In 1999, 58-year-old Shirley Zubick was injured at work by a falling shelving unit, suffering a concussion and a torn rotator cuff for which she subsequently had surgery. Prior to her injury, Zubick had received a layoff notice. Her employer did not have workers’ compensation coverage. Her employer’s private insurance provided 90 days of disability benefits. Zubick has not worked since and her lawsuit against her employer—which would have provided $30,000–$40,000 in compensation—was unsuccessful because she could not prove that her employer knew the shelving unit was faulty and failed to fix it. Ten years later, this matter is still not resolved. Her employer is pursuing her for approximately $120,000 in costs, which will likely mean she will lose her house.

Zubick’s case shows us several things. First, injured workers who are not covered by workers’ compensation still face the spectre of financial ruin as a result of their injury. Canada does not have a comprehensive disability insurance system to assist those who cannot earn an income due to injury. Second, suing one’s employer for every-day workplace injuries remains a risky proposition for workers. For those with work-related injuries, workers’ compensation is the most accessible source
of financial support. Third, employers act in their own interests in cases of workplace injury—in this case, a labour union seeking to recover court costs—with seemingly little concern for the consequences of those actions for the worker.

This chapter examines why workers’ compensation systems were created. We then turn to how workers’ compensation serves the interests of employers, workers, and the state and the effect this has on the system’s longevity. Despite providing workers with more predictable, immediate, and stable compensation, workers’ compensation has many detractors. Examining the process of injury recognition reveals a pattern wherein decisions about injury recognition limit employer liability for injuries. This is particularly the case for injuries that emerge over or after a long period of time, do not demonstrate a clear pathology, tap into an existing social prejudice, and/or entail significant costs for employers.

When combined with the tendency of workers’ compensation boards (WCBs) to limit benefit entitlements (as discussed in Chapter 6) and worker power (as discussed in Chapter 7), the process of injury recognition suggests that an important outcome of workers’ compensation is to contain employer claim costs. One result of this behaviour is that some of the costs of work-related injuries are transferred onto workers, their families, and government-funded medical and social assistance programs.

WORKERS’ COMPENSATION IN CANADA

Overview of workers’ compensation

Each province and territory has established a workers’ compensation system. Legislation compels certain categories of employers to pay premiums to a workers’ compensation board, thereby gaining coverage for their workers. Other categories of employers may be permitted to purchase voluntary coverage. Approximately 80 percent of workers are covered by workers’ compensation.
When a worker is injured on the job, the WCB is notified and determines whether compensation is warranted. If an injury is deemed compensable, the WCB provides benefits. Benefits can include medical aid to treat injuries and vocational rehabilitation to assist workers to recover their earning capacity. Workers who have lost earnings receive wage-loss benefits at 75–90 percent of their net loss. Workers who are killed on the job have their funeral expenses covered. Where there are dependents, the survivors may receive ongoing pensions.

Employers fund all of these benefits through premiums. The premiums are adjusted annually to ensure there are sufficient funds to cover all costs associated with workplace injuries. An employer’s annual assessment is based upon its payroll, the claims record of similar employers and, in some cases, by the employer’s claims record.

Development of workers’ compensation in Canada
State-operated workers’ compensation systems were implemented at the beginning of the twentieth century. As noted in Chapter 2, workers’ compensation addressed the fact that injured workers rarely received any compensation under the common law, thereby becoming impoverished. Workers’ compensation also ameliorated (to some degree) the social instability caused by such widespread and clear injustice. Although Quebec was the first province to implement workers’ compensation (albeit administered by the courts until the 1930s), the principles of workers’ compensation are most clearly expressed in the five principles ("the Meredith principles") contained in the report of Ontario’s Royal Commission on workers’ compensation.5

The first principle (collective liability) holds that liability for work injuries should accrue to the workers’ compensation system as a whole, rather than to individual employers. This prevents a single incident from bankrupting an employer — a situation likely to deprive injured workers of compensation. In
this way, collective liability displaces the tort system, leading
directly to the second principle of no-fault compensation. No-
fault compensation means workplace injuries are compensated
regardless of fault. This makes irrelevant any attribution of
blame for an incident. It also effectively removes the whole area
of injury and compensation from litigation. The focus instead is
on compensation and the injured worker receives benefits and
services through an administrative process.

