

'Genetic predisposition' argument in Canadian courts may diminish influence of other factors

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Using genetic predisposition as a factor in medical conditions presented in Canadian legal cases may diminish the impact of occupational, environmental and social factors in determining health claims, particularly workplace claims, states an analysis in *CMAJ (Canadian Medical Association Journal)*.

Genetic predisposition was cited in 468 legal cases, particularly in labour law, in every province in Canada and the Yukon Territory. The most common references were to conditions affecting the musculoskeletal system (188 cases), such as osteoarthritis, degenerative disc disease and carpal tunnel syndrome. [Mental health conditions](#) (100 cases), especially mood disorders, schizophrenia, and alcohol and drug abuse, were the next most common.

The use of this argument is especially prevalent in workers' compensation cases (339).

"Although increased communication of genetic information among scientists, clinicians, patients and family members can increase understanding and possibly mitigate the effects of genetic conditions, this is not the reason for presenting genetic information in courts and tribunals," writes Professor Roxanne Mykitiuk, Osgoode Hall Law School, York University and Dr. Jeff Nisker, Schulich School of Medicine and Dentistry, University of Western Ontario, London, Ont.,

with coauthors. "Rather, genetic information is usually presented to substantiate the claim that an employee's health problem is related to a [genetic predisposition](#) instead of an occupational injury. These cases are often workers' compensation appeals tribunals, where the burden of proof of an occupational cause for a condition rests with the employee."

However, the people hearing the information may lack the expertise to adequately interpret the complexity and nuances of the [genetic information](#).

"This is of particular concern given that most of the cases in which genetic predisposition was cited involved conditions affecting the musculoskeletal system and mental health — conditions for which there are nongenetic causes, such as repetitive motion or socioeconomic factors," state the authors.

However, neither employment nor insurance discrimination was raised in any of the Canadian cases available on electronic databases.

"Although it is encouraging that we found no cases of genetic discrimination in Canadian courts and tribunals, future monitoring is required," conclude the authors.

Provided by Canadian Medical Association Journal

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