

# WCB and the Adjudication of Psychological Injuries

Anne-Marie Grondin, Regional Representative PSAC-NCR

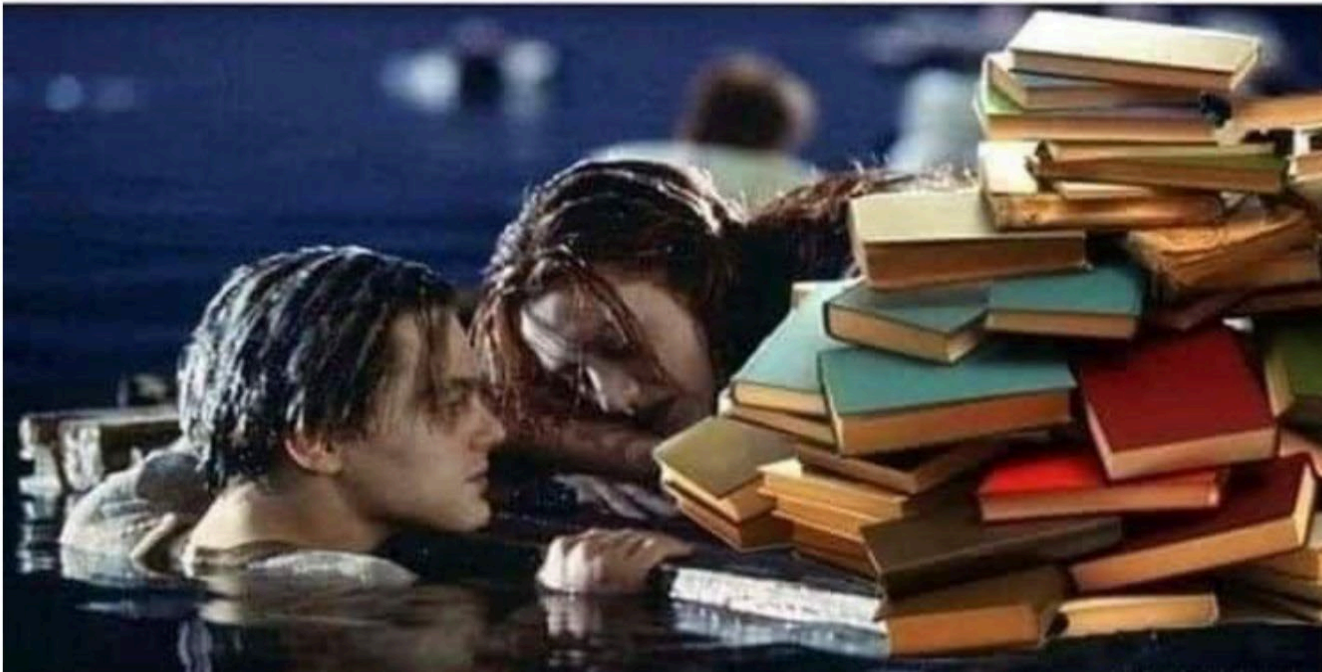


# Anne-Marie Grondin

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I'm sorry Jack,  
there's not enough room



# Workshop Objectives

- Explain the worker's compensation system in Ontario
- Provide an overview of the claims process
- Equip union reps to better advise and assist members with workplace injuries
- Identify challenges with getting psychological claims accepted, and providing resources to do so



# Government Employee Compensation Act Poll

In what year was the Government Employee Compensation Act (GECA) last updated?

