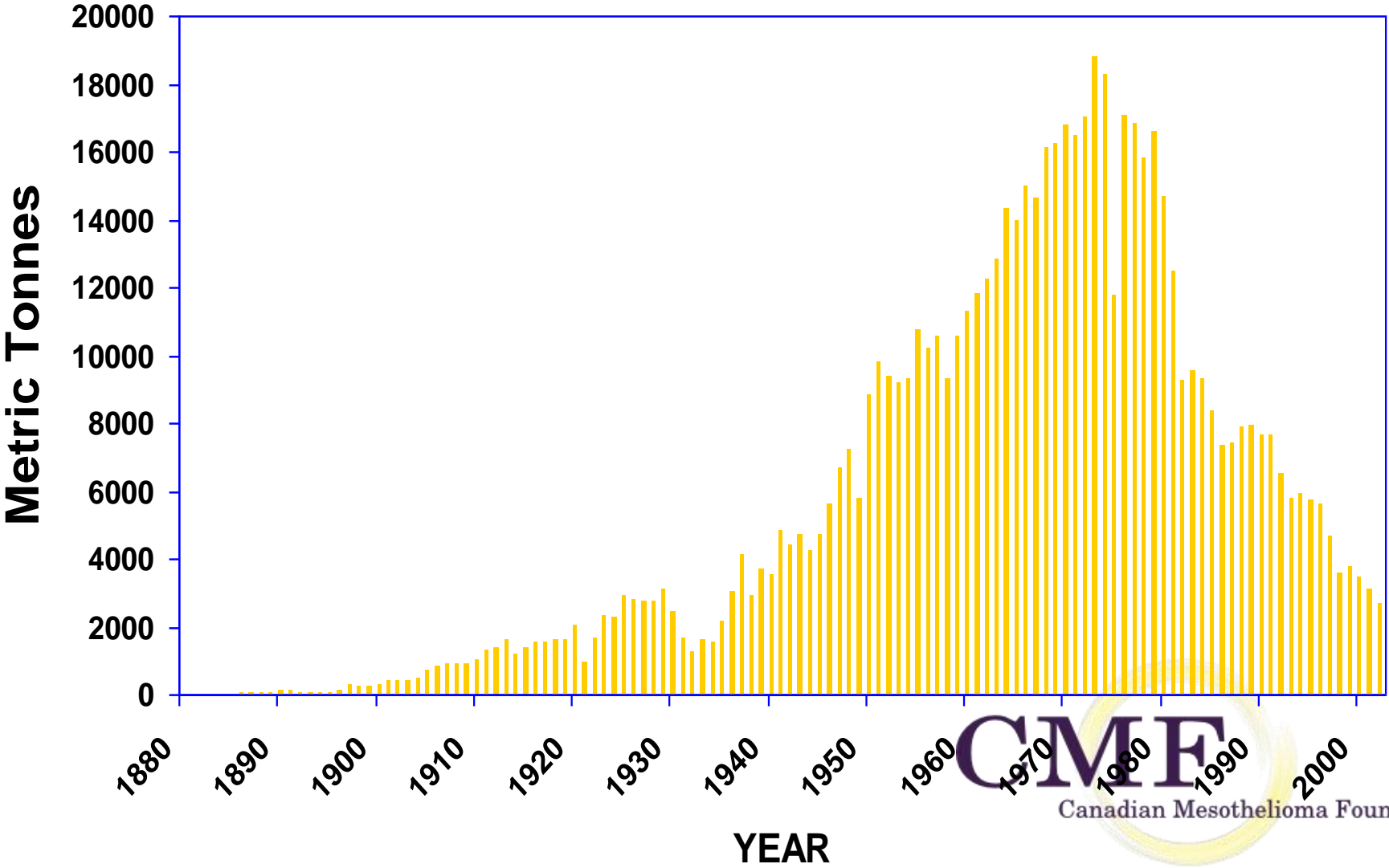




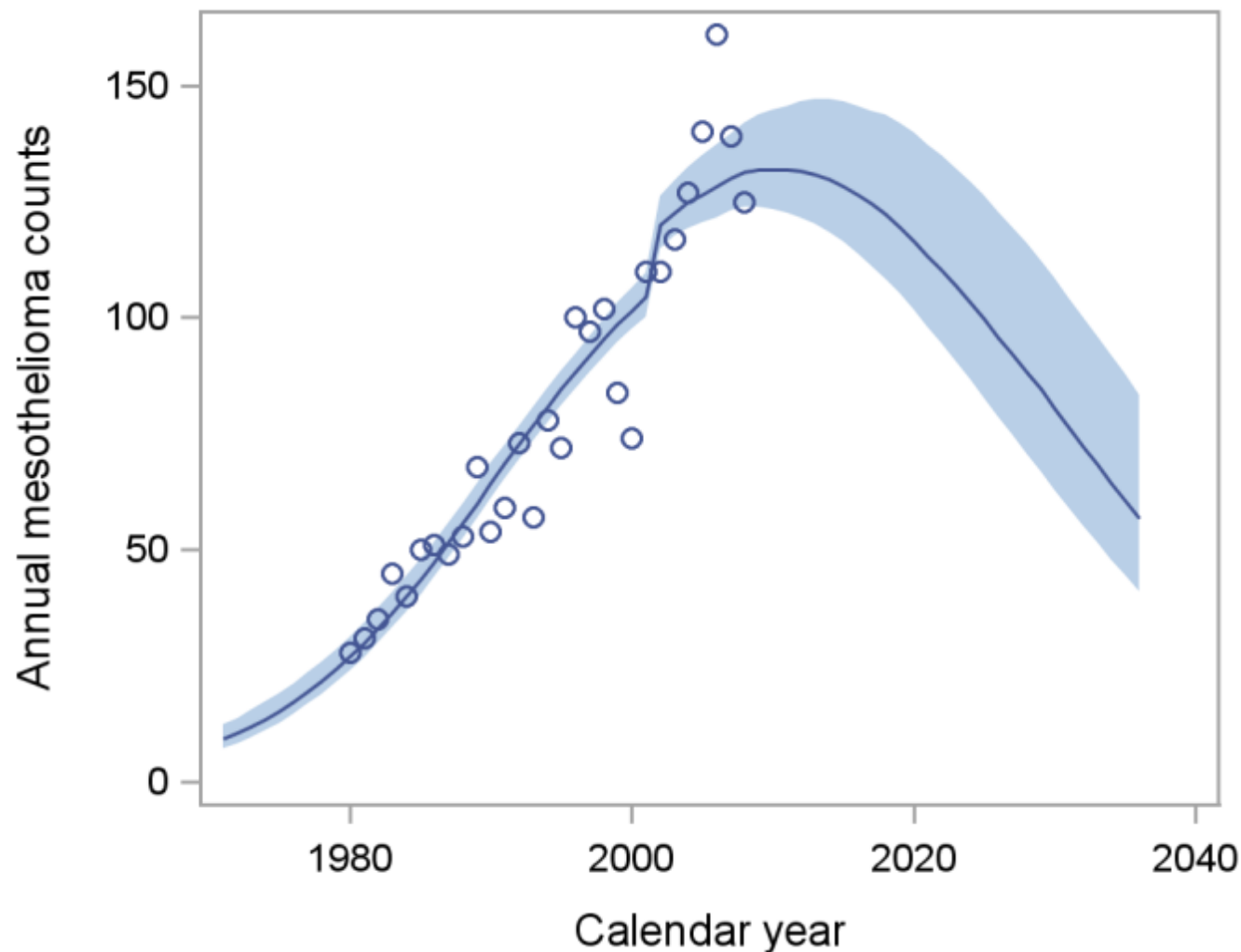
## Workers' Compensation and Trust Fund Claims for Mesothelioma

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April 2, 2014

# Estimated Asbestos Use in Canada



# Mesothelioma incidence counts with projections, males



Data source: Ontario Cancer Registry (2010), Cancer Care Ontario



# Approaches to workers' compensation across Canada



- In Canada, workers' compensation is under provincial jurisdiction. This means that each province or territory establishes its own approach to compensation for mesothelioma.
- Katherine Lippel of the University of Ottawa has written an excellent 2010 review article on workers' compensation for asbestos diseases [http://www.partnershipagainstcancer.ca/wp-content/uploads/Katherine\\_Lippel\\_-FINAL-\\_report\\_April\\_20.pdf](http://www.partnershipagainstcancer.ca/wp-content/uploads/Katherine_Lippel_-FINAL-_report_April_20.pdf)
- Today's presentation focuses on the Ontario approach

# + Ontario approach

- As of May 28, 1992, Ontario implemented an irrebuttable presumption of work-relatedness for a diagnosis of mesothelioma preceded by an exposure to asbestos. The presumption is found in Schedule 4 to the Workplace Safety and Insurance Act (WSIA).
- Covered diagnoses: Primary malignant neoplasm of the mesothelium of the pleura or peritoneum
- Covered exposures: Any mining, milling, manufacturing, assembling, construction, repair, alteration, maintenance or demolition process involving the generation of airborne asbestos fibres

