



# SBCI UPDATE

April 2013

NEWSLETTER

## MESSAGE FROM THE CHAIRPERSON

Everyone will have received an invitation to attend SBCI's 2-day Conference, April 11-12, and 1-day Parklane User Meeting on April 10. I do encourage everyone to attend these events, if at all possible. We do not have a Conference every year, but endeavour to make them very worthwhile in the years that we do organize them. Feedback has always been very positive. There is no charge to attend for member board staff.

The Parklane Meeting is run jointly with Parklane Systems, and provides the opportunity to hear what is new and receive education on how to use the Parklane system more effectively.

The Co-operative's Annual General Meeting will be held during the Conference, at 8:30AM on Friday, April 12. All members are welcome.

I am delighted to be able to announce that Peel District School Board has recently signed up for SBCI's Workers' Compensation, Health and Safety and Attendance Support services. Peel DSB already uses our actuarial services, but this is a significant extension.

I take the opportunity, also, to welcome three new people to SBCI's staff. Shoba Thomas has rejoined the Attendance Support team after 18 months with a large consulting firm. Angela Di Fede has joined us as the CEO's Executive Assistant, and we have our first member of staff dedicated to the new Sick Leave Adjudication service. Siobhan Lucic is our new Account Manager for this service. I welcome them all and hope that they will have an interesting and enjoyable career with the Co-operative.

SBCI has made good progress on developing and introducing a Sick Leave Adjudication and Case Management service and, to date, 9 boards have signed up for this service. We are open to school boards sending to us only selected cases for adjudication. There is no necessity to send us every case if the board feels confident that it has the resources to do the adjudication, itself.

If you have any questions, comments or ideas regarding the Co-operative, please give me a call or send me an email. Our aim is always to improve the services that we provide to you. I can be reached at [lynda.coulter@ycdsb.ca](mailto:lynda.coulter@ycdsb.ca) or (905)713-1211 X13850.

Lynda Coulter  
Chairperson

## COURT OF APPEAL OVERTURNS BLUE MOUNTAIN ACCIDENT REPORTING DECISION

The Court of Appeal has released its decision in Blue Mountain v. Ontario Ministry of Labour. The Ontario Labour Relations Board (OLRB) and a lower Court held previously that the Occupational Health and Safety Act (OHSA) required employers to report any "critical injury" or fatality to any "person" at a workplace; including whenever a non-worker died or was critically injured at or near a place where a worker is working, has passed through, or may at some other time work, regardless of the cause of the incident. The Court of Appeal held that this literal interpretation was unreasonable. For school boards, this decision may have a huge impact as the facilities and grounds are used regularly.

### The Facts in The Blue Mountain Case

Blue Mountain operates a full service ski resort in Collingwood, Ontario. On December 23, 2007 a guest of Blue Mountain drowned in an unsupervised swimming pool. The drowning of the guest came to the attention of an Ontario Ministry of Labour Inspector in March of 2008. On March 27, 2008 the Inspector issued a compliance order directing Blue Mountain to report the drowning to the Ministry of Labour pursuant to section 51(1) of the OHSA. Section 51 of the OHSA states:

51. (1) Where a person is killed or critically injured from any cause at a workplace, the constructor, if any, and the employer shall notify an inspector, and the committee, health and safety representative and trade union, if any, immediately of the occurrence by

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telephone or other direct means and the employer shall, within forty-eight hours after the occurrence, send to a Director a written report of the circumstances of the occurrence containing such information and particulars as the regulations prescribe.

Section 51(1) of the OHSA obliges an employer to immediately report a fatality or “critical injury” which occurs to a person at a workplace to the Ministry of Labour, the Joint Health and Safety Committee (or representative) and any trade union. A written report to the Ministry of Labour must be filed within 48 hours. The term “critical injury” is defined by Regulation as an injury of a serious nature that:

- (a) Places life in jeopardy
- (b) Produces unconsciousness
- (c) Results in substantial loss of blood
- (d) Involves the fracture of a leg or arm but not a finger or toe
- (e) Involves the amputation of a leg, arm, hand or foot but not a finger or toe
- (f) Consists of burns to a major portion of the body, or
- (g) Causes the loss of sight in an eye.