- 1952
- 1972
- 1992
- 2012



# Government Employee Compensation Act

The Government Employee Compensation Act (GECA) was established in 1918 and **was last updated in 1952.**

- Federal Government Workers
- Coverage in cases of accident and/or disease arising out of and in the course of employment
- Refers to Provincial Workers Compensation Acts



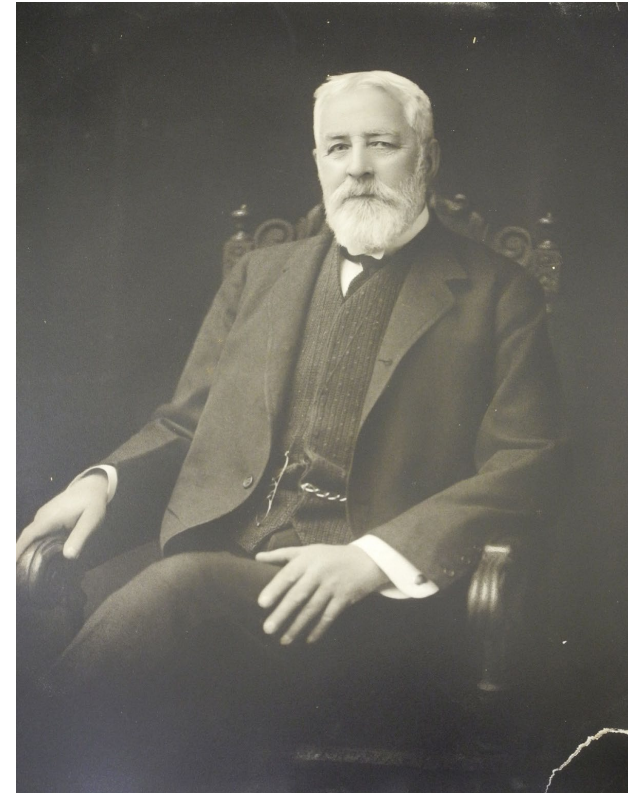
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of Canada

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# The Historic Compromise

- Sir William Meredith – Meredith principles
- **No-fault system**
- The employer assumes the financial cost in a public insurance system



# Government Employee Compensation Act

## GECA summary:

- Provincial / Territorial Compensation Legislation
  - Benefits
  - Adjudication & Appeal Process
- Employment and Social Development Canada (ESDC)
  - Labour Program
    - Administrative Agreement
    - Funding
    - 3rd parties



# GECA Challenges

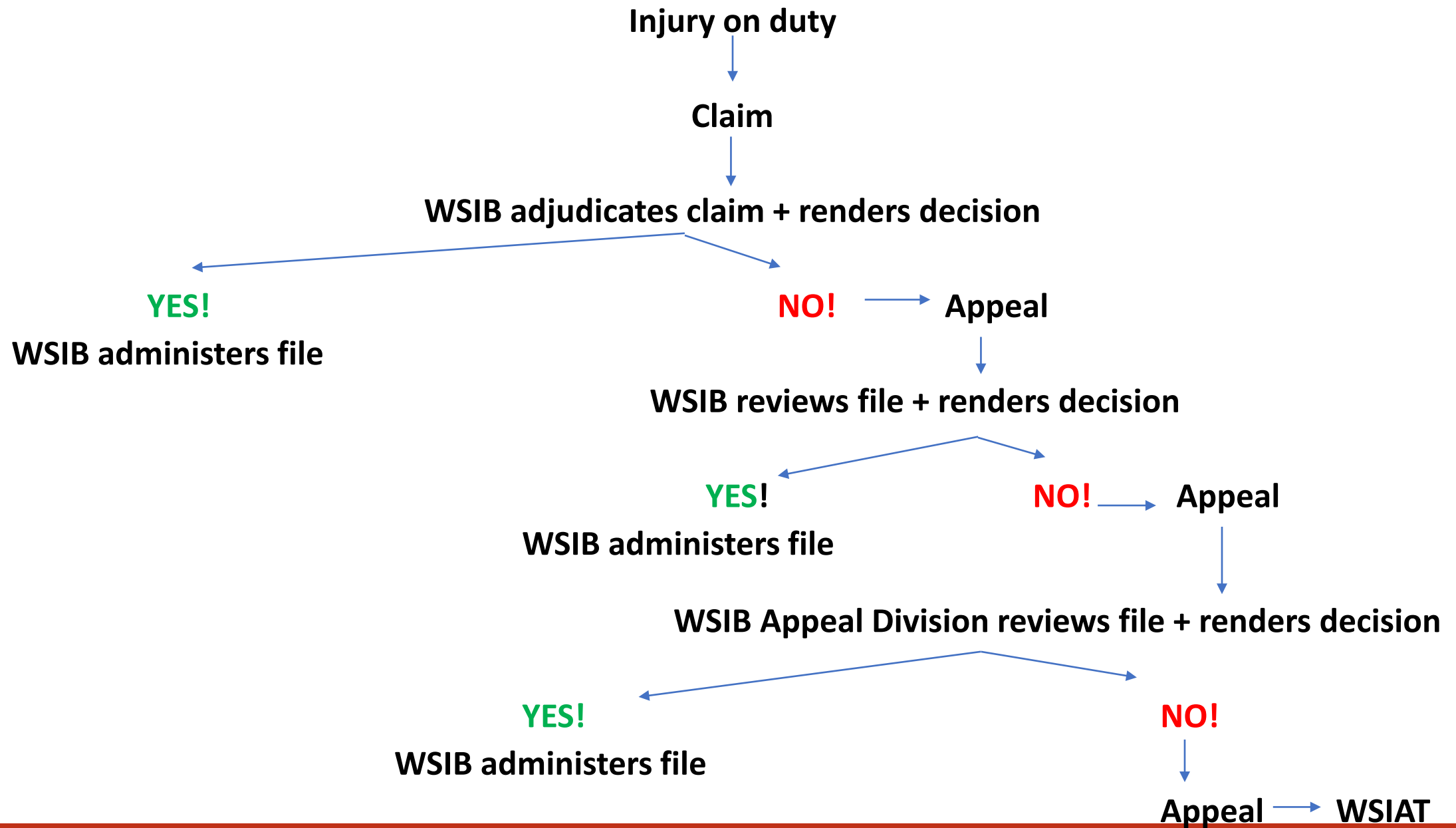
- Variations from province to province
- Last review in 1952
- Funding