Meredith recommended that employers should fund the cost
of benefits and services to injured workers, along with the ex-
pense of administering the system. Employer funding is based
on the capitalized cost of the injury (i.e., the projected cost over
the duration of the injury) rather than the current cost only
(i.e., the annual cost). This ensures that costs are not passed
between employers, as individual businesses and even whole
industries open and close over time. Among other things, this
was thought to create an incentive for employers to reduce in-
jury rates by improving workplace safety.

The fourth principle (wage-loss replacement) requires work-
ers to be compensated directly by the WCB for a portion of any
wage loss attributable to an injury. The establishment of an ac-
cident fund guarantees that compensation monies are available,
thus assuring injured workers of secure and prompt compen-
sation and future benefits. Herein lies an important trade-off:
workers gain stable, predictable, and immediate compensation
but give up the right to sue their employers and gain compen-
sation for non-quantifiable losses (e.g., pain and suffering).

Finally, Meredith recommended all matters related to work-
ners’ compensation be administered by an independent WCB,
which operates exclusively as decision-maker and final author-
ity for all claims and all related administrative matters. The
clear intent was that the WCB should be autonomous—both
politically and financially independent of government and any
special interest group that may have the ear of a politician.
The activities of the WCB would be focused solely on serving the needs of workers and employers in an efficient and impartial manner.

**Workers’ compensation as a compromise**

In the 40 years following Meredith’s 1913 report, all provinces came to adopt systems founded on these principles. The resulting compromise has endured nearly a century of political and economic change. Workers’ compensation has not, for example, been subject to the degree of intervention and erosion that collective bargaining has been since the 1970s. This may mean that workers’ compensation entails a relatively low cost on (or threat to) the capital accumulation process and thus there is relatively little for capital or the state to gain via intervention. It may also be that the political costs of meaningful change to workers’ compensation are high. Examining the advantages workers’ compensation provides for employers, workers, and government is instructive.

Workers’ compensation limits employers’ liability for work-related injuries. Specifically, the tort bar eliminates the risk of employer bankruptcy, fixes the cost of injury in the short-term, and spreads the cost of injury over an entire industry group. As discussed below, the state and WCBs further reduce employer liability by limiting the acceptance of particular types of injuries as well as the level and/or duration of benefits awarded. The expectation of stable, predictable, and immediate injury compensation also lowers the cost of injury to workers. This reduces workers’ motivation to seek significant changes in the labour process to reduce workplace hazards — changes that can erode employer profitability. This may be an example of the dialectic of partial conquest, whereby concessions won by workers via collective resistance raise the stakes of future resistance. In these ways, workers’ compensation provides employers with a significant economic advantage.
Workers’ compensation also provides a political benefit for employers. The process of gaining compensation absorbs worker and trade union energy. By directing attention and energy to claims management, the compensation process reduces the resources workers have available to challenge employer control over the labour process. And the creation of a bureaucratic system of compensation frames workplace injuries as a normal and manageable outcome of work, rather than a profit-motivated transfer of cost from the employer to the worker via unsafe work practices.

For workers, predictable, immediate, and stable workers’ compensation is a significant improvement over the tort system, when work-related injury, disease, or death would often catapult workers and their families into poverty. This significantly reduces pressure on trade unions and on governments to address the root issue: unsafe work practices organized by employers. Those workers not covered by workers’ compensation (some 20 percent of the workforce) may work in very safe jobs or very dangerous ones. Workers with safe jobs have little reason to exert pressure on the state or trade unions to improve safety. Other workers not covered by workers’ compensation may work in precarious jobs and have little ability to exert pressure on the state or trade unions to improve safety.

The state benefits from workers’ compensation because it maintains the production process by limiting employer liability for workplace injuries. It also maintains social reproduction by partially ameliorating the consequences of work-related injuries for workers and consuming their time and energy with claims management. Further, worker attempts to introduce more fundamental change are likely to be tempered by the knowledge that workers’ compensation exists only at the pleasure of the legislature. In these ways, workers’ compensation reduces the likelihood of workers taking direct and collective action.

