



Workers' Compensation and Stress

Gender and Access to Compensation

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Introduction

Workers' compensation schemes in many North American jurisdictions compensate for psychological disability related to workplace stress. In North America those who become unable to work due to psychological disability often have, as their only access to economic support, recourse to workers' compensation legislation. Laws in all North American jurisdictions were initially conceived for physical accidents in the workplace. Compensation legislation dates back to the turn of the century, when far fewer women were in the workforce. Over the years, in most jurisdictions, the courts have adopted an evolutionary approach when construing provisions defining work accidents and occupational illnesses. This sometimes implies stretching the literal meaning of the words used in the statute to cover the new factual situation caused by evolution in work practices over the decades. Stretching meaning necessitates the use of discretion by the decision-maker, and discretion is often exercised on the basis of the values of the decision-maker and his or her perception of what would be an equitable result in a given case.

The majority of North American jurisdictions now compensate for psychological disability related to workplace stressors, although the scope of the legislation varies greatly from state to state and from province to province (Lippel, 1989, 1992). Access to compensation implies access to health care, medication, some form of salary replacement during the period of temporary disability, monetary compensation for permanent disability, and in some cases

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access to rehabilitation including retraining when it is impossible for the worker to return to previous employment.

In several jurisdictions legal criteria used to determine eligibility for coverage include work-relatedness tests that take into account factors such as the exceptional or abnormal nature of the workplace stressors, existence of contributing stressors in the claimant's personal life, and the nature of the links between the stressors and the work environment. In all jurisdictions where compensation is available, workers must demonstrate that their disability falls within the medico-legal criteria applicable in the specific jurisdiction, and this always implies intervention of both legal professionals, (be they advocates for the worker, the employer, or the compensation board or decision-makers in administrative tribunals), and medical professionals who are usually, but not necessarily, psychiatrists.

The field of stress compensation is particularly fertile ground for analysis of gender issues for several reasons. The very nature of women's work provides opportunity for both the development of psychological stressors and the non-recognition of their consequences. Women often occupy high demand-low control occupations (Armstrong & Armstrong, 1994; Lowe, 1989; Sprout & Yassi, 1995; Balka, 1995). Not only do these factors have a documented effect on the development of nefarious psychological and physical consequences (Karasek & Theorell, 1990) but they are often found in jobs traditionally perceived as easy jobs, where women get paid for what they do "naturally." When disability results, both the employer and the compensation boards may be surprised at the allegations of strain related to what is seemingly a job far more benign than that of the executive or the police officer (Lippel, 1995). The invisibility of difficulties of women's work often dictates that women themselves underestimate the strain to which they are exposed, or the difficulties involved in work for which they are often underpaid and undervalued (Armstrong & Armstrong, 1994).

Women most often bear the brunt of responsibilities related to the home and rearing of children (Armstrong & Armstrong, 1994). The difficulties generated by the existence of this double workload may contribute or be perceived to have caused psychological disability, and it is easier for decision-makers to assume that home stressors are the source of disability rather than to examine the work situation. This is true despite the fact that research has clearly shown workplace stressors to be pivotal to working women's mental health (Lowe, 1989).

The courts (Burns, 1993; Cassels, 1995; Lippel & Demers, 1996) and the different players involved (Schafran, 1993; Walters, 1994) have been shown to reproduce gender-based discrimination either by applying apparently neutral standards in a way that indirectly or systemically hinders women, or by more overt forms of discrimination touching on questions of credibility and stereotypical biases.

Finally, stereotypes relating to women and mental health have been documented for decades, and it is reasonable to hypothesize that these stereotypes may be transposed within the medico-legal context in a way that is detrimental to women workers (Russell, 1985; Penfold & Walker, 1986; Ehrenreich & English, 1989; American Medical Association, 1991; Larkin & Caplan, 1992; Burns, 1993).

Objectives

This study examines expert witnesses' and decision-makers' perceptions of men's and women's work and life circumstances as reported in 185 Québec appeal decisions related to compensation payable for psychological disability linked to workplace stress. It aims to determine whether there exists a difference in the perception of these variables, based on claimant's gender, and if so whether there exists a correlation between differences and case outcome.

Our study aims to verify the existence of discriminatory practices, to identify specifically which parts of the process are most likely to produce discriminatory conclusions, and to quantify effect of discriminatory stereotypes on claim recognition.

