

# DISABILITY MANAGEMENT EXPERTS AND THE IMPACT OF JURISDICTION ON PRACTICE AN ONTARIO EXAMPLE

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## ABSTRACT

*Introduction* The role, tasks and competencies of disability management professionals (DMPs) have increasingly become a focus of research in the last decade. However, the legal context in which DMPs work, how this affects their daily practice, and how this impacts their training curricula, has been neglected. This omission is problematic given that international training programs of disability management (DM) operate across different jurisdictions. Our study describes DMPs' practice in Ontario, Canada and considers jurisdiction-specific elements of disability management practice.

*Methods* The study is based on seven interviews and a focus group with five participants, who are either certified disability management professionals or who are involved with DMPs' training, as well as documentary analysis of the legal context of these professionals' practice.

*Results* The study shows how DMPs' practice is affected by the local legal context. The jurisdiction's socio-political framework requires DMPs to distinguish between occupational and non-occupational cases, a distinction which affects their practice and their recommendations to employers. This is in contrast to DM training which emphasises equal treatment of all people with disabilities.

*Conclusions* The research suggests that disability management practices may differ from one jurisdiction to the next and therefore emphasises the need to consider socio-political aspects in DMPs' practice as well as in the development of training programmes and cross-jurisdictional research.

## I BACKGROUND: THE RELEVANCE OF CONTEXT FOR DISABILITY MANAGEMENT

The participation of a person with a disability in society and in the labour market does not just depend on a person's ability to adjust to their society or workplace environment, but also depends on the society's or workplace's ability to let the person participate. In a workplace context, this would mean a match between the needs of the disabled person and the accommodation by the workplace. According to the World Health Organizations' International Classification of Functioning, and its biopsychosocial model, attention is needed to contextual factors and their impact on improving the situation of persons with disabilities. Within this framework, the socio-political context plays a crucial role in any

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intervention aimed at increasing the participation of disabled people in the workplace and society.<sup>1</sup>

Across jurisdictions and at different times there are different laws, policies, procedures and traditions for supporting the vocational rehabilitation and integration of injured and disabled workers. For instance, when comparing the German and Canadian systems, Shrey and Hursh noted that European systems focus on regulation whereas systems in English-speaking countries rely on persuasion.<sup>2</sup> When comparing different international systems of return to work (RTW) and rehabilitation it has to be considered that workers' compensation systems, like those in Ontario and Germany, operate on a different framework than a sickness insurance system, such as those in Scandinavia and in the Netherlands.<sup>3</sup>

When applying the World Health Organization's framework to RTW as well as to disability management and labour market participation, attention is drawn to workplace factors, such as continued contact with the workplace and procedures for managing disability.<sup>4</sup> The task of returning disabled workers to work as well as integrating them at the worksite is linked to legal, administrative, social and political challenges. It requires an interplay between all participants: the health-impaired disabled worker, health care provider, physician, workers' compensation or the disability insurance provider, union and rehabilitation professionals who all take on important roles in the RTW process and the labour integration context. Their roles, responsibilities and support systems are central in guiding the worker on the path back to work.<sup>5</sup>

Disability management professionals (DMPs), such as disability management coordinators and rehabilitation counsellors, guide the health-impaired person and facilitate their social integration and labour market participation. They are not required to have a health background. The particular roles of DMPs vary. They might be employees within a company, work for themselves or a consultancy that provides services to a variety of different companies. They also might be employed at a social insurance organisation such as a workers' compensation board.<sup>6</sup> DMPs' practices have been conceptualised into two practice levels: as system-oriented or more service (client)-oriented. While the system-oriented disability management refers to administrative and managerial tasks with a focus towards the organizational level, the service-oriented

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- 1 Kay Schriener, 'Disability Studies Perspective on Employment Issues and Policies for Disabled People' in Gary L Albrecht, Katherine D Seelman and Michael Bury (eds), *Handbook of Disability Studies* (Sage Publications, 2001) 642.
  - 2 Donald E Shrey and Norman C Hursh, 'Workplace Disability Management: International Trends and Perspectives' (1999) 1 *Journal of Occupational Rehabilitation* 9, 47.
  - 3 For a detailed analysis of international influences on Dutch social security law, and for a detailed analysis of the Dutch system and the ways in which it differs from North American systems, see Frans Pennings, *Dutch Social Security Law in an International Context* (Kluwer, 2002).
  - 4 Shrey and Hursh, above n 2, 46; Susanne M Bruyère and Donald E Shrey, 'Disability management in industry: A joint labor-management process' (1991) 34(3) *Rehabilitation Counselling Bulletin* 227, 242; Rochelle V Habeck, Allan H Hunt and Brett Van Tol, 'Workplace factors associated with preventing and managing work disability' (1998) 42(2) *Rehabilitation Counselling Bulletin* 98, 143.
  - 5 Renee-Louise Franche et al, 'Workplace-Based Return-to-Work Interventions: Optimizing the Role of Stakeholders in Implementation and Research' (2005) 15(4) *Journal of Occupational Rehabilitation* 525, 542; Ellen MacEachen et al, 'Systematic review of the qualitative literature on return to work after injury' (2006) 32(4) *Scandinavian Journal of Work, Environment and Health* 257, 269; Christian Stahl et al, 'A matter of trust? A study of coordination of Swedish stakeholders in return-to-work' (2010) 20(3) *Journal of Occupational Rehabilitation* 299; Amy Ahrens and Kate Mulholland, 'Vocational rehabilitation and the evolution of disability management: An organizational case study' (2000) 15 *Journal of Vocational Rehabilitation* 39, 46.
  - 6 Glenn Pransky et al, 'Development and validation of competencies for return to work coordinators' (2010) 20(1) *Journal of Occupational Rehabilitation* 41.

approach applies when there is a direct contact with the client, when disability managers are working as case managers.<sup>7</sup>

The DMPs are responsible for setting up and running DM programs that aim to promote successful and early RTW as well as cost reduction of workers compensation costs.<sup>8</sup> This includes conducting audits of companies' RTW and DM practices and incorporates, among other things, the collection and analysis of disability cost data (evaluation of disability management practices), monitoring of RTW and reduction of disability management costs. The audits focus on disability management policy and workplace resources, disability prevention and early intervention.<sup>9</sup>

Due to different socio-political and legal frameworks, there may be differences in the tasks and role of DMPs across different countries and between different systems within a jurisdiction. To support people with illnesses and disabilities according to their personal and disability-related needs at the work-site, DMPs may need certain competencies based on the socio-political context such as understanding the impact on disability management practice of particular state policies and support systems. Given that the work of DMPs includes a system-level focus, their tasks include support for employers to understand socio-political issues such as systems governing compensation policies and employee benefits.<sup>10</sup> In some jurisdictions, like Germany and Ontario, the participation of disability managers is neither mandated nor officially acknowledged by the legislation.

