DOCTORS AND WORKERS' COMPENSATION: HOW SYSTEM DESIGN SHAPES DOCTORS' ROLES

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OUTLINE

- Introduction: what matters?
- Methodology of the study
- Results
  - Similarities and differences between the systems
  - Why systems matter to the roles and practices of doctors
  - Why system rules affect the doctors' role in return to work
- Take away messages

- K. Lippel, J. Eakin, L. Holness, D. Howse, The Structure and Process of Workers' Compensation Systems and the Role of Doctors : A Comparison of Ontario and Québec, (2016) 59 (11) *American Journal of Industrial Medicine* 1070-1086

WHY SYSTEMS MATTER

- Every compensation system has its own rules and practices that shape the experiences of all the participants in the system
  - Workers
  - Employers
  - Physicians
    - Treating physicians
    - Insurance physicians
    - IME providers
  - Compensation board staff (including physicians)
- Studies on return-to-work have been shown to insufficiently consider the regulatory contexts (system rules) applicable to the participants in their studies
  - Clay et al, 2014

WHY PHYSICIANS MATTER IN WORKERS' COMPENSATION SYSTEMS

- Systematic review of the importance of physicians

  Kilgour et al 2014

- Access to health care for injured workers

  Lax, 2001; Kosny, 2011

- Physician location can affect diagnosis

  Lax et al, 2004

- Role of timely care and claim acceptance to prevent chronic disability

  Sinnott, JOEM, 2009

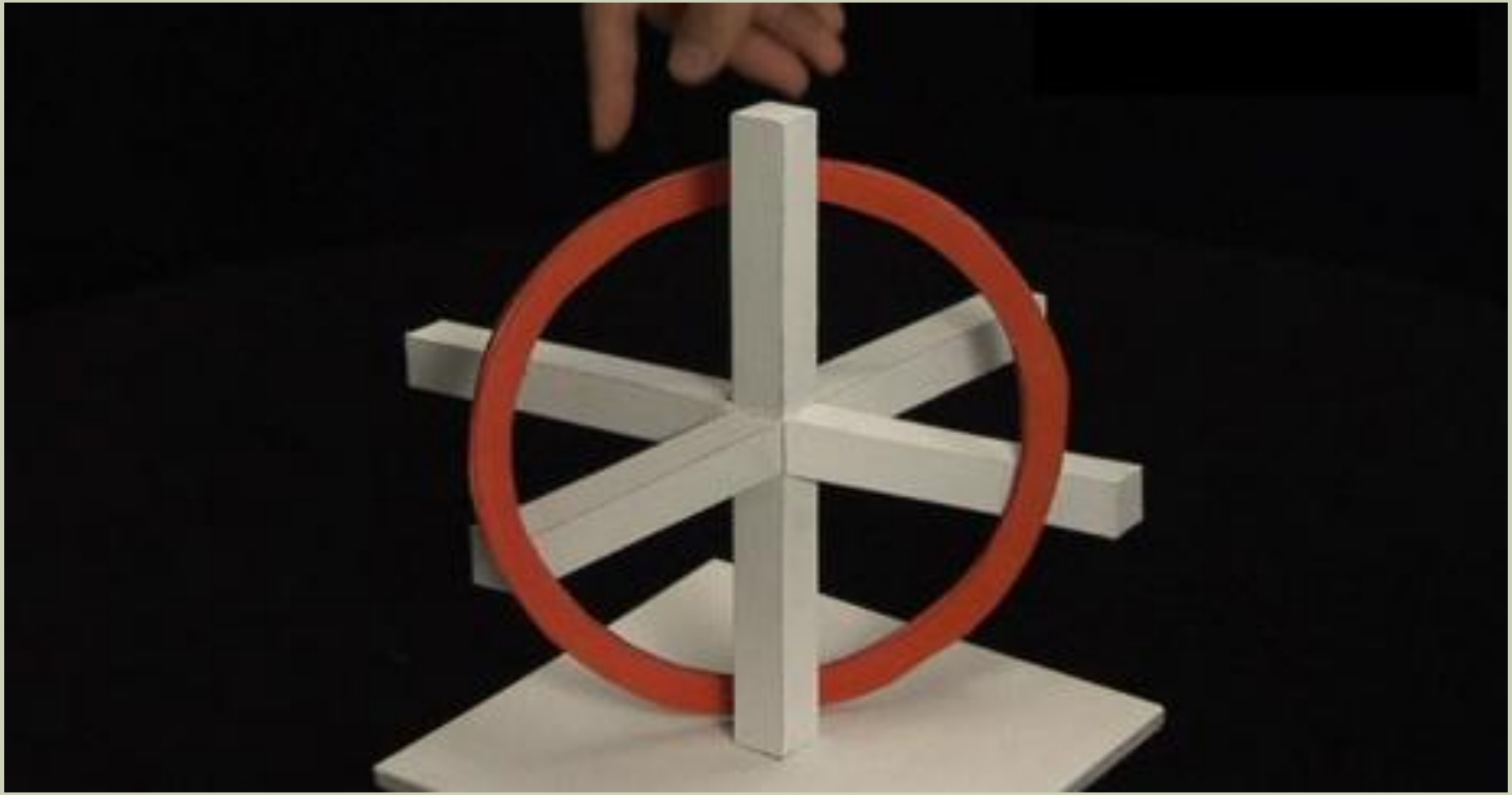
PHYSICIANS' GATEKEEPING ROLES AND WHY THEY MATTER

- Source of anxiety for injured workers, particularly the non-therapeutic encounters
  - Kilgour et al, 2014
- Targeted for cost reduction strategies with regard to workers' compensation
  - Bernacki, 2004
- Targeted to promote more "evidence based" return to work strategies
