



“The voice of the employer is missing”: A critical review of the Canadian policy environment related to employees diagnosed with progressive cognitive impairment

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Research Questions

1. What is the current policy environment in Canada governing employers with workers who are diagnosed mild cognitive impairment or early onset dementia (MCI|EOD) on the job at the macro, meso and micro level?
2. What are the current societal, and employment concerns/trends that impact approaches to this issue in Canada?
3. What direction is being provided to Canadian employers by settled court and tribunal decisions?

Background

The world's population is ageing. By 2030, 1 in 4 people living in Canada will be over the age of 65¹. People are also choosing to work longer for personal and practical reasons. As we live and earn longer the likelihood of working with multiple health conditions rises. Age is a primary risk factor for developing mild cognitive impairment or early onset dementias (MCI/EOD) and we anticipate a significant rise in the number of people experiencing symptoms or who are diagnosed with MCI/EOD while “on the job”. MCI|EOD are classified as disabilities². In Canada, the Canadian Human Rights Act specifies that even in the absence of a formal diagnosis, employers are obligated to provide reasonable accommodation to the point of undue hardship. Employers who suspect an issue, are obligated to investigate and offer accommodations. Yet, to date, little work has been done to understand the employer's experiences, needs or perspectives related to cognitive impairment in the workplace³. The goal of this research was to examine the current societal or employment concerns that govern employers with workers who are diagnosed with MCI/EOD on the job as reflected in different policies, legislation, strategies and practices by using an interpretive discourse analysis.

Policy Review

We performed a scoping policy analysis to identify the intersection of academic & real-world knowledge domains internationally, and relevant jurisprudence in Canada.

Eligibility Criteria

- ✓ Scientific & grey literature
- ✓ Case review of jurisprudence review
- ✓ Published post-1977
- ✓ Written in English and any country
- ✓ Focus on policies that impact employers
- ✓ Policies that impacted workers with MCI/EOD
- ✓ Policy can be applied in Canadian context

Conclusions

1. The law regarding disability discrimination and accommodation is very settled. A right to accommodation usually requires a diagnosis or medical documentation of health issues and generally, imperfect efforts at accommodation can meet legal obligations.
2. Guidance regarding cognitive impairment accommodation is scant due to prime facie evidence that decisions are driven by the facts of each case.
3. Understanding the impact of policies to support employers with employees living with MCI|EOD is largely driven by front-line experience and the courts **not** empirical research. Moreover, the specific risks and opportunities related to employees with MCI|EOD is not fully understood.
4. Further empirical research is needed to inform future policy & our understanding of employer needs, motivations & technology to incent creation of sustainable workspaces for employees with MCI|EOD.

Review of Peer-Reviewed Literature

N=6 published in law (n=1) and social science (n=5) journals from the UK (3), USA (1), and Israel (1)

- There is a general lack of peer-reviewed papers, particularly those that evaluate employers' response to legislation, regulations & policies
- All papers outlined external policy & laws that require employers to accommodate workers with progressive cognitive disease
- Resources to help employers support workers is minimal
- MCI|EOD must be managed on a case-by-case basis, and there is a reluctance to adopt costly accommodations
- A humanistic approach to workplace accommodation is encouraged but not required

Review of Grey Literature

N=129 published, from Canada (96) and internationally (33)

- Canadian human rights legislation prohibits discrimination against “disabled” workers
- Federal and provincial/territorial dementia strategies generally focused on workforce issues related to careers rather than those diagnosed with MCI|EOD.
- Other related policies and legislation in each jurisdiction such as labour laws & fiscal policies can also impact employers' actions towards workers with MCI|EOD i.e., Accessibility & Disability acts (e.g. Sask), Employment & Labour Standards (All), Poverty Reduction Strategy acts (e.g. BC)
- Most policy requires employees disclose MCI|EOD into “high risk” work environments with double jeopardy of aging & cognitive impairment stigma & “myths”

Case Review of Jurisprudence

29 relevant cases classified into 3 categories.

Provincial/federal human rights tribunal decisions

Every jurisdiction in Canada has a human rights statute (it is quasi-constitutional). It cannot be waived, and other laws must comply with it. A tribunal can order the union or the employer to accommodate a worker with a disability, order the employer to reinstate the worker, or award the worker damages.

Decisions regarding labour grievances

The relationship between a unionized worker and their employer is governed by a collective agreement (i.e., a contract). A union can file a grievance on behalf of a worker when they think discrimination based on disability or age has occurred, or accommodation has not been adequate.

Wrongful dismissal cases

A worker can sue their employer for damages if they believe they were terminated and not provided adequate notice or pay in lieu of notice.



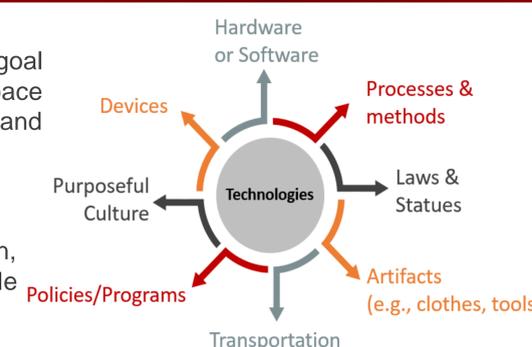
Who we are

Cog@Work is a program of research and network whose goal is to enable affordable, sustainable and inclusive workspace models for employees with mild cognitive impairment and early onset dementia (MCI|EOD)



Our goal

Empower employers and employees with the information, skills, and **technologies** to co-create affordable, sustainable and inclusive workspaces for people with MCI|EOD



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Research Network on Worklife & Dementia (NOWD)

Send a message with the word *subscribe* in the subject line

References

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