Worker and employer support for workers’ compensation
also means substituting injury compensation for prevention entails a relatively low political cost to the state. In this way, the state is able to preserve the capital accumulation process against the threat of social unrest stemming from workplace injury without significantly endangering its own political legitimacy among its citizens. Making WCBs responsible for administering it deflects political pressure: compensation is the responsibility of an independent agency and its decisions are cast as technical, not political, decisions.

Finally, workers’ compensation creates a framework within which employers and workers can seek to shift peripheral costs onto each other without normally risking the collapse of the entire edifice. In this way, workers’ compensation acts much like Canada’s laws governing unionization and collective bargaining. Employers and workers can contest with each other within a relatively stable and predictable framework.11 This places limits on both what can be won and lost in the to and fro of lobbying.

INJURY RECOGNITION REVISITED
The Meredith principles charge WCBs with determining which injuries are compensable. While outright denials of claims are relatively uncommon, embedded in this seemingly technical process are political decisions about the scope of compensation and the types of injuries that warrant it.12 By placing legislative and policy limits on claim acceptance, the state and WCBs have periodically extended employer liability protection. Of particular interest are instances where WCBs apply standard tests to injuries that have difficulty meeting them and where WCB apply special tests or otherwise limit compensation to injuries that are potentially very expensive to compensate.

Determining compensability
When a worker is injured, the WCB must decide whether the worker should receive compensation. Workers are normally
eligible for workers’ compensation when the following three conditions are met:

• the worker’s employer has workers’ compensation coverage,

• the worker sustains an injury compensable under the Act, and

• the injury results from employment.¹³

Determining whether an employer has workers’ compensation coverage is normally a straightforward task. Rendering a judgment on the second and third conditions can be more complex. The decision begins with considering how an “accident” is defined by the applicable legislation. For example, Manitoba’s *Workers’ Compensation Act*, defines an “accident” as follows.

1(1) In this Act, “accident” means a chance event occasioned by a physical or natural cause; and includes

(a) a wilful and intentional act that is not the act of the worker,

(b) any

(i) event arising out of, and in the course of, employment, or

(ii) thing that is done and the doing of which arises out of, and in the course of, employment, and

(c) an occupational disease,

and as a result of which a worker is injured;

The key tests set out in statute are whether the injury arose out of and occurred in the course of employment. The definition of injury is often vague or absent. In British Columbia, a personal injury is “any physiological change arising from some
cause” and includes traumatically induced psychological impairment.\textsuperscript{14} Injuries are distinguished from diseases and only occupational diseases are compensated.

\textit{“Arises and occurs”}

When deciding whether an injury resulted from employment, a WCB applies the two-part “arises and occurs” test set out in the definition of an accident. “Arises from” typically refers to the “how” of the injury, while “occurs in the course of” focuses more on the “when, where, and what” of the injury.\textsuperscript{15} More specifically, an injury arises out of employment when it is caused by the nature, conditions, or obligations of employment (i.e., an employment hazard). An employment hazard is an employment circumstance that presents a risk of injury.\textsuperscript{16}

The second part of the test addresses whether the injury occurred in the course of employment. This is the case when an injury happens at a time and place consistent with the obligations and expectations of employment. While time and place are not strictly limited to the normal hours of work or the employer’s premises, there must be some relationship between employment expectations and the time and place of the injury.\textsuperscript{17}

The test normally applied is that of “causative significance.” This means that there must be evidence that employment contributed to the injury, but employment does not have to be the primary cause. That is to say, employment must have played more than a trivial or insignificant (\textit{de minimus}) role but does not need be the sole, predominant, or major cause.\textsuperscript{18} The causative significance test is well suited to traditional traumatic injuries where it is usually clear when, where, and how an injury occurred.