There is a body of research on disability management rules and norms in different workplaces as well as among different stakeholders within the policy context of Ontario.<sup>11</sup> These studies do not highlight the professionals' actual practice. With some exceptions, the relationship between DMPs and either jurisdiction or the socio-political context has not been extensively researched, either locally or with an international scope.<sup>12</sup> This lack of jurisdiction-focused research with respect to DMPs' practice is surprising, given the

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7 Fong Chan et al, 'Disability Management Practitioners: A work behaviour analysis' (2000) 15 *Journal of Vocational Rehabilitation* 47, 56; David A Rosenthal et al, 'A Survey of current Disability Management Practice: emerging trends and Implications for Certification' (2007) 50(2) *Rehabilitation Counseling Bulletin* 76, 86.

8 Renee M Williams et al, 'Disability Management Practices in Education, Hotel/Motel, and Health Care Workplaces' (2005) 47 *American Journal of Industrial Medicine* 217, 226.

9 International Disability Management Council, 'Implementing Disability Management Quality Standards' (Paper presented at 9th European Conference on Rehabilitation, Copenhagen, 9-10 November 2010) <[http://www.rehabiliteringsforum.dk/fileadmin/filer/ERC\\_2010/Wolfgang\\_Zimmermann.pdf](http://www.rehabiliteringsforum.dk/fileadmin/filer/ERC_2010/Wolfgang_Zimmermann.pdf)>

10 Ahrens and Mulholland, above n 5, 46; Janna Calkins, John Lui and Christopher Wood, 'Recent Developments in integrated disability management: implications for professionals and organizational development' (2000) 15 *Journal of Vocational Rehabilitation* 31, 37; Chan et al, above n 7, 56; William Shaw et al, 'A Literature Review Describing the Role of return-to-work Coordinators in Trial Programs and Interventions Designed to Prevent Workplace Disability' (2008) 18 *Journal of Occupational Rehabilitation* 2, 15.

11 Joan M Eakin, Ellen MacEachen and Judy Clarke, "Playing it smart' with return to work: Small workplace experience under Ontario's policy of self-reliance and early return' (2003) 1(2) *Policy and Practice in Health and Safety* 19, 41; Michael K Schweigert et al, 'Treating physicians' perceptions of barriers to return to work of their patients in Southern Ontario' (2004) 54 *Occupational Medicine* 425, 429; Renee M Williams et al, 'Disability Management Practices in Ontario Health' Care Workplaces (2007) 17 *Journal of Occupational Rehabilitation* 153, 165; Williams et al, above n 8, 226; Renee M Williams and Muriel G Westmorland, 'Perspectives on workplace disability management: a review of the literature' (2002) 19(1) *Work* 87, 93.

12 Irmo Marini, 'What rehabilitation counsellors should know to assist Social Security beneficiaries in becoming employed' (2003) 21 *Work* 37, 43.

number of studies emphasising the impact of local laws and policies on workers as well as on employers in RTW and disability management.<sup>13</sup>

Training in disability management has been established to standardise quality and to provide necessary skills. A prominent training program for DMPs is provided by NIDMAR, the National Institute of Disability Management and Research, based in Canada, launched in 1994 and described by NIDMAR as ‘an internationally recognised organisation committed to reducing the human, social and economic costs of disability’.<sup>14</sup> NIDMAR might be considered a founder of modern DM certification and actively provides DMPs’ training in international jurisdictions including Germany and 13 other countries.<sup>15</sup> In Canada, where the disability management training was developed, but where certification is not mandatory for practitioners in DM, there are 142 certified disability management professionals (cdmp);<sup>16</sup> in Germany there are 728 cdmp.<sup>17</sup> The NIDMAR training is based on nine knowledge domains.<sup>18</sup> It provides a broad conception of occupational and non-occupational disability management. The modules are general and designed to fit most situations. This program takes a generic, cross-jurisdictional approach to DM, and emphasises the notion of ‘duty to accommodate’, a human rights provision, which is present in legislation in many countries where DM is practiced.<sup>19</sup>

Being certified is seen as important with respect to competence in practice. In recent years, researchers have become increasingly interested in the licensing process in the field of rehabilitation counselling as can be seen from an ongoing analysis of the position of rehabilitation counsellors.<sup>20</sup> Within the last 20 years, a number of studies on ‘disability management and rehabilitation counselling practice’ have contributed to an

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13 Sally Atwell and Lesley M Hudson, ‘Social Security Legislation Creates Ticket to Work and Work Incentives Improvement Act’ (2004) 9 *Topics in Spinal Cord Injury Rehabilitation* 26, 32; Lena Edén et al, ‘Return to work still possible after several years as a disability pensioner due to musculoskeletal disorders: A population-based study after new legislation in Sweden permitting ‘Resting disability pension’ (2006) 26 *Work* 147, 155; Kevin Purse, ‘Workers compensation-based employment security for injured workers: A review of legislation and enforcement’ (2002) 18 *Journal of Occupational Health and Safety - Australia and New Zealand* 61, 66; Johannes R Anema et al, ‘Can Cross Country Differences in Return-to-Work After Chronic Occupational Back Pain be Explained? An Exploratory Analysis on Disability Policies in a Six Country Cohort Study’ (2009) 19 *Journal of Occupational Rehabilitation* 419, 424; Katherine Lippel, ‘L’intervention précoce pour éviter la chronicité: enjeux juridiques’, Barreau du Québec (ed), *Développements récents en santé et sécurité du travail* (Éditions Yvon Blais, 2008) vol. 284, 137.

14 Industry Canada, *National Institute of Disability Management and Research* <<http://www.ic.gc.ca/app/ccc/srch/nvgt.do?lang=eng&prt=1&sbPrtl=&estblmntNo=234567030935&profile=cmpltPrfl&profileId=21&app=sold>>.

