

## **Second-hand Smoke and Workers' Compensation Schemes Across Canada: An Inter-jurisdictional Review**

Historically, second-hand smoke (SHS) has not been recognized as a workplace hazard as its presence is not the result of a manufacturing or work process. Incriminating SHS as the single most significant causative factor of occupational disease such as cancer can be difficult. Many SHS-related diseases like cancer have a long latency period, the synergistic effects of SHS with other workplace hazards are well known, and cancer itself is a multi-factorial disease. In addition, the adjudication of SHS-related claims is further complicated by difficulty in identifying exposure at work versus exposure at home. However, with the relatively recent acceptance of a handful of occupational disease (cancer) claims across Canada, SHS is now recognized alongside asbestos and other poisonous chemicals as a workplace hazard.

Between February and May 2004, data from Workers' Compensation schemes across Canada were gathered via telephone interviews as well as from mailed questionnaires. Due to privacy concerns, individual cases were not made available. However, the information that was provided paints an interesting picture of the issues and trends related to SHS that are emerging across Canada. These are summarized in the key points below.

- A growing number of SHS-related claims are being made and paid out, most notably in Alberta, Manitoba, Ontario, Nova Scotia, and Northwest Territories/Nunavut. However, the total number of SHS-related claims across Canada filed each year remains low compared to the total number of claims filed. This translates into small amounts being paid out and a relatively low impact on employer premiums.
- Thanks to Heather Crowe and her willingness to go public with her cancer claim<sup>1</sup>, there is a growing awareness amongst workers of their ability to make claims, as well as an increased awareness of potential legal liabilities amongst employers. All jurisdictions expected to have higher employer premiums in the future if they started to receive numerous cancer claims, especially fatal ones. To date, only British Columbia and Ontario have accepted fatal claims. All jurisdictions also indicated they expect to receive more SHS-related claims from workers in the hospitality industry, correctional institutions, and long-term care and other health facilities.
- Across Canada, no one workplace is incurring more SHS-related claims than any other. Claims have been accepted from a variety of workplaces and sectors including:
  - correctional facilities (most jurisdictions)
  - long-term care and other health facilities (most jurisdictions)
  - transportation

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<sup>1</sup> A non-smoking waitress for 40 years, Ms. Crowe was diagnosed with lung cancer. The Ontario WSIB accepted her claim in 2002, making hers the first successful cancer claim in Ontario. In 2001 a health care aide in a Peterborough County nursing home was the first successful WSIB second-hand smoke claimant.

- hospitality/food services
  - manufacturing
  - services<sup>2</sup>
  - other<sup>3</sup>
- With the exception of British Columbia, jurisdictions do not separately code illnesses caused by SHS. All jurisdictions indicated that they are looking at how they handle SHS claims and have expressed a desire to deal with the issue in a more meaningful way. In addition, all jurisdictions indicated that claims are dealt with on an individual basis, and that workplace smoking bans would not be relevant to whether a claim was accepted or rejected. More importantly, all indicated that the date a worker became aware of his or her illness would serve as the most crucial factor.

The following table provides a quick snapshot of the key information from each Workers' Compensation scheme across the country.

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<sup>2</sup> Includes areas of the economy involved in retail and wholesale activities- including warehousing, leisure and entertainment activities

<sup>3</sup> Includes Crown administrations, agencies, boards and commissions, public utilities and school boards.

### Claims Summaries for SHS Exposure Across Canada

Jurisdiction	Year of 1 <sup>st</sup> Claim or Data Collected	Number of Claims Received	Number of Claims Accepted	Total Claims Costs to Date <sup>4</sup>	Remarks
British Columbia	1998	89	38	\$323,174.66	<ul style="list-style-type: none"> <li>• BC is the only province that specifically codes SHS claims</li> <li>• One fatal lung cancer claim and 1 breast cancer claim related to SHS have been accepted (hospitality sector)</li> <li>• In most cases claims are on the basis that SHS aggravated an underlying condition, like asthma</li> <li>• The majority of claims have been filed by hospitality sector employees</li> </ul>
Alberta	1996	11	4	\$7,985.62	<ul style="list-style-type: none"> <li>• AB recently started tracking occupational disease claims by adding a primary and secondary “source of injury” descriptive code specific to SHS</li> <li>• A ruling in favour of 4 prison guards with previous medical conditions aggravated by SHS essentially recognized SHS as a workplace hazard</li> <li>• To date, no claims have been accepted for SHS exposure causing an occupational disease like cancer</li> </ul>
Saskatchewan	1996	2	1	\$20,330.16	<ul style="list-style-type: none"> <li>• 3,500 “inhalation” claims have been registered as “unknown” over the years</li> <li>• Difficult to ascertain how many relate to SHS</li> </ul>

<sup>4</sup> Total claims costs can include wage loss benefits, health care costs, pension costs and re-employment/job placement rehabilitation costs. Note: total costs to date do not necessarily correspond to the year of the first claim or the first year that data was collected.

Jurisdiction	Year of 1 <sup>st</sup> Claim or Data Collected	Number of Claims Received	Number of Claims Accepted	Total Claims Costs to Date	Remarks
Manitoba	1994	39	33	\$2,640.90	<ul style="list-style-type: none"> <li>• MB handles SHS claims like any other claim under their occupational disease policy</li> <li>• All claims to date have been categorized as simple physical reactions or an aggravation of an underlying condition. The total number of claims received is somewhat misleading, as 25% have been made by one person</li> <li>• No claims received for occupational disease resulting from exposure to SHS</li> </ul>
Ontario	1990	263	96	\$217,666	<ul style="list-style-type: none"> <li>• Claims are coded with SHS as the primary causal agent</li> <li>• Most of the claims accepted have been an aggravation of a pre-existing condition, such as asthma. Notably different is Heather Crowe's lung cancer claim</li> <li>• SHS-related fatal claim(s) accepted</li> </ul>
Quebec	1999	4	0	0	<ul style="list-style-type: none"> <li>• Quebec's approach shows inconsistencies and does not separately categorize SHS-related claims, therefore difficult to assess the number of claims</li> <li>• All rejected claims relate to asthma exacerbation</li> </ul>
New Brunswick	1996	0	0	0	<ul style="list-style-type: none"> <li>• No claims made related to SHS</li> <li>• The Board is currently developing an awareness bulletin to employers concerning reducing or preventing SHS exposure</li> </ul>
Nova Scotia	2002	4	4	Less than \$50,000	<ul style="list-style-type: none"> <li>• One claim accepted for breast cancer</li> </ul>

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Prince Edward Island	N/A	0	0	0	<ul style="list-style-type: none"> <li>• SHS-related claims would be treated like any other</li> <li>• No claims to date</li> </ul>
Newfoundland and Labrador	1996	0	0	0	<ul style="list-style-type: none"> <li>• No statistical information available; no SHS-related claims received</li> <li>• Any future SHS-related claims would be treated like any other</li> </ul>
Northwest Territories/Nunavut	1998	4	3	\$18,688.07	<ul style="list-style-type: none"> <li>• Not clear if SHS-related claims are categorized separately</li> <li>• Two claims accepted as aggravation of pre-existing asthma; one claim denied as SHS was not recognized as the causative factor</li> </ul>
Yukon	N/A	1	1	No claim was paid	<ul style="list-style-type: none"> <li>• No policy to date on SHS-related claims</li> <li>• Re-employment assistance was provided for an office worker who suffered asthma attacks while at work</li> </ul>
<b>Total</b>		<b>417</b>	<b>180</b>	<b>\$640,485.41</b>	