\textit{Balance of probabilities and presumptions}

In determining causation, WCBs obtain the evidence they require to adjudicate and manage claims. In this way, workers’
compensation is based on an inquiry model, rather than the adversarial model, which characterizes proceedings under tort law. Nevertheless, even if the inquiry process is not explicitly adversarial, the interests of the worker and the employer are, and each side typically brings forward evidence supporting its interests.

WCBs are expected to use “the balance of probabilities” as the standard of proof in adjudication. This means the adjudicator asks: “Is it more likely than not that this worker’s employment was a significant contributing factor in the development of the injury or occupational disease?” Where the evidence for or against is approximately equal in weight, the issue is resolved in favour of the worker claiming benefits. This standard is different from “beyond a reasonable doubt” or scientific certitude.

When it isn’t possible to gather enough evidence to determine if an injury both “arises and occurs,” WCBs may rely upon “statutory presumptions” about injuries. In Manitoba, these presumptions are:

4(5) Where the accident arises out of the employment, unless the contrary is proven, it shall be presumed that it occurred in the course of the employment; and, where the accident occurs in the course of the employment, unless the contrary is proven, it shall be presumed that it arose out of the employment.

These presumptions ensure that workers are compensated when the evidence indicates the injury either 1) arose out of or 2) occurred in the course of employment (i.e., where a determination can be made about one but not the other).

Politics of injury recognition
As discussed in Chapter 3, defining an injury is a political process that is informed by the interests and power of the
state, employers, and workers. Workers’ compensation systems influence the injury-recognition process by accepting some injuries as compensable and thereby legitimizing them. The injury-recognition process also influences workers’ compensation systems. For example, employers may hide information about workplace hazards, oppose the expansion of occupational health and safety (OHS) regulations and compensation plans, and game these same plans to maximize their profitability. This behaviour affects the willingness of WCBs to recognize some injuries as compensable. Governments have also at times acted to reduce employer liability by delaying recognition and limiting the acceptance of injuries. For their part, workers often seek to both maximize the compensation available as well as create safer and healthier workplaces by limiting employers’ ability to organize work.

Workers’ compensation systems implicitly adopt the biomedical model of injury causation that underlies Canadian approaches to occupational health and safety. As stated in Chapter 3, the three basic assumptions made about work-related injuries are:

- the mechanism of injury will be discernable, or at least mostly distinguishable from other events or disease processes,

- the injury will manifest itself at the time of or reasonably soon after the injury occurs, such that the injury can be causally related to a workplace event, and

- the course and treatment of the injury will be broadly similar from one person to the next.

These assumptions reflect the belief that illness must have a biological source (or pathology). Further, the degree of illness must be proportional to the degree of biological malfunction. Objective medical knowledge (e.g., test results, observations, functional evaluations) is more valued than patient self-reports.
The biomedical model plays a significant (and useful) role in workers’ compensation. Medical evaluations inform decisions about injury causation and the extent of disability resulting from it. These evaluations also guide rehabilitation programs and decisions regarding when workers are employable and, thus, no longer eligible for compensation. At the time of Meredith, and for some time after, a majority of injuries considered by WCBs resulted from an acute physical injury in the workplace, reflecting the importance of resource extraction, processing, or manufacturing industries. Consequently, injuries and injury mechanisms were relatively easy to see.

As noted in Chapter 3, this model also runs afoul of recent research that suggests (1) injuries are often multi-factorial, and (2) work exerts significant effects on health and a broad range of diseases have work-related components. Attempting to classify injuries as work-related and non-work-related (thereby ignoring the interactive effect between occupational and broader environmental factors) is likely an impossible task. Alternatives (narrowing causation or expanding it) both have significant drawbacks. Consequently, the existing approach remains in operation—often to the disadvantage of injured workers.