Section 51(2) of the OHSA imposes sweeping obligations upon employers to preserve the scene of a fatality or “critical injury”. Section 51(2) states.

51. (2) Where a person is killed or is critically injured at a workplace, no person shall, except for the purpose of,

- (a) saving life or relieving human suffering;
- (b) maintaining an essential public utility service or a public transportation system; or
- (c) preventing unnecessary damage to equipment or other property interfere with, disturb, destroy, alter or carry away any wreckage, article or thing at the scene of or connected with the occurrence until permission so to do has been given by an Inspector.

The Ministry of Labour took the position that the pool was a “workplace” within the meaning of the OHSA and that the plain wording of the section required Blue Mountain to report each time a “person” was fatally or critically injured. The Ministry noted that the term “worker” was separately defined in the OHSA and that the legislature could have used the term

“worker” in section 51(1) if it wished to confine the scope of the reporting obligation to employees.

The Court allowed the appeal and overturned the decision of the Ontario Labour Relations Board which had been upheld by the Divisional Court, finding the OLRB's interpretation of the OHSA unreasonable. Ultimately, the Court of Appeal held that employers are not required to report every critical injury or death of a person at a workplace, but rather only those where the hazard giving rise to the death or critical injury poses a realistic risk to worker safety.

What are the implications for school boards? Should student critical injuries be reported? It would be prudent to continue the practice of reporting student critical injuries to the Ministry of Labour and preserving the accident scene, unless the directed otherwise by your local office of the Ministry of Labour.

(Case summary from Stringers.)

## **REGULATION 1101, FIRST AID REQUIREMENTS**

A reminder to the employer and supervisors regarding their responsibilities related to First Aid in the workplace. Regulation 1101 requires that “All employers covered by the Workplace Safety and Insurance Act (the Act) are required to have First Aid equipment, facilities and trained personnel in all workplaces”.

Therefore, we would like to remind employers and supervisors that a First Aid station shall:

- be in the charge of a worker who works in the immediate vicinity of the First Aid station and who is the holder of a valid First Aid Certificate
- include a First Aid box containing all articles required according to the size of the workplace
- display a posting board which includes:
  - the WSIB poster known as Form 82
  - the valid certificates of qualification of the trained workers

- an inspection card for recording the date of the most recent inspection of the first aid box
- be inspected all least every three months for its content and the inspection shall be marked with the date of the most recent inspection and the signature of the person making the inspection.

Furthermore, all accidents shall be reported on the Form 7 or on the School Board In-house Accident Form, which must be duly completed and sent to the school board Human Resources Department within 48 hours following the accident. Any accident that ended with lost time or required medical attention shall be reported to the WSIB on the Form 7 within 72 hours following the accident.

## **LES EXIGENCES DU RÈGLEMENT 1101 SUR LES PREMIERS SOINS**

Un rappel des responsabilités de l'employeur et des superviseurs en ce qui a trait aux premiers soins sur le lieu de travail. Le règlement 1101 exige que «Tous les employeurs couverts aux termes de la Loi sur la sécurité professionnelle et l'assurance contre les accidents du travail (LSPAAT), sont obligés d'avoir dans tous leurs lieux de travail du matériel et des postes de premiers soins, ainsi que du personnel ayant suivi une formation de secouriste. »

Ainsi, nous rappelons à l'employeur et aux superviseurs que le poste de premiers soins :

- doit être confié en tout temps à un employé qui est titulaire d'un certificat valable de secourisme et qui travaille dans le voisinage immédiat de la trousse de premiers soins;
- comprend une trousse de premiers soins contenant les articles exigés selon la grosseur du lieu de travail
- comprend un panneau d'affichage incluant :
  - l'affiche 82 «En cas de lésion au travail »;
  - les certificats de secourismes valables indiquant la

compétence des travailleurs et la liste des noms des personnes détenant un certificat;

- une fiche de contrôle comportant des espaces pour indiquer la date du dernier contrôle
- doit être vérifié au moins à tous les trois mois pour son contenu et que la fiche de contrôle porte la date du contrôle le plus récent et la signature du préposé au contrôle.