15 International Disability Management Council, above n 9.

16 National Institute of Disability Management and Research, *Current Listings CDMPs* <[http://www.nidmar.ca/certification/cdmp/cdmp\\_certified.asp](http://www.nidmar.ca/certification/cdmp/cdmp_certified.asp)>.

17 Deutsche Unfallversicherung, *Disability management, Stand in Deutschland, Mai 2009* (2009) available via <<http://www.vdima.de>>.

18 National Institute of Disability Management and Research, *Examination Preparation Guide* (2004) <[http://www.nidmar.ca/certification/cdmp/CDMP\\_Examination\\_Preparation\\_Guide.pdf](http://www.nidmar.ca/certification/cdmp/CDMP_Examination_Preparation_Guide.pdf)>.

19 Philip M Berkowitz, Thomas Müller-Bonanni and Anders Etgen Reitz, *International labor and employment law* (2008) vol 2, *Human Rights Code*, RSO 1990, c H19.

20 Vilia M Tarvydas, Michael J Leahy and Stephen A Zanskas, ‘Judgment Deferred: Reappraisal of Rehabilitation Counseling Movement Toward Licensure Parity’ (2009) 52 *Rehabilitation Counseling Bulletin* 85, 94.

empirical base for understanding this domain.<sup>21</sup> Although findings of this research have been integrated into training programs, there is a lack of research based on the DMPs' practice taking an educational/ pedagogical perspective and conceptualising implications for curricula development within disability management. The above mentioned studies conclude that study findings contribute to revision of curricula but how they impact curriculum development is not discussed clearly. There is a lack of independent research regarding specific training programs such as the NIDMAR program.

This paper examines the impact of local legislation on DMPs' practice. The study aims to uncover factors that are relevant when assessing the impact of legislation on the skills, work and tasks of DMPs. What are the relevant issues that are important to consider when comparing different disability management systems in different jurisdictions? The NIDMAR trained DMPs and the situation in Ontario, Canada, are the subject of this case study. A guiding hypothesis of this study is that, as NIDMAR is a Canadian-based program, it might show sensitivity to Canadian socio-legal context.

This investigation emerges from an initial focus on the broad adoption of the NIDMAR certification in disability management in Germany, which prompted questions about the particular training needs of DMPs internationally.<sup>22</sup> Although focussed on the situation in Ontario, the study allows for broader consideration of the kinds of issues that might need to be considered by DMPs in different countries.

## II STUDY DESIGN AND METHODS

This qualitative study consisted of document analysis of laws and policies pertinent to disability management in Ontario, and interviews and a focus group with DMPs held in February/March 2009.

The interview questions were devised by the three authors following an analysis of Ontario and Canadian legislation. The questions were piloted in two initial interviews and then refined and further developed in the process of data collection. For instance, it became apparent that DMPs preferred to talk about ideal practice (how disability management should work) and that particular probes would be necessary to prompt them to speak about actual practice.

The semi-structured, open-ended interviews, as well as the focus group, investigated the role and tasks of DMPs in Ontario, the impact of legislation on their practice, the handling of occupational versus non-occupational accidents, the impact of sickness insurance, relevant skills and training needs with reference to jurisdiction, and experiences with

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21 Fong Chan et al, 'Training needs of certified Rehabilitation Counselors for Contemporary Practice' (2003) 46(2) *Rehabilitation Counseling Bulletin* 82, 91; Kenneth F Currier et al, 'Functions and knowledge Domains for Disability Management Practice: A Delphi Study' (2001) 44(3) *Rehabilitation Counseling Bulletin* 133, 143; Glenn Pransky et al, 'Development and Validation of Competencies for Return to Work Coordinators' (2009) 20(1) *Journal of Occupational Rehabilitation* 1, 8; David A Rosenthal et al, 'A Survey of current Disability Management Practice: emerging trends and Implications for Certification' (2007) 50(2) *Rehabilitation Counseling Bulletin* 76, 86; William Shaw et al, 'A Literature Review Describing the Role of return-to-work Coordinators in Trial Programs and Interventions Designed to Prevent Workplace Disability' (2008) 18 *Journal of Occupational Rehabilitation* 2, 15; Susan M Skully, Rochelle V Habeck and Michael J Leahy, 'Knowledge and Skill Areas Associated with Disability Management Practice for Rehabilitation Counselors' (1999) 43 *Rehabilitation Counseling Bulletin* 20, 29; George N Wright, Michael J Leahy and Pamela Riedesel Shapson, 'Rehabilitation Skills Inventory: Importance of counsellor Competencies' (1987) 31 *Rehabilitation Counseling Bulletin* 107, 118.

22 Dörte Bernhard, *Weiterbildung betrieblicher Akteure im Kontext der beruflichen Integration behinderter Menschen. Eine Bildungsbedarfsanalyse* (Shaker, 2008) 19; Dörte Bernhard, Mathilde Niehaus and Britta Marfels, 'Changes in managing disability at the workplace in Germany: Chances of professionalization' in Henry Harder and Thomas Geisen (eds), *Disability Management. Theory, History, Research and Methods* (in press).



NIDMAR training as well as with alternative programs. Interview questions explored the following issues:

1. What role does the legal framework play in DMPs' practice?
2. What kinds of jurisdiction-specific training needs exist?
3. How does the NIDMAR training prepare these DMPs for practice?

Criteria for recruitment of DMPs were that they were NIDMAR certified, or involved in NIDMAR training, and that they represented a range of DM practices.

Data was collected from ten DMPs in Ontario and two who worked at the national level for a total of 12 DMPs in interviews and the focus group. The interviews were conducted by telephone (six) and face-to-face (one). The focus group included an additional five participants. Nine participants were NIDMAR certified and the remaining three were involved with NIDMAR in other ways, such as being on the Board of NIDMAR or responsible for designing NIDMAR training.

All interviews and the focus group were audio-recorded and transcribed verbatim. All participants were assured of anonymity and data confidentiality at the beginning of each interview. The names associated with the quotes provided in the paper are pseudonyms. The participants agreed to publication and dissemination of results from this study and were assured of receiving any material published.