Work-related musculoskeletal disorders and causation

Work-related musculoskeletal disorders (WMSDs) are an example of the contested nature of injury recognition that has emerged as the type, frequency, and severity of work-related injuries has changed. Service-sector work and the growing use of technology appear to be associated with an increasing rate of non-traumatic injuries, such as cumulative injuries resulting from repetitive activity or occupational diseases. Among the non-traumatic injuries associated with the service industry are WMSDs, such as strains and sprains of the back, neck, shoulder, arm, and wrist. Repetitive strain injuries (RSIs), such as
carpal tunnel syndrome, develop over time, may have multiple causes, and may be difficult to link to employment. There has also been a tendency in North America to suggest WMSDs are psychological in origin.²⁸

Andrew Hopkins notes that historical contingencies in Australia meant that it labelled RISIs as an “injury” instead of characterizing the condition as an “occupational neurosis” or even a “regional pain syndrome” (which was initially advocated by some medical authorities).²⁹ It also confronted the popular conception that the cause of RSI was somehow embedded in technology (i.e., was inevitable) by showing that the increase in RISIs was due to changes in the labour process caused by speeding-up work and staff cutbacks. In addition to allowing easy access to compensation (at least at first), the government of Australia placed limits on speed and required regular breaks. In many places, keyboard operators were reclassified as administrative assistants, assigned broader duties, and provided with ergonomically designed furniture.

This response stands in contrast to the treatment of RSI victims in the United States, where the prominent explanation of the epidemic was based on the assumption that it was essentially a form of neurosis. Psychiatrists and orthopedic surgeons reasoned that, if the symptoms were not detectable using conventional medical equipment (i.e., did not conform to the biomedical model), the pain could not have a physical basis, and must therefore be psychological in origin. Norton Hadler, for example, posits that regional musculoskeletal disorders reflect a worker’s (in)ability to cope with environmental stressors rather than a definable pathology.³⁰ Other research suggests, however, that there are four categories of risk factors that influence the occurrence and course of WMSDs:

- individual characteristics and personality traits, such as previous WMSDs, age, obesity, smoking, and gender;
physical (biomechanical) factors, such as vibration, lifting, and posture;

psychophysical factors, such as one’s perception of how demanding work is; and

psychosocial factors, such as the work environment and how much control the worker has over the job.\textsuperscript{31}

Regarding psychosocial factors, such factors as “limited job control, monotonous work, psychologically demanding work, and low workplace social support” seem to make an independent contribution to the onset of WMSDs.\textsuperscript{32} It is not entirely clear how psychosocial factors affect injury causation. Yet, jobs without the key psychosocial risk factors seem to protect workers’ health, while jobs with risk factors seem to increase the risk of injury.

The challenges WMSDs pose for causation creates an opportunity for employers to dispute these claims. Suggesting that the injury is largely psychosomatic creates a narrative that justifies denying compensation for such claims.\textsuperscript{33} Yet, where there does appear to be a link between a WMSD and the structure of a job and/or the work environment, disallowing claims or limiting benefit entitlements without consideration of such factors allows an employer to transfer the costs of production to workers.

\textit{Occupational diseases}

Occupational diseases also pose challenges to traditional approaches to causation, in part because their (typically) long latency periods and the presence of myriad other potential factors make it difficult to definitively determine that work contributed to the disease in other than a \textit{de minimus} way.\textsuperscript{34} As a result, there is significant under-compensation of occupational disease in Canada. For example, Allen Kraut estimated morbidity
Examining cancer, asthma, chronic airways disease, heart disease, and carpal tunnel syndrome, Kraut estimated that between 77,900 and 112,000 new occupational diseases arose that year. But Canadian WCBs accepted only 37,927 occupational disease claims in 1989. This suggests between 40,000 and 74,000 occupational diseases were uncompensated in 1989 alone.

As noted in Chapter 3, the state historically has been reluctant to recognize, regulate, or compensate many occupational diseases. While the complex causation of such diseases is often cited as a reason for delay or refusal, there is also evidence that governments are concerned about the economic consequences of extending employer liability. Yet, in some cases, governments have stipulated causation through a list of presumptive diseases in legislation, regulation, or Board policy.

Alberta’s Firefighters’ Primary Site Cancer Regulation, for example, stipulates certain types of cancers among firefighters are automatically compensable after a minimum period of workplace exposure. The effect of such a designation is to place the onus on the WCB or the employer to bring forward information to establish why an injured worker should not be eligible for compensation, rather than vice-versa. Yet, as noted in Chapter 3, few occupational cancers are handled in this way, the majority of which are not reported to WCBs and thus rendered invisible.