De même, tout accident doit être déclaré sur le formulaire 7 ou le rapport d'accident maison du conseil scolaire. Ce formulaire doit être dûment rempli et envoyé aux Services des ressources humaines du conseil scolaire dans les 48 heures suivant l'accident. Tout accident qui provoque une perte de temps ou nécessite des soins médicaux devra être déclaré à la CSPAAAT sur le formulaire 7 à l'intérieur de 72 heures suivant l'accident.

## **SAFETY TIPS IN VEHICLE INSPECTIONS**

Does your workplace include vehicles? Who inspects them? Are circle checks required? Since they need to be inspected regularly as part of the workplace inspection program, why not expand your committee's experience next month? Take the teaching and custodial reps out to the parking lot and do some vehicle inspections – it will increase their knowledge of your workplace (how many different vehicles do you have) and you may gain from fresh eyes looking at old workplaces. Given the recent conviction of the Brewers Retail, school boards need to know what is going on in school board vehicles.

Think About It!

## **ELECTRONIC FORM 7s**

At present, half of SBCI member school boards are submitting their Form 7s to the WSIB electronically and then by email to SBCI. Once the school board staff gets used to the process they find that this is an efficient way to do business and that it cuts down on extra faxing or photocopying and mailing.

The WSIB is working on enhancements to the process so that an employer will be able to process an e-Form 7 for a casual worker and also be able to attach other documents to the electronic Form 7 for review by WSIB claims adjudication staff. WSIB is planning to have this process in place by the end of June 2013.

SBCI is working with the WSIB and will be looking for volunteers to assist in testing the capacity of the WSIB to accept attachments to the e-Form 7. At this stage, we are verifying with Parklane to see if any changes are needed to that system before testing can begin. If you have general questions about electronic submission of Form 7s, please do not hesitate to contact Melissa@sbcix222 or Sylvie@sbcix224.

## **UPDATE ON WSIB POLICY REVIEW**

In alignment with the WSIB's 2012-16 Strategic Plan and the Framework for Policy Development and Renewal, the WSIB is committed to continual improvement and ongoing renewal of WSIB policies. Jim Thomas is the Chair of the 2012 WSIB Consultation Process and the first four policies that have been under review are the following: recurrences; work disruptions; permanent impairments; aggravation basis. SBCI participated in the consultation process and provided a submission to Mr. Thomas on behalf of member school boards.

Mr. Thomas plans to release his report to the President, WSIB by end of March/early April 2013. Then, WSIB will create 'draft' policies. There will be a further feedback window and the goal is to have the new policies finalized by the end of 2013.

The next policies that are scheduled for review are:

- employer reporting obligations – the current policy allows employers to notify the WSIB within 7 business days of learning of the injury by accident or disease. This is not in accordance with the 3 day requirement stipulated in Sec. 21 (1) of the WSIA. The WSIB will look to amend this policy by clarifying existing reporting

requirements, and to align it with the legislation.

- last employer of record – currently claims costs are reflected in the accident employer's record, with cost relief or cost transfer under certain circumstances. The WSIB will consider a policy review of the process for attributing claims costs to an employer. In particular, the focus will be on the implications of current policy on those sectors where there is an increasingly transient workforce.
- travel and related expenses – the WSIB intends to review the policies pertaining to travel and related expenses. Related expenses include expenses such as accommodations, meals and escorts. A review of these policies is critical to ensure they provide consistent and appropriate guidelines to WSIB decision makers as well as the general public.

It is expected that the same process will be followed as with the review of the first four policies – SBCI will again participate in any consultation process that will occur.