The interviews were analysed thematically following the steps of a qualitative content analysis.<sup>23</sup> This involved repeated reading of the transcripts and ordering all data by category, for instance, all responses relating to DMPs' practice according to whether or not the injury was occupational. Data were then reviewed for themes that illustrated jurisdiction-specific DM issues. At this point, accounts were compared and contrasted and contradictions were examined.

Trustworthiness of the data was enhanced by verbatim transcribing of the audio-recorded interviews by the lead author, and by discussion and analysis of the data by the three authors, who have broad occupational health research experience and represent different knowledge domains.

### III RESULTS

Results are presented in four sections. First, the socio-legal context for DM in Ontario, Canada is described, to explain issues that need to be navigated by DMPs in their local practice. Next, the interview study and focus group of Ontario DMPs highlight three primary aspects of DM practice relevant to the socio-legal context: (a) that disability training focuses on the generic needs of all people with disabilities and the duty of employers to accommodate these needs regardless of the source of the injury, be it occupational or not; (b) that in practice, disability management involves consideration of distinct socio-political conditions. In Ontario, this is evident in the distinction raised by DMPs between the management of occupational as compared to non-occupational injuries; and c) that disability management training lacks systematic consideration of socio-political issues. In the discussion we consider the challenges arising when DMPs' training does not incorporate these socio-legal issues.

#### *A Socio-legal context for disability management in Ontario*

The socio-legal analysis identified four policy contexts relevant to DM in Ontario: the workers' compensation system administered by the Workplace Safety and Insurance Board, human rights legislation, employment insurance and private salary insurance for short-term and long-term disability leave.

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23 Philipp Mayring, *Einführung in die qualitative Sozialforschung* (Beltz Verlag, 2002).

### 1 *Workplace Safety and Insurance Board*

Each province in Canada has its own workers' compensation legislation, and each has particular provisions for issues such as eligibility, coverage, and RTW. In Ontario, workers' compensation is governed by the *Workplace Safety and Insurance Act (1997)*.<sup>24</sup> This Act is based on the Meredith Principles (1913) which lay the ground for a no-fault approach where workers receive compensation at no cost and employers pay premium rates depending upon the industry.<sup>25</sup> The system is administered by a neutral workers' compensation agency with exclusive jurisdiction over all matters arising out of the enabling legislation.<sup>26</sup> The Ontario Workplace Safety and Insurance Board (WSIB) began as the Workmens' Compensation Board in 1915. The system requires workers to give up the right to sue for occupational injuries, irrespective of fault, in return for guaranteed compensation for accepted claims.<sup>27</sup> About 72 per cent of Ontario employers are covered by workers' compensation and WSIB salary insurance to workers covers 85 per cent of their net wages.<sup>28</sup> The *Workplace Safety and Insurance Act (1997)* and Early and Safe Return to Work policy provide at least three incentives for employers and workers to engage in RTW:<sup>29</sup>

- a. *Back to work*: Employers of firms with more than 20 workers are required to re-integrate work-injured workers into their workplace, an obligation that lasts for two years from the time of injury. The obligation only applies to workers with at least one year's seniority.<sup>30</sup>
- b. *Experience-rated insurance premiums*: For all WSIB employers, experience-rating provides a strong incentive to return workers to work quickly as every dollar paid by the WSIB to workers who are off work due to an injury increases the employer's WSIB premiums.<sup>31</sup>
- c. *Duty to cooperate*: Workers and employers have a 'duty to cooperate' with RTW plans established for them. If workers do not comply, workers' compensation benefits can be reduced or suspended.<sup>32</sup> Employers are also required to cooperate

24 *Workplace Safety and Insurance Act (1997)* SO 1997, c 16 ('WSIA').

25 See generally on the foundations and the application of the workers compensation systems in Canada: Terence G Ison, *Workers' Compensation in Canada* (Butterworths, 2<sup>nd</sup> ed, 1989). See also the information available at Association of Workers' Compensation Boards of Canada, *History of Workers' Compensation* <<http://www.awcbc.org/en/historyofworkerscompensation.asp>>.

26 Terence G Ison, above n 25

27 Morley Gunderson, Douglas Hyatt (eds), *Workers' compensation: foundations for reform* (University of Toronto Press, 2000); and Association of Workers' Compensation Boards of Canada, above n 25.

28 On coverage, see the information available at Association of Workers' Compensation Boards of Canada, *Assessment/Premiums* <<http://www.awcbc.org/en/assessmentpremiums.asp#Scope%20of%20Coverage>>; On benefits see Association of Workers' Compensation Boards of Canada, *Workers' Compensation Benefits & Rehabilitation* <<http://www.awcbc.org/en/workerscompensationbenefitsandrehabilitation.asp#Benefits>>; on the implications of coverage, see Rachel Cox and Katherine Lippel, 'Falling through the legal cracks: the pitfalls of using workers' compensation data as indicators of work-related injuries and illnesses' (2008) 6(2) *Policy and Practice in Health and Safety* 63, 84. For an overview of the application of the Ontario legislation, see Garth Dee and Gary Newhouse, *Ontario Workplace Safety and Insurance Act & Commentary Supplement* (LexisNexis Canada Inc, 2008 ed).

29 Workplace Safety and Insurance Board, *Early and Safe Return to Work* (Policy 19-02-01) <<http://www.wsib.on.ca/wsib/wopm.nsf/Public/190201>>.

30 WSIA s 41; Workplace Safety and Insurance Board, *Re-employment Provisions* (Policy 19-04-02) <<http://www.wsib.on.ca/wsib/wopm.nsf/Public/190402>>.

31 Experience rating based on frequency and costs of injuries is mandated by WSIA s 83(1) which explicitly includes as an objective 'to encourage employers to reduce injuries and occupational diseases and to encourage workers' return to work.' See also policy detailing the implementation of experience rating: Workplace Safety and Insurance Board, <<http://www.wsib.on.ca/wsib/wsibsite.nsf/Public/EmployersPIhowmuch>>.

32 WSIA s 40(2); Workplace Safety and Insurance Board, *Workplace Party Co-operation* (Policy 19-02-03) <<http://www.wsib.on.ca/wsib/wopm.nsf/Public/190203>>.

in RTW.<sup>33</sup> It is important to note that no specific provisions of the workers' compensation legislation in Ontario provide guidelines for DMPs. In other words, there is no legal obligation for employers to hire or consult with DMPs; it is a purely discretionary and voluntary arrangement between DMPs and the employers. For this reason there is no accreditation process, and the services are not paid for by WSIB so no fee schedule exists.