# + Ontario approach - 2

- Ontario Policy Document 16-02-12 details the approach.
- Mesothelioma of the pleura or peritoneum is an occupational disease under sections 2(1) and 15 of the *Workplace Safety and Insurance Act*, as peculiar to and characteristic of a process, trade, or occupation involving exposure to asbestos.
- If the worker was employed in Ontario in a mining, milling, manufacturing, assembling, construction, repair, alteration, maintenance or demolition process involving the generation of airborne asbestos fibres at or before the date of being diagnosed with mesothelioma, mesothelioma is conclusively deemed to be due to the nature of the employment.

# + Ontario approach - 3

- This means that in the vast majority of mesothelioma claims filed with the WSIB, entitlement is relatively easy to establish. This is vital given the often very short survival period following diagnosis. It provides certainty of compensation for this vulnerable group of workers and their survivors.
- Benefits available:
- If the worker is diagnosed while still working, loss of earnings benefits will be paid during the lifetime of the worker, based on 85% of net earnings subject to a maximum wage ceiling (\$84,100 in 2014). Canada Pension Plan disability benefits are deducted. An additional 5% is paid by WSIB into a retirement account after 12 months on benefits.

# + Ontario approach - 4

- Loss of earnings benefits continue until age 65 or, where diagnosis occurs at age 63 or later, for up to two years.
- Where diagnosis comes after retirement from work, no loss of earnings benefits are paid.
- A lump sum non-economic loss award based on degree of impairment and age. The lump sum will be larger for younger workers, smaller for older workers, and usually paid at the 100% level. The payment will be in the range of \$28,600 to \$74,300.



# + Ontario approach - 5

- There are also survivors' benefits payable should the worker die from mesothelioma.
- The surviving spouse will receive a lump sum ranging from \$27,800 to \$83,300, depending on his/her age at the time of death of the worker. Where there is no spouse but there are dependent children, the lump sum is \$55,500.
- Where there is a surviving spouse, s/he will receive periodic payments for his/her lifetime. If there dependent children, the spouse will receive 85% of the worker's net earnings, or if the worker is retired, 85% of the earnings of a worker in comparable employment (this aspect is under appeal by some employers). CPP survivor benefits are deducted.

# + Ontario approach - 6

- Where there are no dependent children, or once the children are no longer dependent, there are periodic payments ranging from 20 – 60% of net earnings, depending on the age of the spouse.
- There are complex rules for other situations where there is no spouse but there are dependent children.
- Non-dependent children receive no compensation. Parents only receive compensation where they can prove actual dependency at time of death and where there are no dependent spouse or children.

# + Ontario approach - 7



- WSIB also pays for the worker's mesothelioma related health care.
- Survivors are provided with support for burial expenses, some related transportation costs and bereavement counselling.
- WSIB will also provide support to a surviving spouse for his/her labour market re-entry.

# + Trust Funds: An Overview



- Compensation trust funds have been established by a number of former asbestos companies to deal with their liabilities in place of court litigation.
- Over \$35 billion is in these trusts, and at present there are more than 30 different trusts that can be accessed by the victims of asbestos related disease.
- Each case is different.
- This presentation does not constitute legal advice.

# + Features of Trust Claims

- Trusts specifically apply to Canadians, who can make claims for significant amounts of compensation based on their exposure to asbestos products manufactured by the companies that created these trusts.
- There are hundreds of “approved sites” in Canada where the trusts admit their products were present, and will accept claims for people who worked at those sites.
- Over the past decade, thousands of Canadians have made successful claims against trusts.

# + Other Features of Trust Funds

- No court case.
- Legal fees may be only payable if claims succeed.
- Legal fees usually range from 25% to 33% of any amounts recovered from the trusts.
- The information that a client needs to provide is not overly burdensome.

# + Who can make claims

- In addition to claims by workers exposed in the course of employment, claims can also be made by people exposed away from work who do not have WSIB entitlements. The types of exposure that are allowed include:
  - People exposed via home renovation,
  - People exposed when washing the clothing of another person who worked with asbestos, or by living in the home of someone who worked with asbestos,
  - Self employed people, and
  - The family of people who have died from mesothelioma or lung cancer.

# + How the CMF can help

- We work with a number of law firms.
- See if you can get a free consultation from a lawyer experienced in trust claims
- Most lawyers who specialize in this work will take your case on a “contingency fee basis”.
- Case-by-case referrals.