# Workers' Compensation in Ontario

- **WSIA (Workplace Safety & Insurance Act)**
- **WSIB (Workplace Safety & Insurance Board)**
- **WSIAT (Workplace Safety & Insurance Appeals Tribunal)**

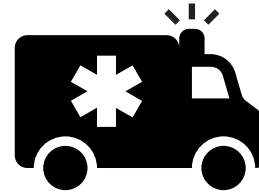
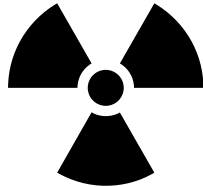




It's not you.



# When Injured at Work



# Collective Agreements

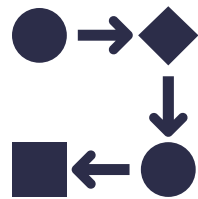
How does your collective agreement address work place health and safety?



# Activity:

## Steps to Take When a Worker is Injured

What steps do you think need to be taken when a worker is injured at work?



- 
- 
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# Reporting an injury (i.e. filing a claim)

<https://www.wsib.ca/en/businesses/claims/report-injury-or-illness>



# How to Get a Claim Approved

When making a claim you need to consider the following:

- What medical information is available
- When the incident occurred
- How the incident occurred
- What to say and not say
- If there is a need for accommodation
- Where to get help



# Definition of Accident

**1. A chance event occasioned by a physical or natural cause; or**



## **Claims are denied because:**

The biggest reason for the denial of these claims is a lack of proof that an injury happened.

**2. A disablement arising out of and in the course of employment**



The major reason for the denial of these claims is lack of proof that the work caused the injury.

# Claim Approval Tips - Example

For personal injury by an accident and/or disease in the course of employment:

**Don't say:**

I fell and hurt myself.

**Say:**

I was walking through the office in the scanning division. I stepped on a marker that was on the floor. My right leg went forward and I lost my balance. I fell backwards. I hit my shoulder on the fax machine. I hurt my right shoulder on the machine. When I landed on the floor, I hurt my right wrist, my neck, and my right hip.