Québec law applies the unusual stress criteria to claims for psychological disability related to workplace stressors; administrative tribunals decide all compensation claims. As both the psychological disability and the stressful circumstances of the workplace are hard if not impossible to measure, subjectivity is pervasive in the compensation process for these claims. Not only does the worker rely on subjective perceptions, but all intervenors rely on their values and perceptions to determine compensability.

By unravelling and documenting the process by which decisions are made, we hope to understand better how seemingly neutral mechanisms may adversely affect women claimants. Although rules are ostensibly the same for all, their application by health care professionals and legal intervenors may vary both because of the intangible nature of the factual situations and the broad ambiguity of the legislation itself.

Examination of the discourse of these professionals, with regard to the specific factual situations at hand, provides insight into their perception of men's and women's work. Conclusions may also be drawn with regard to the internal mechanisms of the legal process (interpretation of soft law and soft evidence) that provide fertile ground for systemic discrimination against women. These conclusions may apply not only to compensation cases but also to other legislative issues where the adjudication process is similar.

Methodology

Our study is based on a qualitative and quantitative analysis of 185 written legal decisions rendered between 1985 and 1994 by the two administrative tribunals having jurisdiction on compensation issues in Québec: the Bureau de révision paritaire or B.R.P., a tripartite review board composed of a compensation board chair accompanied by union and management assessors; and the Commission d'appel en matière de lésions professionnelles or C.A.L.P., the final appeal tribunal. C.A.L.P. decisions are rendered by lone decision-makers, usually lawyers, who may be assisted by a medical assessor. The latter does not have decision-making powers.

Our sample is comprised of administrative tribunal decisions rendered on compensability of stress claims for psychological disability: all C.A.L.P. decisions (74) and 105 B.R.P. decisions, including all published decisions during the period and 62 unpublished decisions (all unpublished prior to 1989, all un-

published in a 12-month period between 1993 and 1994). Six decisions were eliminated from our original sample because the actual recognition of the claim was not at issue. Coding of decisions was done by trained analysts. Because decisions were in French (between 5 and 20 pages) it was impossible to neutralize the language in order to permit blind coding. Nor did funds permit more than one rater per decision. Two raters participated in the ratings, under the supervision of the author. Spot-checking did not detect rater bias in the categorization of stressors. Owing to the nature of the data, no rater bias was possible with regard to the essential elements of the hypotheses (gender and success of the compensation claim).

We did not look at first-level decisions of the Commission de la santé et de la sécurité du travail (C.S.S.T.), so our findings reflect the adjudicative process rather than the compensation process itself. Only those workers alleging disability that is sufficiently severe to prevent them from working claim compensation from the C.S.S.T. Therefore, the analysis does not permit conclusions with regard to workplace stress, as the vast majority of workers suffering from stressors do not file claims at the C.S.S.T., either because they are not yet disabled, because they prefer to obtain salary insurance without involving the workplace, or because they simply do not wish to go through the arduous process of proving work relatedness.

Results

Our analysis demonstrated both a quantitative and a qualitative disparity in access to compensation based on gender. Whereas the quantitative disparity was significant only at the review-board level (see Tables 1, 2, and 3), the qualitative differences in the types of stressors perceived as justifying the worker's claim existed in the decisions of both tribunals.

Various factors were investigated to explain the gender disparity in success of claims. It was found that the type of stress at the source of the claim does not explain the difference. Acute stress claims, related to one clear and significant stressful event, are usually easier to justify, whereas chronic stress claims, based on a series of less significant stressful events, are more difficult to win (Lippel, 1992). Although women claimed slightly more often than men for chronic stress (25% of male and 36% of female claims), this difference was not significant. However, when women and men both complained of chronic stressors, men fared significantly better than women, as can be seen in Table 4. It is interesting to note that, when faced with a chronic stress claim, decision-mak-

TABLE 1
Case Outcome According to Gender of Claimant: Parity Review Board*

Gender of claimant	No. accepted (%)	No. refused (%)	Total
Male	28 (47.5)	31 (52.5)	59
Female	12 (26.1)	34 (73.9)	46
Total	40 (38.1)	65 (61.9)	105

*Fisher's exact test: 2-sided p value = .028 (significant).

TABLE 2
Case Outcome According to Gender of Claimant: Final Appeal Tribunal*

Gender of claimant	No. accepted (%)	No. refused (%)	Total
Male	24 (50)	24 (50)	48
Female	14 (53.8)	12 (46.2)	26
Total	38 (51.3)	36 (48.7)	74

*Fisher's exact test: 2-sided p value = .8106 (NS).

ers will exact clear evidence of the unusual character of the stressful events, while an acute stress claim, involving one clearly circumscribed event, will be less likely to undergo scrutiny with regard to unusualness.

