive legislation which extends coverage to all workers and stress injuries.

While Saskatchewan's move suggested a welcome shift towards including all workers, more recent developments in the Atlantic Provinces have, unfortunately, gone in the other direction; appearing more regressive rather than progress. Indeed, New Brunswick, Nova Scotia and Prince Edward Island all introduced amendments in 2016 and 2017 that cover first responders and other selected occupations rather than inclusive coverage for all workers. A disheartening feat that we advocate against in Newfoundland and Labrador. Indeed, why should any worker, for any reason, be considered less worthy of presumptive compensation in comparison to another?

SUMMARY: PROBLEMS WITH MOST PROVINCIAL PRESUMPTIVE LEGISLATION

Provincial debates concerning presumptive legislation have revolved around two central issues:

1) restricting presumption to PTSD alone; and

2) limiting the presumption to selected occupations.

There is limited evidentiary basis for these limitations and quite a substantial body of evidence supporting the need for the more open form of legislation as evident in Saskatchewan. We have presented considerable evidence-based empirically sound support that occupations other than police, paramedic and fire can experience trauma and have diagnosis or symptoms consistent with PTSD or other major mental disorders (O'Brien, 1998; Skogstad et al., 2013). Moreover, as many provincial jurisdictions have acknowledged in recent years within reforms to health and safety legislation, a key and often too common source of traumatic stress comes from workplace harassment, threats of violence and bullying, and other organizational stressors. For example, in a recent survey of over 1000 Canadians by the federal government, 42 percent reported experiencing harassment in the last two years, while 12 percent and 14 percent experienced sexual harassment and violence respectively over that time period (Employment and Social Development Canada, 2017). While not all of these workers went on to develop PTSD or other disorders, 61 percent indicated that they did not feel properly supported in dealing with the stress and thought more counselling services were needed. Researchers have also constructed a large body of empirical and clinical research documenting that harassment, sexual harassment and bullying can lead to significantly higher levels of PTSD (Avina & O'Donohue, 2002; Birkeland, Nielsen, et al., 2015). Particularly interesting is a study of United States female military personnel in the Persian Gulf War, where the researchers found that the experience of sexual harassment had a larger impact on PTSD symptoms than combat exposure (Wolfe et al., 1998). Such findings are not surprising given that organizational stressors have been documented to be more common and impactful than operational stressors in many occupations (see Ricciardelli, 2018; Ricciardelli, Power, & Simas Medeiros, forthcoming). While most provinces now require specific workplace policies aimed at addressing these issues, the more restrictive forms of presumptive legislation fail to recognize the severity and scope of said problems when presumption clauses are restricted to select occupations and to PTSD.

Regarding the latter, the exclusive coverage of PTSD, researchers have demonstrated that PTSD is just one of several possible psychological disorders arising from trauma, including major depressive disorder, anxiety disorder, and panic disorder (Ben-Ezra et al., 2008; Norris, 1992). As one clinical psychiatrist put it, "although post-traumatic stress disorder (PTSD) remains the most widely known disorder, chronic post-traumatic psychiatric disorders are many and varied" (Auxemery, 2017, p.ii). Included in this list are several types of phobias or anxiety disorders and the more serious psychotic disorders.

An additional problem with most presumptive laws in Canada is that they are limited to acute traumatic events, whether single or cumulative, ignoring the much larger problem of chronic workplace stressors. Evidence suggests that chronic workplace stresses may be responsible for far more health and psychological health problems among workers than acute trauma, which bears many costs to the workforce, employer and employees (Shain, 2009; OPSEU, 2016). It also must be acknowledged that the key source of stress for many of the first responders and other groups covered under current presumptive legislation may not be the actual traumatic event itself but rather the uncertainty of when such events will occur if ever. We should be asking if police officers, social workers, correctional workers, retail clerks, miners, and construction workers, among others, are getting sick from work not just because of a particularly traumatic experience but also because of the chronic worry and strain of the everyday unpredictable and perhaps routine aspects of their job. A question here to reflect on then is, should the chronic stress tied to occupational uncertainty related to trauma also be reflected in legislation? At what point does the chronic stress represent a cumulative experience resulting in mental health injury in itself? And should it qualify under the presumptive clause?

Finally, we also must recognize the omission of prevention in most discussions concerning PTSD and presumption. Most often (e.g. Ombudsman Ontario Report, 2013), the high risk of trauma is largely accepted as a fact of life in so-called high risk occupations like policing (Ombudsman, 2013). The assumption that the work environment has fixed exposures to traumatic incidents, although entirely sensible given the 'nature of the jobs', reduces the prevention discourse to questions of post-trauma early intervention and treatment. The tendency to focus on individual coping is also grounded in the "psychiatrization of PTSD," where the problem is not the context and the resources in which events are addressed, but rather, the problem is assumed to be in the individual and the individual's response (Davis, 1999).

In effect, within the PTSD discourse, prevention is understood as the strengthening of the first responders' capacity to weather the effects of traumatic stress – which is essentially a reactive and individualized approach. In the Ontario Ombudsmen report, for example, it is notable that while there was one limited discussion of reducing police exposure to stress through job rotation, this did not make it into the recommendations. Also, notably absent from the report and its recommendations was any attention to management structures or practices despite the fairly significant literature on the connections between stress, police culture, and other work characteristics such as military hierarchy, supervisory practices, and lines of authority (Murphy & McKenna, 2007; Padyab et al., 2014).

RECOMMENDATIONS FOR PRESUMPTIVE LEGISLATION IN NEWFOUNDLAND AND LABRADOR

In making recommendations for the parameters of the presumptive clause in legislation in Newfoundland and Labrador, we need to recognize a variety of different elements and consider these elements in the language and scope of coverage of the legislation.