## **ONTARIO REGULATIONS UNDER THE PUTTING STUDENTS FIRST ACT, 2012**

Ontario Regulation 2/13 contains some significant provisions dealing with the top-up of WSIB benefits. Ontario Regulation 12/13 amends two of the provisions in Regulation 2/13 dealing with the top-up of WSIB benefits. SBCI is pleased to provide you with a preliminary interpretation of the relevant sections of the Regulations dealing with the top-up of WSIB benefits, however we do not have all of the answers. Our aim is to provide you with some practical guidance rather than a definitive legal analysis.

There are two sections of Regulation 2/13 that deal with the top-up of WSIB benefits. Section 2 of the Regulation pertains to employees who do not bargain collectively while section 3 deals with employees who bargain collectively. The wording in the section 2(10) and 3(8) appears to be identical. We have chosen

to focus on the wording in section 3(8) since that would apply to most school board staff.

Section 3(8) reads as follows:

“The employee’s entitlement to receive an amount to top-up benefits that he or she is entitled to under the *Workplace Safety and Insurance Act, 1997*, is as follows:

- i. The employee is only entitled to receive the top-up amount if the employee is in a class of employees that, on August 31, 2012, was entitled to use unused sick leave credits for the purpose of topping up benefits received under the *Workplace Safety and Insurance Act, 1997*.

Interpretation – We read this section to mean that anyone that was part of a collective agreement on August 31, 2012 that allowed for top-up of WSIB benefits when they had unused sick leave is entitled to be topped up.

- ii. The top-up amount shall be paid for a maximum of four years and six months.

Interpretation – This section provides for a maximum period of top-up of four years and six months. Under the previous sick leave plan, the length of time that an employee could top-up their payments was limited to the amount of sick leave credits accumulated by the employee. Once an employee had exhausted their sick leave credits, no further top-up was provided. The current regulations provide a maximum period for the payment of top-up.

As to the question of whether the maximum duration is per employee or per claim, one would expect that if an employee who was on WSIB, and received top-up returned to work, and has another workplace accident or illness as a result of which he/she becomes eligible for WSIB, the maximum duration would apply again.

- iii. “The top-up amount shall be paid at a rate determined in accordance with the collective agreement in effect on August 31, 2012 or, if the collective agreement did not provide for the top-up, in

accordance with a board policy in effect on August 31, 2012.” (This is amended wording provided for in Ontario Regulation 12/13)

Interpretation – This section essentially means that you need to look at your existing collective agreements in place as of August 31, 2012 to see if they provide a description of the amount of top-up to be paid to the employee. If a collective agreement is silent on the issue then the school board should next look to see if any board policies described the amount of top-up to be paid.

- iv. For the purposes of the 2012-13 fiscal year, an employee is not entitled to receive a top-up amount under this section if,

- A. On August 31, 2012, the employee was eligible to receive benefits under the *Workplace Safety and Insurance Act, 1997* and

- B. As of September 1, 2012, the employee had no unused sick leave credits that were provided in previous years.

Interpretation – We read this section to mean that if an employee was eligible to receive WSIB benefits on August 31, 2012 (because they had an approved open claim) then the employee would not get any top-up if they had already run out of sick leave as of September 1, 2012.

- v. If, as a result of an accident, an employee received benefits under the *Workplace Safety and Insurance Act, 1997* in respect of the first workday in the 2012-13 fiscal year, the employee’s entitlement to be topped up for four years and six months shall be reduced by the length of time for which the employee received benefits under that Act as a result of that accident.

Interpretation – We read this section to mean that there is cap on the duration of top-up for employees who had an active claim and received WSIB benefits on the first day of school in 2012-13 and still had

sick leave in their bank as of September 1, 2012. The maximum duration for the payment of top-up is for a period to four years and six months as a result of an accident i.e. the maximum duration includes the period prior to September 1, 2012 when the employee was receiving top-up.

### **Practical Guidelines**

1. Employees that were eligible to use unused sick leave in the past to top-up WSIB benefits continue to be entitled to top-up on new claims. The maximum duration would be for a period of 4 years and 6 months.