When the specific nature of the stressors alleged were examined, it was found that, if anything, the nature of women's stressors should have helped rather than hindered the recognition of the claim. Table 5 ranks, in order of frequency, the stressors to which workers attributed their disability whereas Table 6 lists in descending order the stressors recognized by the tribunals as having caused compensable disability.

Analysis of case law demonstrates that stress arising from negative evaluations, including personnel decisions and disciplinary measures, has usually been held to be outside the realm of the compensation schemes, unless it can be demonstrated that the disciplinary measure is abusive (Foulsham, 1985; Lippel, 1992; Lafond, 1997). This principle is reflected in Table 6, where negative evaluation is ranked last in the list of stressful situations giving rise to compensation. One would expect those cases to be refused. Because men significantly more often claim in cases involving negative evaluations (Tables 5 and 7), it would be expected that women's overall success rate would be higher than that of men, yet the contrary is true. When cases relating to negative evaluation were eliminated from the sample, the discrepancy between acceptance rates of claims for men and women was highly significant for the entire sample, comprising both review-board and final appeal decisions, as can be seen by Table 8. Thus, the nature of the stressful events cannot account for the discrepancy in recognition levels.

Although classification of stressors was not coded blindly, we do not believe that this aspect affects validity of conclusions regarding the nature of the stressors involved, as gender differences were found only in relation to negative

TABLE 3
Case Outcome According to Gender of Claimant: All Cases*

Gender of claimant	No. accepted (%)	No. refused (%)	Total
Male	52 (48.6)	55 (51.4)	107
Female	26 (36.1)	46 (63.9)	72
Total	78 (43.6)	101 (56.4)	179

*Fisher's exact test: 2-sided p value = .1243 (NS).

TABLE 4
Nature of Stressor, Gender, and Claim Outcome

Stressor	% Acceptance		
	Male (<i>n/N</i>)	Female (<i>n/N</i>)	Total (<i>n/N</i>)
Acute	56 (13/23)	67 (6/9)	59 (19/32)
Mixed	42 (24/57)	38 (14/37)	40 (38/94)
Chronic*	55 (15/27)	23 (6/26)	40 (21/53)
Total	49 (52/107)	36 (26/72)	44 (78/179)

*Fisher's exact test, 2-sided *p* value = .0244 (significant).

evaluations, and these issues are quite distinct from other stressors and less vulnerable to confusion.

Given that the nature of workplace stressors did not explain the difference in results, we verified whether personal differences between male and female

TABLE 5
Percentage and Rank of Most Frequently Reported Stressors

Stressors	Total % and rank	% and rank— male	% and rank— female
Conflictual relations	48.6% R. 1	47.7% R. 1	50% R. 1
Overwork	33.6% R. 2	29.9% R. 3	38.9% R. 2
Negative evaluation	25.7% R. 3	30.8% R. 2	18.1% R. 7
Lack of social support	23.5% R. 4.5	19.6% R. 5	29.2% R. 3
Weight of responsibility	23.5% R. 4.5	20.6% R. 4.5	27.8% R. 4
Lack of control	21.2% R. 6	18.7% R. 6	25% R. 5
Job/task change	20.7% R. 7	20.6% R. 4.5	20.8% R. 6
Lack of recognition	11.7% R. 8	11.2% R. 7	12.5% R. 10.5
Lack of training	10.1% R. 9	5.6% R. 9	16.7% R. 8
High workforce turnover	7.3% R. 10	2.8% R. 11.5	13.8% R. 9
Role ambiguity	6.7% R. 11	2.8% R. 11.5	12.5% R. 10.5
Role conflict	5.6% R. 12	6.5% R. 9	4.2% R. 12

Note. These figures are drawn from 179 files, representing claims by 107 men and 72 women. Many files contain several stressors; thus, the absolute number of stressors exceeds the number of claims.

