



Understanding Asbestos Related Lung Disease – And the Legal Principles Used in Adjudicating Occupational Disease Claims



By: Gary Majesky, *WSIB Consultant & Executive Board Member*

As reported in 353 social media, and union meetings, my office has received the largest influx of asbestos claims since I started working at the Hall in 1998. It was assumed that once asbestos was banned from use in Ontario in the late 1970s, there would be an immediate reduction in asbestos related disease claims. The problem, simply, is asbestos related health issues are long term latency diseases that will not morphologize for 3 to 5 decades after exposure.

Delayed onset of asbestos lung disease in part explains the dismissive attitude of some supervisors who don't appreciate the inherent risk when members learn there is asbestos on a job site. The fact asbestos doesn't result in immediate illness, gives cold comfort to some, however the medical reality is far different.

During a three-month period over summer and fall (2014), I received 4 mesothelioma, 3 asbestosis, and 4 pleural plaques claims. The age cohort involves members age 65 and older who worked in the industry from the 1950s to 1990s. What is also evident based on my discussions with members is they are not aware of the clinical distinction between different asbestos pathologies, and assume they are all the same. They are also unfamiliar with the legal principles that apply.

Entitlement to Compensation for Asbestos Related Diseases

There are legislative presumptions codified in various provincial statutes that govern compensation for occupational disease in all the provinces, but there is significant variation between provinces with regard to many issues.

Asbestosis is the only disease presumed to be related to work involving exposure to asbestos in Alberta, while mesothelioma is also included in the legislation of four provinces. Lung cancer, cancer of the larynx and gastro-intestinal cancers are targeted by legislation and policy of some provinces but not others. Ontario and Newfoundland provide for irrebuttable presumptions in the case of asbestosis and, this is also so in Ontario with regard to mesothelioma, if very specific conditions of exposure and latency are met.

Legal Framework of Workplace Safety and Insurance Act, Schedules 3 & 4

(Irrebuttable Presumption)

Occupational diseases are referenced in Schedule 3 or 4 of the *WSIA*, including asbestosis, and these regulations define whether a worker suffers from and is impaired by an Occupational Disease.

The inclusion of various occupational diseases under Schedule 3 of the *WSIA* regulations has legal and administrative implications. The *WSIA* legislation states:

If the worker at or before the date of disablement was employed in any process mentioned in the second column in Schedule 3 and the disease contracted is the disease in the first column of the Schedule set out opposite to the description of the process, the disease shall be deemed (presumed) to have been due to the nature of the employment unless the contrary is proved.

In essence, this means if you worked in construction (listed industry), and develop a listed disease it is presumed you acquired the disease through work.

Overview of Various Asbestos Related Pathologies

In my discussions with members they are surprised to learn there are several types of asbestos disease (pathologies) which electricians may develop, each having a different clinical, functional, and medical course. They include:

Pleural Plaques: this pathology is generally viewed by the American Society of Thoracic Surgeons to be a benign pathology, typically without pulmonary complications (shortness of breath). It is usually discovered in a routine x-ray or CT scan in which calcified shadows are revealed on the diagnostic scans. The calcification of bodies in the lungs is the human body natural defence mechanism to envelop or cocoon asbestos fibres which become calcified deposits. This is also referred to as scarring of the lung. While technically inert, pleural plaques indicate prior exposure to asbestos, and workers so diagnosed, are at a higher risk for developing asbestosis or mesothelioma.

Asbestosis: is a chronic inflammatory and fibrotic medical condition affecting the parenchymal tissue of the lungs caused by the inhalation and retention of asbestos fibers. It usually occurs after high intensity and/or long-term exposure to asbestos (particularly in those individuals working on the production or end-use of products containing asbestos) and is therefore regarded as an occupational lung disease. People with extensive occupational exposure to the mining, manufacturing, handling, removal or disturbing asbestos fibers are at risk of developing asbestosis. Sufferers may experience severe dyspnea (shortness of breath) and are at an increased risk for certain malignancies, including lung cancer but especially mesothelioma.



Asbestosis specifically refers to interstitial (parenchymal) fibrosis from asbestos, and not pleural fibrosis or plaquing.

Mesothelioma - (or, more precisely, **malignant mesothelioma**) is a rare form of cancer that develops from cells of the mesothelium, the protective lining that covers many of the internal organs of the body. Mesothelioma is most commonly caused by exposure to asbestos. The most common anatomical site for mesothelioma is the pleura (the outer lining of the lungs and internal chest wall), but it can also arise in the peritoneum (the lining of the abdominal cavity), the pericardium (the sac that surrounds the heart), or the tunica vaginalis (a sac that surrounds the testis).

Most people who develop mesothelioma have worked in jobs where they inhaled or ingested asbestos fibers, or were exposed to airborne asbestos dust and fibers in other ways. Unlike lung cancer, there seems to be no association between mesothelioma and tobacco smoking, but smoking greatly increases the risk of other asbestos-induced cancers.

Signs and symptoms of mesothelioma include shortness of breath due to pleural effusion (fluid between the lung and the chest wall), chest wall pain and constitutional signs such as unexplained weight loss. The diagnosis may be suspected based on chest X-ray and CT scan findings, but must be confirmed either by examining serous effusion cytology or with a biopsy (removing a sample of the suspicious tissue). A thoracoscopy (inserting a tube with a camera into the chest) can be used to acquire biopsy material, and allows the introduction of substances such as talc to obliterate the pleural space (a procedure called pleurodesis), preventing more fluid from accumulating and pressing on the lung. Despite treatment with chemotherapy, radiation therapy or sometimes surgery, mesothelioma carries a poor prognosis.

No Legal Requirement to Register WSIB Claim for Exposure

There is no requirement or mechanism to register and establish a WSIB claim for workplace exposures, particularly when there is no immediate injury or disease. Under the *Workplace Safety and Insurance Act* ("WSIA") there must be a work related injury in order for a claim to be established and Loss of Earnings paid.

Exposures Reported on the Construction Exposure Incident Report (CEIR)

The WSIB, in conjunction with construction industry stakeholders, developed a **Construction Exposure Incident Report Form** that should be completed if there has been an unexpected workplace exposure where there is no lost time or no illness. The trigger in registering an occupational disease claim includes exposures (e.g., fumes) when a worker experiences an illness or adverse reactions that requires treatment (such as diagnostic tests, medication or ongoing treatment and assessment).

To all the members who brought to my attention your recent asbestos exposures, **you are to be commended** for your diligence, because asbestos is no laughing matter. And when it does become an issue in your workplace, the precautionary principle of zero tolerance is the safest approach.

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Pension Gifts

The following pensioners are invited to the South Unit Membership meeting at the Union Office, 1377 Lawrence Avenue East, Toronto on Thursday, January 8, 2015 at 7:00 p.m. to receive their pension gifts:

Ken Ball, Philip Brook, Ercole Cifa, Edward (Wayne) Gillespie, Frederick (Gord) Kreick, Roy Robert, Tony Salvaggio, Robert A. Scott, Giovanni Trombino, Neil Valentine, Barry Bassett, Manuel Cordeiro, Rick Crowhurst and George Mitas.