2. Top-up shall be calculated in accordance with the language in collective agreements in effect as of August 31, 2012. If a collective agreement is silent on the issue then a school board should look to any board policies in effect on August 31, 2012.

3. Employees that had an active claim as of August 31, 2012 (claim approved and LOE benefits being paid) would be entitled to receive top-up provided that as of August 31, 2012 they had unused sick leave credits. If they had no unused sick leave as of September 1, 2012 then there is no entitlement for top-up on claims with accident dates prior to September 1, 2012.

4. An employee with an active claim as of August 31, 2012 and unused sick leave credits as of September 1, 2012 would be entitled to top-up for a maximum period of 4 years and 6 months. The actual duration of top-up would be reduced by any periods during which top-up had been paid. This would require a reconciliation of prior periods of top-up payments.

### **Examples**

Scenario 1: John Doe had an accident on August 1, 2012 and ran out of sick leave on August 25, 2012. He was off work continuously until December 10, 2012 when he returned to modified duties. As he had no unused sick leave as of September 1, 2012 he would not be entitled to top-up from September 1, 2012 until December 9, 2012.

Scenario 2: John Doe had an accident on September 1, 2008 and remains off work

as of February 15, 2013. On September 1, 2012 he had unused sick leave. John would continue to be eligible for top-up for a maximum period of 4 years and six months from the accident date of September 1, 2008.

Scenario 3: John Doe had a new accident on October 1, 2012 and is entitled to top-up of WSIB benefits for lost time under this new claim to a maximum period of 4 years and six months. When John had a new claim on February 1, 2013 he would be entitled to a maximum period of top-up of four years and six months in respect of this separate accident.

We hope that this guidance is of some practical assistance and should you have any questions please contact [chris@sbc.org](mailto:chris@sbc.org) or your individual SBCI Claims Manager. Thank you.

## **SBCI BOARD OF DIRECTORS**

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Lynda Coulter (Chair)
Carolyn Bastien (Vice Chair)
Ronald Bender
Judi Goldsworthy
Mark Musca
Maura Quish
Roger Richard
Mary Lynn Schauer
Anna Sequeira
Gerry Thuss

## **DATES OF MEETINGS**

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### **Board of Directors Meetings**

Friday, April 12, 2013  
Friday, May 10, 2013

## **SBCI STAFF**

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*Brian Brown*, Chief Executive Officer  
*Lynn Porplycia*, Chief Operating Officer  
*Wendy Achoy*, Chief Actuary  
*Raazia Haji*, Actuarial Analyst  
*Joe Huang*, Actuarial Analyst  
*Shawn Tang*, Actuarial Analyst  
*Christopher James*, Senior Claims Manager & Lawyer  
*Mary Luck*, Claims Manager  
*Darlene Iwaszko*, Claims Manager  
*Kelly Melanson*, Claims Manager  
*Robert Orrico*, Claims Manager  
*Figen Dalton*, Claims Manager  
*Robbin Lavoie*, Senior Health & Safety Specialist  
*Christina Bick*, Health & Safety Specialist  
*France Germain*, Health & Safety Consultant  
*Louise Bellamy*, Financial/Office Coordinator  
*Angela Di Fede*, Executive Assistant  
*Lily Li*, Executive Assistant  
*Melissa Hewit*, Bilingual Supervisor, Data Management  
*Sylvie David*, Bilingual Data Management Assistant  
*Rose Erbay*, Bilingual Data Entry Clerk  
*Audrey O'Connor*, Data Entry Clerk  
*Julia Barrasso*, Attendance Support Practice Leader  
*Byron Franson*, Attendance Support Consultant  
*Kathleen Gratton*, Attendance Support Consultant  
*Shoba Thomas*, Attendance Support Consultant  
*Patrick Gani*, Senior Analyst Programmer  
*Rana Khalaf*, Manager, IT Applications Coordinator  
*Siobhan Lucic*, Account Manager