TABLE 6
Percent Success Rate for Various Stressors

Stressors	Total no. (%) alleged out of total no. of claims (N = 179)	% Accepted	% Male accepted	% Female accepted
Lack of social support	42 (23.5)	54.8	71.4	38.1
Role conflict	10 (5.6)	50	43	66.6
High workforce turnover	13 (7.3)	46.2	66.6	40
Weight of responsibility	42 (23.5)	42.9	50	35
Conflictual relations	87 (48.6)	42.5	45.1	38.9
Role ambiguity	12 (6.7)	42	33.3	44.4
Lack of recognition	21 (11.7)	38.1	50	22
Job task change	37 (20.7)	35.1	31.8	40
Overwork	60 (33.6)	33.3	37.5	28.6
Lack of training	18 (10.1)	33.3	66.6	16.7
Lack of control	38 (21.2)	32	35	27.8
Negative evaluation	46 (25.7)	26.1	21.2	38.5

Note. Percentage of stressors accepted as compared to those alleged. These figures are drawn from 179 files, representing claims by 107 men and 72 women. Many files contain several stressors; thus, the absolute number of stressors exceeds the number of claims.

claimants could explain the outcome. We found that the women in our sample had not consulted a mental health professional prior to current problems any more often than men, as can be seen in Table 9, and that negative outcome was not determined by prior consultation, regardless of gender, as can be seen in Table 10. Differences between men and women in these tables were not significant.

Moreover, personal problems were not alleged significantly more often in cases involving women than in those involving men. When such problems (marital difficulties, sick or dying relative, delinquent children) were alleged, women lost more often than men, although the difference was not significant (see Table 11). Mention of personal problems was made in 12% of decisions relating to men and 22% of decisions relating to women. Of those without problems, a lower percentage of women was accepted, although again the difference was not significant.

TABLE 7
**Negative Evaluation and Other Sources of Stress,
 by Gender***

Gender	Negative evaluation	Other stressors	Total
Male	33	199	232
Female	13	181	194
Total	46	380	426

*Fisher's exact test: 2-sided *p* value = .0196 (significant).

TABLE 8
Acceptance Rate of Cases Not Entailing Negative Evaluations*

	Male	Female	Total
Accepted	45 (61%)	21 (36%)	66
Rejected	29	38	67
Total	74	59	133

Note. % = percent of total claims that are accepted.

*Difference between acceptance rate of men and women highly significant. Fisher's exact test: 2-sided *p* value = .0052.

Other variables controlled for include personality, legal representation, and employer litigation. None of these could explain the disparity between men and women at the review-board level.

Although there was no statistical difference in outcome at the appeal commission level (C.A.L.P.), outcome was significantly different when cases involving negative evaluation were excluded (see Table 8). Qualitative analysis leads us to believe that successful claims by women at the appeal level were more likely to be "good cases" in the sense that issues raised were more obviously favourable to the claimant than in the successful cases of men. For instance, several women who were successful before the C.A.L.P. had been victims of some form of sexual or physical harassment or aggression, or verbal assault. Others had been involved in an acutely stressful situation, involving prisoner suicide or death threats. Many of the men who lost at the C.A.L.P. were claiming in cases where case law was against them, as, for instance, in cases involving disciplinary measures. It is likely that if the review board unjustly refuses more "good cases" of women than it does those of men, then those "good cases" will reappear in appeal, while those of men will have already been compensated. This could explain why issues raised by women before the C.A.L.P. sometimes appear to be more obviously compensable than those raised by men. Were these "good cases" to have been compensated at the review board level, it is possible that the portrait of decision making at the final appeal level would appear to be less equitable.

Discussion

Having excluded the most obvious possibilities that could explain the disparity in the treatment of claims by men and women, we can now turn to other

TABLE 9
Gender and Prior Consultation of Mental Health Professional

	No. male claimants (%)	No. female claimants (%)	Total no. (%)
Prior consultation	23 (21.5)	13 (18.1)	36 (20.1)
No prior consultation	27 (25.2)	23 (31.9)	50 (27.9)
No mention	57 (53.3)	36 (50)	93 (52)

TABLE 10
Gender, Prior Consultation, and Claim Outcome

	% Acceptance	
	Male (n/N)	Female (n/N)
Prior consultation*	52.2 (12/23)	30.1 (4/13)
No prior consultation**	63 (17/27)	56.5 (13/23)
No mention***	40.4 (23/57)	25 (9/36)

*Difference between acceptance rate of men and women: Fisher's exact test: 2-sided p value = .3014 (NS).

**Difference between acceptance rate of men and women: Fisher's exact test: 2-sided p value = .7739 (NS).

***Difference between acceptance rate of men and women: Fisher's exact test: 2-sided p value = .1790 (NS).

variables that might contribute to the outcome. Two aspects of the adjudication process are of particular interest: the gender distribution of the decision-makers, and the interpretation given to vague concepts.