## 2 Human Rights legislation

The provisions governing workplaces' 'duty to accommodate' workers with injuries and disabilities are found in human rights legislation,<sup>34</sup> and if the source of the disability is a work injury, the obligation to accommodate is also integrated in the WSIA.<sup>35</sup> The employer must adapt the work or the workplace to accommodate the worker with a disability to the extent that the accommodation does not cause the employer undue hardship. However, when the source of the disability is not a work injury, recourse under the Human Rights Code is the only remedy. It is a complaints-based procedure with little enforcement and no institution is mandated proactively to ensure that people are accommodated; therefore outside of the workers' compensation process, if there is no formal complaint, there will be no sanction of employers who violate the duty to accommodate.<sup>36</sup> When it is a work accident, the compensation board will take much more assertive initiative.<sup>37</sup> Rules governing employers' obligations and the limit of undue hardship are created by this legislation, and interpreted and applied by the courts if the worker files a complaint.<sup>38</sup> This legislation applies to all workers and all forms of disability.

## 3 Employment Insurance<sup>39</sup>

There is a modest public sickness benefit available through federal employment insurance but many people are ineligible because of contribution requirements. It starts on the third week of illness, lasts 15 weeks and provides 55 per cent of salary. To be eligible for employment insurance benefits, workers need to have contributed premiums for several hundred hours of employment in the previous 52 weeks (currently 600 hours).<sup>40</sup> This is particularly problematic for people with chronic illness and those with short-term or intermittent employment contracts, as they often do not work the required number of hours.

## 4 Private Salary Insurance

Some workers in Ontario have supplementary privately-purchased sickness insurance, usually provided by employers as an incentive. This insurance provides income replacement for both short-term and long-term disability in situations where there are

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33 WSIA s 40(1); Workplace Safety and Insurance Board, *Re-employment Provisions* (Policy 19-04-02) <<http://www.wsib.on.ca/wsib/wopm.nsf/Public/190402>>.

34 *Human Rights Code*, RSO 1990, c H19, s 11(2).

35 WSIA s 41(6).

36 For a discussion of the difficulties in winning complaints based on Human Rights Codes complaints for failure to accommodate see Judith Mosoff, 'Lost in translation?: The disability perspective in *Honda v. Keays* and *Hydro-Québec v. Syndicat*', Book Review (2009) 3 *McGill Journal of Law and Health / Revue de droit et de la santé de McGill* 137.

37 Anne-Marie Laflamme and Sophie Fantoni, 'L'obligation d'accommodement au Canada et L'obligation Française de Reclassement: Convergences, Divergences et Impacts sur le Maintien en Emploi du Salarie en État d'incapacité' (2009) 3 *McGill Journal of Law and Health / Revue de droit et de la santé de McGill* 12.

38 Mosoff, above n 36, 149.

39 See generally, Georges Campeau, *From UI to EI: Waging war on the welfare state* (UBC Press, 2005).

40 Service Canada, *Employment Insurance*, <<http://www.servicecanada.gc.ca/eng/ei/types/special.shtml>>.



non-work related injuries and illnesses. There is no legal obligation to provide salary insurance to workers and 38 per cent of Canadian workers have no cover.<sup>41</sup> The likelihood of access to those additional benefits is far higher for unionised employees on full-time and permanent job contracts in large companies. It is less often available to workers who work for small businesses, and in certain sectors of employment, where precarious employment is high.<sup>42</sup>

### *B The generic training of disability managers*

The skills described by DMPs as necessary for practice were overwhelmingly of a generic nature. DMPs noted that one needs to be a ‘people person’ and have empathy and compassion. Participants also mentioned the need for interpersonal and communication skills as well as organizational and problem solving skills. The NIDMAR training program in Canada does not require students to have a training background in physical or mental health. They referred to the need to be clear about tasks and problems and about recognizing the role and responsibilities of the other RTW stakeholders.

The DMPs described the NIDMAR training as providing a structure for practice and a place for ongoing education at a ‘high level’:

I couldn’t do the job without NIDMAR training because it sets out a format that is fairly easy to follow. It gives you the structure you need to organize it. (Sarah)

Participants described their NIDMAR certification as leading them to a wider understanding of injury management situations. For instance, this workers’ compensation board participant described how it widened her perspective to include injuries that were not work-related:

Before my certification, my knowledge was very focused on workers’ compensation matters and the matters that apply to that legislation. So, by being certified it gave me a broader understanding of other things that impact an individual, whether it is a work-related injury, non work-related, the different legislations that might come into play. It just gave me a more wholesome understanding of disability management. (Laure)

The DMPs also emphasised that the training prepares them to provide help to people to return to work, regardless of whether their health problem is work-related or not.

Whether someone is off on sick leave or off on workers’ compensation, it doesn’t matter to us. The process is the same. (Sarah)

The DMPs were aware that their practice was affected by legislative or mandatory RTW provisions. They referred to the *Ontario Human Rights Code (OHRC)*, the *Occupational Health and Safety Act*<sup>43</sup> and the *Workers’ Safety and Insurance Act (WSIA)* as the basis for their practice. Some also mentioned the impact on disability management practice of the collective agreements applicable to unionised workers.

We found that DMPs’ training appears to focus on the generic needs of all people with disabilities and the duty of employers to accommodate these needs regardless of the source of the work injury.

### *C Socio-political conditions in disability management*

#### *1 Awareness and different treatment of work-related versus non work-related cases*

An important aspect of DM practice was the DMPs’ stance of treating all situations equally to avoid a two-tier system for workers with occupational or non-occupational

41 Katherine Marshall, ‘Benefits of the job’ (2003) 4(5) *Perspectives on Labour and Income* Table 1 <<http://www.statcan.gc.ca/pub/75-001-x/00503/6515-eng.html>>.

42 Ibid Table 2.

43 RSO 1990, c O1.

injuries:

We try to treat them all the same. .... If you break your arm falling here or falling at home, it doesn't matter to us. Not all employers are like that, but we work really hard, because we don't want a two tier system. We don't want employees who get hurt at work treated better than employees who get hurt at home. (Sarah)

However, in their descriptions of practical situations it was apparent that jurisdictional conditions affected both DMPs' ability to support people with injuries or disabilities and the type of support being sought by the DMPs' employers. When asked about DM practice differences for occupational versus non-occupational related health problems, several differences in RTW case management were revealed, relating to privacy rights, influence over RTW, and the urgency and pace of RTW activities.