  - Loisel et al 1997; Anema, 2002; Franche et al 2005; Kosny et al 2007
- Process more challenging for physicians when dealing with invisible injuries
  - Kosny et al, 2016

GATEKEEPING ROLES VARY BY LOCATION: SOMETIMES MULTIPLE HATS

- Profession
  - Family physician vs specialist
  - Broad range of specialities
- Function
  - Treating physicians
  - "Independent medical examiners":
    - paid by WCB/insurer
    - paid by employer
    - paid by worker
  - Insurer doctors
  - Company doctors
  - Adjudicating doctors?
  - Public health doctors

METHODS



SOURCES OF DATA

- Classic legal analysis of workers' compensation legislation, cases and policy: Ontario & Québec
- Literature
- Qualitative study
  - Individual and group interviews
  - Secondary data
  - Documentary and textual materials
    - Forms
    - Websites
    - On-line chats and discussion groups
    - …

INTERVIEW DATA: 2010-2014

	ONTARIO	QUÉBEC
DOCTORS	12 (Past or present: Treating, consulting, IME providers for various parties, WSIB staff doctors, company doctors, expert witnesses, service providers for WSIB)	22 (Past or present: Treating, consulting, IME providers for various parties, adjudicating doctors, expert witnesses, public health physicians)
NON-MEDICAL PARTICIPANTS	19 (Past or present: HCP, workers, worker reps, WSIB staff)	12 (Past or present: representatives of workers and employers and members of appeal tribunal)
SECONDARY ANALYSIS	36 Frontline adjudicators	85 Injured workers

METHODS OF ANALYSIS

- Systematic iterative comparison of key structural & discursive elements
- Linking differences between the systems with :
  - physicians' experiences, practices and perspectives
  - other participants' accounts of physicians' roles
- Conceptualizing implications:
  - for compensation systems, doctors' practices & workers' experience