Although it would be simplistic to conclude that the gender of decision-makers determines their sympathy for the claimants it is nevertheless striking to note that the composition of the tripartite review board (B.R.P.) is overwhelmingly male. While 57.3% of compensation-board representatives were men, 83.5% of union representatives were men and 97% of employer representatives were men. Although there exists no direct correlation between gender of decision-makers and outcome, it remains an interesting variable. Validation of our results in focus groups involving union members who act as decision-makers or worker representatives lead us to believe that the disproportionate presence of men at the worker's hearing has a dampening and intimidating effect on the worker's testimony. Further research is planned to verify this possibility.

Comparison of decisions relating to men and women claimants allows us to see that the fuzzy concept of "unusual stress" can be interpreted in many ways, and that gender of the claimant seems to influence the interpretation. Thus, the following examples, drawn from successful claims by men, were all judged to be *unusually stressful situations*: working with an incompetent co-worker, being charged with police brutality; being the subject of a complaint for sexual harassment; having a vacation rescheduled without prior notice; being obliged to produce an important report within a deadline without a secre-

TABLE 11
Gender, Personal Problems, and Claim Outcome

	No. cases with problems alleged (%)*	No. accepted (%)**	No. rejected (%)
Men	13 (12)	7 (54)	6 (46)
Women	16 (22)	3 (19)	13 (81)

Note. $N = 179$.

* Gender difference in mention of personal problems: Fisher's exact test: 2-sided p value = .0973 (NS).

**Gender difference in acceptance rate: Fisher's exact test: 2-sided p value = .1090 (NS).

tary; experiencing harassment by subordinates, or supervisor, or colleagues; having difficulty with clientele; being subjected to the depressing atmosphere of a prison environment; and being rejected by work colleagues.

These situations can be compared to the following bases of claims by women refused under the unusual-stress rule. All the situations enumerated here were judged to constitute *normal working conditions*: working in a conflict-ridden work atmosphere (with clientele, or colleagues or supervisors); having to work compulsory overtime; having unpredictable work schedules imposed despite seniority and contrary to the collective bargaining agreement; undergoing intense surveillance by a supervisor; restructuring of the work organisation without proper training; being overburdened with responsibilities for patients, beneficiaries of social programs, and in other helping professions; being a female prison guard sexually harassed by inmates; having new technology introduced without adequate training.

The issue as to whether a given situation is a work-related event is also open to interpretation. Thus, when a male bus driver was yelled at by a female passenger, or when a male worker was insulted (the board noted he was “unjustifiably called a faggot”), the events were deemed to have happened in the course of employment and the men were compensated. Compare these with the following events, experienced by female claimants whose claims were refused because the events were deemed to have not taken place in the course of employment: A female police officer on the hit list of the killer responsible for the “Montreal Massacre” was refused compensation because she was targeted because she was a woman and not because she was a police officer. A woman supervisor sexually assaulted by employees on the job site during working hours was refused compensation because the event was judged not to be work related because it was “not in the interest of the employer.”

Conclusion

Access to compensation for psychological disability related to stress is more difficult for women workers than for men, although it is difficult for both men and women to make their case. Differences in outcome are not explained by personal problems, previous psychiatric history, legal representation, employer opposition, or nature of stressful situations giving rise to the claim.

Male domination of tribunals, particularly tripartite tribunals (parity boards), may encourage discriminatory results.

Qualitative analysis of the decisions permits us to conclude that the unusual-stress rule works against women, in particular, as women’s work is more likely to be perceived as being banal, unimportant, or not unusual. Alternatively, when women do a job that is usually done by a man, their stress claim will often be refused because they are “not tough enough for the job” (argument of bad job fit), even in circumstances where men are compensated. The unusual-stress rule is applied in many American states (DeCarlo & Gruenfeld, 1989); thus, it is possible that, in these jurisdictions, similar discriminatory practices may be couched in seemingly gender-neutral language.

It is hoped that the documentation of the discriminatory process may contribute to the elimination of those parts of the process that are most conducive

to discrimination. Given the logic of the compensation system it may be assumed that equal access to compensation will serve to promote better prevention of those working conditions that are detrimental to health. The more that stressful work is seen as a significant contributor to disability the more likely it will be that preventative measures will be integrated in the workplace. Alternatively, if the difficulty of women's work remains invisible, those factors that most contribute to ill health and disability will persist.

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