DMPs mentioned that in the case of occupational injuries, protection of workers' personal information was a challenge. These injured workers had a lower level of protection of their right to privacy than workers who had a non-compensable injury because requirements of cooperation provided for in the workers' compensation legislation were more invasive than any constraints associated with the application of the *Ontario Human Rights Code (OHRC)*, which does not actively oblige workers to participate in return to work activities if they choose not to do so.<sup>44</sup> The danger of intrusion and the need for consent of the work-injured worker in the RTW process were raised as issues.

Consideration of differences between occupational and non-occupational disability illustrated the significance of the different legal frameworks. Compensation for occupational injuries is funded by the WSIB, while other cases can be dealt with through employer-based insurance for either short or long term disability.<sup>45</sup> In both situations, there were different employer responsibilities. DMPs referred to stronger and more precise policies (such as return to work policy) being applied to work-related injuries. With work-related injuries there was a faster return-to-work after the accident because employers wished to reduce costs related to experience-rated workers' compensation premiums, which penalised the employer for worker absence due to work injury. As mentioned in the description of the socio-legal context, experience rating is used by the WSIB as a strong economic incentive to employers, as premiums increase significantly if employers fail to reintegrate injured workers in a timely manner. Such incentives would not normally apply in private insurance contracts.

Participants described work-related injuries as subject to stricter and more precise legislation and therefore a greater obligation is placed on employers when handling occupational injuries and on workers who are obliged to comply with the RTW process to avoid losing their benefits.<sup>46</sup> DMPs noted that when an injury was occupational, the employer had more influence over the injured worker while workers' compensation board had more authority over the employer of injured workers.

Another difference noted between occupational and non-occupational injuries was that non-occupational injuries required less documentation and less follow-up. With temporary non-occupational injuries, employers had no mandate to put in place early RTW provisions. Interestingly, DMPs mentioned that employers often lack knowledge of how to reintegrate workers with non-occupational related health problems. They also noted that some employers were unfamiliar with how such injury impacts their short and long term disability costs.

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44 Marie-Claude Chartier, 'Human Rights and the Return to Work: The State of the Issue' (Research presented to the Canadian Human Rights Commission, 28 April 2006) <[http://www.chrc-ccdp.ca/research\\_program\\_recherche/rtw\\_rat/toc\\_tdm-eng.aspx](http://www.chrc-ccdp.ca/research_program_recherche/rtw_rat/toc_tdm-eng.aspx)>.

45 Ibid.

46 Ellen MacEachen et al, 'A deliberation on 'hurt versus harm' logic in early-return-to-work policy' (2007) 5 (2) *Policy and Practice in Health and Safety* 41, 62.

Finally, participants mentioned that conducting disability management audits provided them with insight into differences between non-occupational and occupational injuries. The audits included questions on statistics and data as well as on the existence of policy. The DMPs also mentioned that these audits reinforced their belief that occupational and non-occupational cases were dealt with in different ways:

When I do audits of organisations.... we audit the organizations' DM as a whole, whether it is work related or not. That's when you begin really to see the differences and sometimes even different policies applied for the different types of injuries. And, you always see... more distinct policies for the work related injuries than you do for the non-work related. (Laure)

## 2 How costs drive DMPs' practice

The cost factor, or as one DMP (Lilly) termed it 'the return on investment of Disability Management', was another issue raised by DMPs as relevant to their practice.

When economic times get tough, then there is less receptiveness on the employer's part to bring people back to work. So, you know, I think, that's certainly one of the things that you have to be cautious about, when you are doing Disability Management. And, you just have to know, how to manage the return to work period, so that the production floor doesn't have too many modified workers. (Lilly)

DMPs suggested that accommodation of injured workers can be seen by employers as unattractive because, according to the *Ontario Human Rights Code*, employers must adapt employment conditions up to the point of 'undue hardship', and this might be costly:<sup>47</sup>

..., and undue hardship could be identified as money, you know, it could be that you don't have the money to do it, but the level is pretty high in terms of money, and because we are a government agency [workers' compensation] we really can never use that excuse, we might be allowed to phase it in over a year, if it's something major, but generally we are not allowed to use that as an excuse. (Sarah)

The DMPs also noted that work-related incidents were seen by employers as costly because of premium expenses associated with experience-rated workers' compensation premiums. These considerations showed that the focus of DMPs is not only on the injured or disabled worker but also on the finances of the company:

Anyone who is contacting the designated individual who is trained in this, it is more of a cost saving measure, how can I save money, and that's the end result of good programming, and because it is time sensitive, they want it immediately, in other words, in this case, I want results, I want my costs reduced. ... There will be management decisions at all aspects of our lives that are going to... conflict with what you want. This is a business need, for a business requirement or decision. (Viktor)

There is also sometimes a cost impact. It's costly for organisations to have workers off work whereas the cost for non work-related seems to be not as much in their face. Ultimately, it does cost everyone. (Laure)

The principle is to be cost effective and show cost benefit, ... I don't see as extra because we do it no matter what the economy is but there is a definite need to demonstrate to employers the economic benefits of disability management. (Nelly)

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<sup>47</sup> *Human Rights Code*, RSO 1990, c H19; given that, as we have seen above, the same threshold applies to accommodation of injured workers under the *WSIA* this differentiation is somewhat surprising.

### *D Formal DM training lacks consideration of socio-legal issues*

DMPs talked of the relevance of socio-legal issues to their practice when they referred both to the need to guide employers about legislation compliance or educating employers about the benefits of DMPs' services when compared with the costs. Although the DMPs referred to making individual efforts to learn relevant laws, policies and current research, their formal training lacked these aspects.

#### *1 Lack of detailed knowledge on the legal framework*

The DMPs referred to the need to ensure that they had an understanding of all the different legislation that impacted workers with injuries and disabilities. They emphasized that human resource personnel intervened on a variety of different employment issues and therefore did not have the same focused approach to disability management as a dedicated DMP.