First, in as much as traumatic events can occur in virtually any work setting, it is patently unfair from a worker rights perspective to privilege some workers over others, just as it is unfair to limit compensation to workers who are "lucky enough" to develop PTSD as opposed to other possible disorders which are just as debilitating. However, it is not just a question of what is fair, there is also a need to recognize prevention and early intervention.

Our second point, then, is that while the risk of psychological trauma may not be as great across all occupational groups, the same cost benefits for

presumptive legislation apply to all workers in as much as recovery depends on early and effective intervention, both of which are much less likely if workers are unable to access financial compensation and psychological supports without a long drawn out and often stressful process of demonstrating a work cause (Lippel & Sikka, 2010; Lippel, 1990; McFarlane & Bryant, 2007; Shain, 2009). Thus, the process of accessing support cannot be a barrier to access or a source of incredible stress. Said another way, accessing services when a person is already mentally vulnerable should not have the potential to make an individual feel even worse about themselves and their situation.

Third, mental health injury stigmas are a very real barrier to reporting and seeking help for mental health injuries. One way to reduce such stigma and the associated barriers is by making changes in the workplace and through institutional recognition of mental health injuries (Ombudsmen Ontario Report, 2013). Denials and delays in claims of said injuries deter reporting and place increased demands and added costs on private employer and employee-financed health plans, while ultimately leading over the longer term to added costs to public disability pensions, health insurance and welfare programs as workers' conditions worsen and they lose their jobs (Bejean & Sultan-Taeb, 2005; Lippel & Sikka, 2010). Another caveat to help reduce this stigma or, at a minimum to refrain for intensifying it, is to ensure that any legislation or advocacy surrounding such legislation available refrains from using discriminatory or stigmatizing language and is reviewed to ensure it presents empirical-based, ethically sound, research findings. Indeed, in any consideration of presumptive coverage, we need to always remember that humans cannot always control their reactions, particularly to life-changing acute or cumulative trauma or when under the pressures of chronic and unrelenting stress.

Our position is that Newfoundland and Labrador should be seeking the most inclusive law possible as reflected by the current Saskatchewan law; however, we also suggest building on Saskatchewan's legislation to make it even more accessible and supportive of the people of Newfoundland and Labrador—including those represented by NAPE. To this end, our recommendations for the legislation are as follows:

1) Recognize and cover all mental health injuries resulting from chronic stress, either tied to operational or organizational stressors in the course of employment.

2) Recognize that all psychological injuries, including chronic stress resulting from work-related activities, are occupational illnesses which can be caused by cumulative as well as single stressful events.

3) Give the presumptive benefit of the doubt to the worker when a claim for compensation has been made, such that workers will not have to prove a work cause of a diagnosed disorder to receive compensation benefits.

4) Limit the rebuttable presumption for any diagnosed psychological injuries for all workers exposed to traumatic events during the course of their employment to very specific ambiguous cases, specifically only when there is ambiguity about the diagnosis being a major mental disorder, not if the trauma was directly or indirectly impacted by the workers employment, or of the credentials of the professional making the diagnosis.

5) Recognize and include under presumptive coverage that work experiences wrap around into events and experiences outside of the work, and that workplace trauma can have direct or indirect implications for experiences of cumulative trauma, acute incidents, and chronic stress that comprise mental health.

6) Require a diagnosis with any 'major' mental health injury, preferably by a clinician such as a psychiatrist or a psychologist, based on the standards established in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5).

7) Ensure legislation covers mental health injuries that occurred prior to the date of the Bill's Proclamation.

In addition, in the interests of primary prevention, we recommend that the government establish in compensation and health and safety law an employer's responsibility to develop an integrated and systemic approach to the prevention of stress and psychological injuries, grounded in the principles and procedures as outlined in the National Standard of Canada on Psychological Health and Safety in the Workplace (CSA, 2013).

Legislation should require a comprehensive mental health policy and program based on current best practices and evidence, which includes the systematic and ongoing assessment of wellness needs, stress hazards and injuries as well.

To this end, we advocate for the incorporation of resiliency training and other prevention and early intervention (e.g. Road to Mental Readiness as offered by the Department of National Defense, facilitated by the Canadian Institute for Public Safety Research and Treatment or/and the Canadian Institute for Military and Veteran Health Research) into employee wellbeing and training initiatives.

Thus, we recommend that along with requiring education and various kinds of supports such as debriefing procedures and counselling options, employers would establish, in consultation with workers, health and safety committees and representatives and unions, primary prevention policies and programs, for creating healthier workplaces for employees (CSA, 2013).

CONCLUSION

While we realize that there is always the fear that expanded access to stress-related compensation claims will bankrupt the compensation system, there is no evidence to support this claim.

Persons may try to draw attention to the United States, where the government had experienced some significant increases in the 1980s when court cases had opened up the capacity for chronic stress claims, most notably in California where stress claims doubled from 1980-87 (Gnam, 1998), this is not what happened in Canada. For example, after decades of allowing chronic stress claims, the percentage of claims compensated for stress injuries in 2007 was only 1.1% of total claims in Quebec (Lippel & Sikka, 2010, p. S19).

At this point, as well, there are also no signs that Saskatchewan or Manitoba are experiencing major increases in claims and claim costs from their more expanded presumptive legislation. Yet, there is considerable evidence that untreated mental illness in the workplaces places an enormous economic and social burden on employers, workers and society as a whole, while much of this mental illness and the consequences are preventable.

We know that a healthier workforce means a stronger workforce, with less sick leave taken by employees and less strain on compensation and healthcare systems in any province or country.

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