# Psychological injuries- What are potential challenges that make it difficult to deal with?



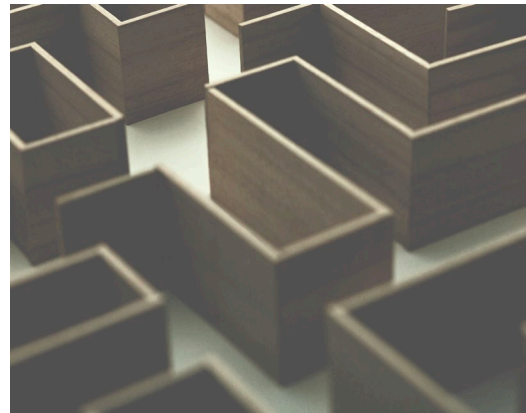
# Psychological injuries- What are potential challenges that make it difficult?

- Chronic issues
- “Moment of enlightenment” many workers do not realize they have been significantly injured until they come to a realization, the damage has been done
- Accessing proper care and assessment
- Our own limitations on our understandings of the illness
- Psychological injuries may affect the members perception or their ability to clearly and effectively communicate
- Apprehension and stigma around asking for help for MH challenges (looking weak)



# Challenges con't

- More difficult to find appropriate care, high in demand
- Psychological claims require additional information
- Severity is more difficult to determine- DSM-V testing is essential for long term claims – determines 2 things :nature of injury and severity
- Cost, not fully covered, if at all – sun life/insurance will not fully cover.



# WCB Policies



# WSIA on psychological injuries

<https://www.ontario.ca/laws/statute/97w16#BK1>



# WSIB policies on psychological injuries

<https://www.wsib.ca/en/operational-policy-manual/traumatic-mental-stress>



# Medical information

- How the reported injury is related to a workplace event
- The nature of the illness (diagnosis is key)
- Whether the illness is permanent or temporary, and the prognosis
- The restrictions or limitations that flow from the injury (reference job description)
- The basis for the medical conclusions- what objective tests have been done? What criteria have been met? What studies/research support them?
- Treatment plan, including any treatment that has already occurred
- Referrals?



# Other key factors in the Claims process

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## Time

- People must report to the employer without delay
- Injuries should be reported to WSIB as soon as possible
- **Injured workers must seek medical attention without delay**

Gaps in time will create doubt

# Other key factors in the Claims process

## Work Relatedness

Particularly with psychological injuries, the tendency in reporting is to list all factors (employee and doctors).

Reporting should stick to work related events, and avoid raising non work related events, or likely to support a determination of normal course of employment

Reports should be treated as concise, not a “laundry list”



# Other Compensation Options

- Sick leave credits
- Sick leave advances
- Employment Insurance sickness benefits (first 15 weeks)
  - max. \$56,300/ 55% (\$30,940 annual)
- Release for Incapacity / Resignation / Medical Retirement
  - Disability Insurance (after 13 weeks) 70% / 66% / top up
  - Canada Pension Plan Total Disability Benefits
  - Public Service Superannuation Act
    - (2% X # years)
  - Impact on Severance Pay

If you apply for these benefits you must let them know that you are also applying for WCB benefits. They will ask you to sign a form which is a promise to pay back the money you may receive from WCB.

- If also claiming for LTD coverage (if available) they may ask to file a WCB claim



# Disability claim vs. Workplace claim

## Disability

- Do not have to illustrate work relatedness
- Has a 13 week elimination period
- Pays less than workplace claim
- Not nearly as many restrictive clauses
- Definition of “totally disabled”

## WSIB

- Pays more than disability
- No elimination period
- Has a larger support system available
- Is harder to obtain
- Who finances it?



## Resources

You don't need to have all the answers, but you need to know where to look, and who to ask

- [www.ccohs.ca](http://www.ccohs.ca)
- Canadian Mental Health Association
- USJE
- Your PSAC Regional Office/ Regional H&S Representative



Questions?

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