Quite often, the people who are running the human resource areas..., disability, is one of the functions they run. So, their understanding of that legislation is somewhat lacking, when to use it, how, to use it, it doesn't work. They have rights and obligations that they really don't understand. (Viktor)

The DMPs were aware that legislation was stricter in cases of occupational injuries and diseases, and saw as one of their tasks the responsibility to ensure that other RTW stakeholders in the companies were familiar with the legislation so that each was aware of their duties, roles and responsibilities:

What we do is, we actually bring to the attention of employers and unions ... that there are really kind of two types of legislation governing the whole duty to accommodate... because they need to know that they need to be in compliance with the legislation as part of their risk management. (Pauline)

Sometimes just making sure, that people are aware of the different legislation and their obligations. I find many people aren't clear on their roles and responsibilities, to ensure that they are meeting legislative requirements ... Educating people on the legislation and what is expected of them in the legislation and the consequences if they aren't able to comply with it. (Laure)

According to the DMPs, employers lacked understanding of the legislation relevant to non-occupational injuries:

They don't understand how this impacts their short term and long term disability, costs, their wage replacement, those kind of things. (Nelly)

The DMPs mentioned that employers had a growing responsibility for RTW issues. They noted that RTW rules and related legislation prompted employers to initiate RTW programs and engage the services of DMPs. The DMPs saw themselves in a position to teach and support employers, to raise their awareness and to ensure that employers were familiar with the legislation. The DMPs had a strong orientation to employers' needs with respect to RTW costs and also legislation compliance.

One of the areas that... I work a lot on... in services and professional development and additional training is a financial aspect or the return on investment of disability management, so that's probably one of the areas that need some additional thought around them. (Nelly)

Although DMPs had general knowledge of relevant legislation, they seemed to have little specific knowledge. Only a few DMPs seemed aware of the changes occurring to relevant legal frameworks. Some saw legislation as unchanging over time while others discussed legislation as having changed quite dramatically in 1998 when the workers'

compensation legislation was revamped in Ontario. The DMPs were generally unaware of details of RTW such as employers' duty to reemploy a person injured at work as a provision that applies for two years after initial injury and that only applies to employers with more than 20 employees.<sup>48</sup> In addition, the worker's 'duty to cooperate' was only mentioned once as a legal provision.

The DMPs mentioned individual efforts to engage in socio-political training needs. They gained knowledge at conferences, hearings where they heard about legal decisions, employers' associations and through the Vocational Rehabilitation Association of Canada.

What is pertinent is that DM training, as exemplified by NIDMAR training, focussed on generic issues. The reality of disability management, in the context of the workplace environment, was that practical cost and legal-policy issues shaped practice. While the DMPs recognised a gap between theory and practice, they tended to follow workplace practice requirements:

Having to apply the theory of NIDMAR to the organisation, ... .. The principles ... work, no question about it. [With] the application of the principles, there are difficulties ... because it does take a different thinking, a different way of doing business and understanding that [in]every business there is a production [requirement]. No question about it, and at the end of the day ... there are certain things that have to be met: bottom lines, that way of doing work. (Alf)

#### IV DISCUSSION

With this exploratory case study of DMPs' practice in Ontario we find that cost and socio-political considerations play an important role in the practice of professionals guiding the injured or disabled person back to work. Our results allow for broader consideration of issues that might need to be considered by DMPs in different countries.

Internationally applied training modules as well as an internationally valid certification system for disability management professionals tend to take a generic approach to disability management. The programs are focused on the common needs of disability management across situations and jurisdictions. It is assumed that there is no need to distinguish between work-related and non work-related injuries as all workplaces have a 'duty to accommodate'. This study was conducted to examine the more particular needs that DMPs might have for successfully engaging in their practice. We were interested in the impact of local legislation on DMPs' practice. The goal of the study was to uncover factors that are relevant when assessing the impact of legislation on the skills, work and tasks of DMPs. Is it possible that such a generic focus could miss out – due to an all market orientation – on a detailed application of problems and issues in different jurisdictions? In other words, is an equitable treatment of all people with disabilities, regardless of the cause of their disability, possible in DMPs' practice in all jurisdictions? Also, how are differences dealt with in training?

The discussion focuses on two issues raised by this study. First, that DMPs are oriented to meeting the needs of employers, and second, that DMPs' practice varies according to different RTW needs established by legislative frameworks that distinguish between work injury and disability that is not necessarily related to a workplace injury.

##### *A Supporting the employer*

The DMPs emphasised that their job includes ensuring that employers know about their legal responsibilities. In effect, when helping employers to ensure legal compliance, the DMPs are also helping employers to avoid exposure to liability.

<sup>48</sup> WSIA s 47; Workplace Safety and Insurance Board, 'Re-employment Provisions' (Policy 19-04-02). <<http://www.wsib.on.ca/wsib/wopm.nsf/Public/190402>>.



DMPs tend to work in occupational health departments of large firms and as consultants to firms. Results suggest that the work setting of DMPs affects their own focus. This issue has also been addressed in research.<sup>49</sup> In effect, according to the participants in the study, DMPs are almost always hired by employers, rather than by workers, and this can shape their orientation. Even in the case of those Ontario DMPs who work at the WSIB, a social insurance organisation, a recent study indicates that staff view employers, and not workers, as the key funder of their organisation and key customer.<sup>50</sup>

The findings suggest that workplace cost is an important element of disability management practice and impacts the behaviour of DMPs. The DMPs in this study noted employer concerns about workers' compensation costs and were, in turn, conscious of this issue as it related to the need for a faster RTW pace for occupationally injured workers. Conversely, because of relatively reduced cost pressures, employers did not direct DMPs to be as concerned about RTW with non-occupational injuries. This employer focus on cost rather than rehabilitation was noted by Roberts-Yates, who found that within the Australian system the 'primary focus on cost containment [is] taking precedence over the diverse needs of the injured worker'.<sup>51</sup> Research has shown that the RTW process can actually be harmful if only seen as an economic issue.<sup>52</sup>

These issues raise concerns about the role of DMPs and the direction of their work. Is the fundamental priority of DMPs to help to get people back to work or to help employers to comply with legislation and to manage costs? The answer to this question may well depend on the specific jurisdictional context in which they do their work. If the 'market' determines the need for DMPs rather than a legislative mandate designed to promote disability prevention, then it is likely that their profession will be shaped by the needs of the 'market' which will be synonymous with the needs of employers. Thus it is possible that DMPs in different countries, while having the same accreditation, may have significantly different skills, allegiances and practices.