INTERJURISDICTIONAL TRANSDISCIPLINARY ANALYSIS

- Multi-perspectival interpretation & analysis:
  - legal, medical, sociological
- Repeated discussion linking qualitative data with socio-legal context in which it is was produced
- Dialogue based analytical approach
  - Perspective pooling
  - Critical self-questioning
  - Joint theorizing

COMMONALITIES

COMMONALITIES: WSIB-CSST

- Work relatedness: a decision of the WCBs
- The bureaucratic process is a source of irritation for treating physicians
  - Forms and paperwork
    - « ..*the doctor said 'There is no room for me to say you can not work* » (W rep FG)

COMMONALITIES: WSIB-CSST

- The doctors' gatekeeper role is a source of discomfort for treating physicians
- Lack of feedback
- More treatment options if compensable
  - More choices, more tests
  - More timely access

COMMONALITIES: WSIB-CSST

- The gatekeeper role provides significant income to non-treating physicians
  - Mechanisms differed
  - Sources of funding differed
  - Disparities in who could access «expert» evidence differed
  - Incentives played out differently

SYSTEM DIFFERENCES

DIFFERENCES IN THE ROLE OF TREATING PHYSICIANS

- Québec
  - Treating physician's opinion is binding on the CSST with regard to:
    - Diagnosis
    - Treatment
    - Maximum Medical Recovery
    - Functional Limitations
    - Permanent Impairment
- Ontario
  - Treating physician's opinion is not binding but will be considered by the WSIB

OPINIONS OF TREATING PHYSICIANS: BINDING (AND NOT)

Québec

- Treating physician's opinion may be disputed by employer or CSST, if they follow complex arbitration procedures
- Disputing requires second opinions; every opinion may lead to a second opinion.
- The worker can not contest the treating physician's opinion on the 5 issues that are binding.

Ontario

- The WSIB is not bound by any medical opinions
- Employers may contest medical issues, workers may object
- Workers may contest medical issues

EFFECT OF DIFFERENT ROLES: ONTARIO…FEELING IGNORED

- "*I will put on a form that I don't feel that the patient can work …and the patient reports back … that Workmen's compensation says they can work and they're cutting them off…sometimes I just feel that they are asking my opinion, they are paying me for my opinion and they are ignoring my opinion*" (On-Doc-10)

EFFECT OF DIFFERENT ROLES: QUÉBEC…FEELING ATTACKED

- *I'm not an expert physician…only a treating physician. As a treating physician I understand very well that there can be differing opinions with those of expert physicians [IMEs] but I find it very difficult when I read an expert opinion by a colleague from a different specialty that attacks us. That's a lack of professionalism and often the patient has read that opinion and it creates a malaise because the patient is stuck in the middle; so disagreement is one thing, but lacking professionalism and attacking the other, that's something else. Written in bold and underlined, you know, that shouldn't exist and it creates a malaise that's so unnecessary.*

(Qc Doc, specialist – FG)

FEWER PAPER DOCTORS IN QUÉBEC THAN IN ONTARIO

- What's a «paper doctor»?
- Opinions in Ontario often based on files:
  - Internal WSIB doctors
  - External review of files: piece work
- Equivalent much less common in Québec
  - Doctors, regardless of who they are paid by, usually examine the worker
  - CSST doctors can give frontline staff opinions on work-relatedness without examining the worker

ROLE OF DOCTORS IN APPEAL VERY DIFFERENT

Québec: CLP

- 20.5 doctors on staff as assessors who assist the tribunal
- Tribunal does not pay expert witnesses
- Very frequent testimony and production of expert opinions paid for by employers, CSST or worker
- In one case: 32 expert opinions

Ontario: WSIAT

- No doctors on staff sitting in hearings with judges
- Doctors may be mandated as expert witnesses paid by tribunal
- Parties may produce expert opinion