### *B Differences in disability management between work-related versus non work-related cases*

The DMPs' description of their orientation to treat all people with disabilities in the same way illustrates a disability management ideal that operates in tension with the demands of daily practice. The DMPs' descriptions of how they deal with work-related versus non work-related cases, reflects policies and legislative conditions that created quite different conditions for disability management practice. That DMPs emphasized differences between occupational and non-occupational injuries might be seen as a due diligence approach, or a way to assist employers by helping them avoid exposure to financial and legal liability. It could also be that the impact of jurisdiction, in terms of exclusion from coverage of several categories of workers and injuries from the purview of the workers' compensation system, also affects DMPs' practice whose focus is particularly on those who are covered by the compensation system.<sup>53</sup>

49 Fong Chan et al, 'Training needs of certified Rehabilitation Counselors for Contemporary Practice' (2003) 46(2) *Rehabilitation Counselling Bulletin* 82, 91.

50 Joan Eakin, Ellen MacEachen and Judy Clarke, 'The logic of practice: An ethnographic study of front-line service work with small businesses in Ontario's Workplace Safety and Insurance Board' (Working Paper No 346, Institute for Work and Health, 2009) <<http://www.iwh.on.ca/working-papers>>.

51 Christine Roberts-Yates, 'The concerns and issues of injured workers in relation to claims/injury management and rehabilitation: the need for new operational frameworks' (2003) 25(16) *Disability and Rehabilitation* 898, 900, 907.

52 Katherine Lippel, 'Workers describe the effect of the workers' compensation process on their health: A Québec study' (2007) 30 *International Journal of Law and Psychiatry* 427, 443; Lorraine Sager and Carole James, 'Injured workers' perspectives of their rehabilitation process under the New South Wales workers' compensation system' (2005) 52 *Australian Occupational Therapy Journal* 127, 135.

53 Cox and Lippel, above n 28, 84.

The ‘contradiction’ between what professionals were trained for and what they desire, as compared to what they actually end up doing because of policy-driven realities, reveals the relevance of socio-legal context. It raises the question as to whether it is appropriate for DMPs to distinguish between disability management of occupational and non-occupational health conditions. We find a conflict of norms, in that norms specific to DM promote an inclusive approach while giving priority to the importance of cost-effectiveness. This leads to a weaker disability management focus on workers whose disability is not work-related.

The findings of this study raise several questions, which we address below. What are the implications, from an equity perspective, when DMPs apply different practices for occupational and non-occupational groups? Is the NIDMAR conceptual framework achievable in disability management practice in jurisdictions like Ontario? Do DMPs need to go beyond the knowledge provided by recognised training programs such as NIDMAR in order to understand local jurisdictional rules and legislation, as well as the labour market and the work environment of work organisations? If, as it appears, disability management is oriented to employer needs, how well do workers benefit from it?

## V CONCLUSION

The DMPs’ allegiance to employers, as well as differences in the case management of work and non work-related injury and disability, are key illustrations of the impact of legislation on the skills and tasks of Ontario DMPs. If a system provides economic incentives to employers to reduce disability, this will make the investment in a DMP more attractive. If the system fails to provide that kind of incentive, this will influence the DMPs’ role and may focus attention on only those cases where economic incentives exist. If the drive for DM services were to be mandated by legislative requirements to ensure services rather than economic incentives to reduce costs, perhaps the practices of these professionals would be different.

The results of the study suggest that the goal to ‘promote equitable treatment of diverse individuals’ without ‘biases’, treating all injured and disabled people the same – as stated in the NIDMAR training framework<sup>54</sup> – can be difficult to implement in practice. The DMPs in Ontario were aware of the equal treatment ideal, but in their practice it appeared that employers were seen as the key customer and that their focus was more strongly on workers with occupational injuries rather than those hurt outside the course of their work. This appeared to be because the workers’ compensation system provides strong economic incentives to return those workers to work as quickly as possible.

The findings suggest that, when designing studies to examine RTW practices of DMPs, jurisdiction-specific legislation and policy should be considered. As this study has shown, the distinction between occupational and non-occupational health problems becomes an issue of concern. Researchers need to be aware of the jurisdictional framework in place and how jurisdiction impacts each stakeholder’s role. This is of particular relevance when designing cross-jurisdictional studies. The socio-political system and policy governing work disability are important factors to be considered when designing studies on RTW and when researching the effect of jurisdiction-specific policy on practice.

The training of DMPs might benefit from the inclusion of more specific analysis of jurisdictional issues such as laws and policies that provide varying incentives to different parties to engage in DM in particular ways. If achieving equitable treatment of all injured and disabled workers is a challenge for DMPs, there may be a need for nonpartisan support for injured and disabled workers in the RTW process. In Germany, due to the

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54 NIDMAR, *Examination Preparation Guide* (2004). <[http://www.nidmar.ca/certification/cdmp/CDMP\\_Examination\\_Preparation\\_Guide.pdf](http://www.nidmar.ca/certification/cdmp/CDMP_Examination_Preparation_Guide.pdf)>.

design of the legal framework, some DMPs also have the mandate to act as representatives of severely disabled persons and can provide peer support.<sup>55</sup> But this at the same time can also create a conflict of interests. Do DMPs in other jurisdictions have the opportunity to work directly for workers, and if so what are the legal incentives to do so and what are the differences in DM practice between these DMPs and those in jurisdictions such as Ontario where they are predominantly hired by employers? Cross-jurisdictional research might shed further light on these issues.

## VI METHODOLOGICAL CONSIDERATIONS

Since the impact of jurisdiction on DMPs' practice has not been previously investigated thoroughly in research, the goal of the study was to be exploratory. The small sample reflects a 'pilot study' approach to the topic, and limits the generalisability of the findings. Focussing on one Canadian province can be seen as limiting; however, it also allows for sketching one specific framework and outlining how this case particularly impacts DMPs' practice. The qualitative methods used for this study were useful because they provided a way to reveal particular issues in DM practice that might be explored further in qualitative or measurement studies. The findings raise awareness about the impact on the DM practice of the rules in one jurisdiction. These findings should apply to other jurisdictions with similar legal frameworks, thus identifying issues that require further exploration.

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<sup>55</sup> Bernhard, above n 26, 70.