NUMBER OF CLAIMS, MEDICAL ARBITRATIONS AND APPEALS TO EXTERNAL APPEAL TRIBUNAL IN ONTARIO AND QUÉBEC

	Ontario	Québec
Lost time claims 2013	54,430	67,687
Arbitrations triggered by 2nd opinions of CSST or employers (average 2010-2013)	N/A	10,167 (69% initiated by employers)
Number of new appeals to final appeal tribunal 2013-2014	5079	30,026
Number of published appeal decisions (2010-2014)	14,292	40,422
Number of appeal decisions discussing medical evaluations (2010-2014)	6318 (44%)	23,906 (59%)

RESULTS: RETURN TO WORK

- Differences in rules governing early return to work
- Differences in practices of different participants

RETURN TO WORK BEFORE MAXIMUM MEDICAL RECOVERY

Ontario	Québec
• **Employers and workers must cooperate** in early return-to-work process, subject to fines or suspension of benefits. • Treating practitioner obliged to submit form on ability to do modified work, functional abilities and treatment plan at the request of the WSIB. • **WSIB not obliged to follow the opinion of treating practitioner.**	• **Employer may (not required) propose modified work** described by the employer in a prescribed form to be approved by the treating physician if "1. worker is reasonably fit to perform the work; 2. the work, despite the worker's injury, does not endanger his health, safety or physical well-being; and 3. **the work is beneficial to the worker's rehabilitation".** • **Physician's opinion cannot be disputed by insurer or employer** but worker can appeal the decision based on this opinion • Premiums may increase if employer does not offer modified work

HOW DO THESE SYSTEMS DRIVE PRACTICES?

- Ontario
  - Both the worker and the employer can be punished if they don't cooperate.
- Economic stakes are high and physicians from various institutional locations participate in process which sometimes leads to disputes.

- Québec
  - Economic pressure on employer, but no penalties or fines applicable and no obligation to offer modified employment.
  - Worker must comply if the treating physician approves the assignment.
  - No appeals for employers or insurer
    - -no second opinions but employers can re-submit proposals to doctors if the initial proposal is not approved

ONTARIO: DISSATISFACTION WITH DOCTORS IN RTW PROCESS

- "Our staff are constantly asking us, what we're doing to educate doctors in the province of Ontario around issues like return to work and what the compensation system needs from doctors, what employers need from doctors. They're frustrated because they get information that either isn't helpful or that is a little, isn't sort of positioned in a way that helps the case to move forward or to resolve the case, so they ask management to uh, you know, what are we doing to, to fix the doctors, you know, to help the doctors to understand, to do their job better with respect to their um, responsibilities towards the WSIB."
  - WSIB administrator

QUÉBEC: ADVICE OF EMPLOYER LAWYER TO HIS CLIENTS

- "[…] stop working on getting the cooperation of the treating physician…contact the worker. It's for his benefit. Ask him what he thinks he can do, given his current condition. Get him to participate in identifying tasks he can accomplish, and you'll see you'll have much more success. Stop working on the doctor, work on your worker. And if your proposal is sincere and done for the right reasons, you'll be more successful [in getting the worker back to adapted work]."

QUESTIONS RAISED BY THESE POLICY DIFFERENCES

- Ontario
  - Will the policy approach that punishes the worker and the employer for non-cooperation lead to more temporary work arrangements?
  - What effect does this have on the quality of the relationship between the worker and the employer?
  - Will this approach increase or decrease likelihood of sustainable RTW?
- Québec
  - If the doctor has the last word, are there fewer temporary work arrangements?
  - If so, does this increase likelihood of chronicity?
  - Will the approach that encourages buy-in from the worker lead to more positive RTW experiences?
  - Does this increase or decrease likelihood of sustainable RTW?

CONCLUSION

- Systems matter
  - Different systems drive different practices and behaviours
  - Participants usually unaware of system drivers, even if they know the rules
- For researchers
  - Consideration of system characteristics essential to design, implementation and interpretation of results of a study.
- For policy makers
  - Importing research from other policy contexts requires conscious contextualisation of those studies to ensure that the results are not driven by the system rather than the intervention.

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