**Limiting liability: Psychological injuries**

In Canada, 40 percent of wage-loss insurance claims (inside and outside workers’ compensation) are related to mental health problems. Governments and WCBs have restricted liability for many psychological injuries, either by outright exclusion or by subjecting them to more rigorous tests of causation. Indeed, Canada’s Kirby Commission report in 2002 noted that only four provinces had not excluded mental illness from coverage in
their legislation. Alberta’s WCB requires all of the following criteria to be met for a psychological injury to be compensable:

- there is a confirmed psychological or psychiatric diagnosis as described in the DSM-IV,
- the work-related events or stresses are the predominant cause of injury,
- the work-related events are excessive or unusual in comparison to the normal pressures and tensions experienced by the average worker in similar occupations, and
- there is objective confirmation of events.

This test is much more stringent than the arises-and-occurs standard applied to other types of injuries. There must be a clear diagnosis by a physician, there must be some record of what event caused the psychological injury, and the event causing the injury must be both the predominant cause of the injury and extraordinary.

The higher standard of causation applied to psychological injuries reflects, in part, the complexity of psychological injuries as well as the expectation that they can stem from many factors. Yet, a worker will likely receive compensation for a back-pain claim (an injury that is also multi-factorial and difficult to quantify) even if the claim is the result of a non-acute event. Treating these broadly analogous injuries differently suggests an inconsistency in workers’ compensation policy—an inconsistency that punishes workers who have an injury to which a social stigma is attached.

The almost wholesale exclusion of such injuries allows employers to transfer the costs of psychological injuries caused by work to workers. Indeed, in the 1990s, Saskatchewan modified its policy on accepting chronic stress claims in order to address fiscal pressures and claim proliferation. Cost pressures
combine with the potential for workers to fake psychological symptoms and the general social disapproval of mental illness to make these injuries easier for governments and WCBs to reject.

**Chronic pain syndrome**
A small percentage of injured workers develop chronic pain, as well as such closely related conditions as fibromyalgia, and claim that it is related to their work. Chronic pain is difficult to cope with within the biomedical model and is vulnerable to statutory and policy efforts to limit compensability, in part because it can be labelled as a psychological problem or malingering. A 2003 Supreme Court of Canada ruling on two Nova Scotia cases of chronic pain demonstrated that workers can resist employer and government efforts to limit injury recognition, although few workers are likely able and willing to fight their cases to the Supreme Court. More likely, they will end up accessing workers’ compensation appeal systems (see Chapter 7).

The workers in these cases suffered work-related injuries and developed chronic pain. Nova Scotia’s *Workers’ Compensation Act* and regulations limited workers’ compensation benefits to a four-week treatment program. The workers appealed their decisions, claiming this policy discriminated against chronic pain sufferers on the basis of disability, thereby violating s.15(1) of the *Charter of Rights and Freedoms*. The Supreme Court of Canada (SCC) agreed, noting that uniform benefit limitations ignored the needs of workers who were permanently disabled by chronic pain and made no attempt to distinguish between workers who were genuinely suffering and required compensation and those who might be abusing the system. Finally, the SCC provided some commentary on the difficult causation issues related to chronic pain cases:
Although the medical evidence before us does point to early intervention and return to work as the most promising treatment for chronic pain, it also recognizes that, in many cases, even this approach will fail. It is an unfortunate reality that, despite the best available treatment, chronic pain frequently evolves into a permanent and debilitating condition. Yet, under the Act and the FRP [Facility Response Plan] Regulations, injured workers who develop such permanent impairment as a result of chronic pain may be left with nothing: no medical aid, no permanent impairment or income replacement benefits, and no capacity to earn a living on their own. This cannot be consistent with the purpose of the Act or with the essential human dignity of these workers.45

New regulations were subsequently enacted to guide the handling of chronic pain cases. Compensating the approximately 4000 workers whose claims were improperly denied was estimated at $220 million with ongoing annual costs of approximately $11 million. This one liability alone resulted in a 3 percent increase in average assessments by the WCB.46 This decision requires that all injuries must now be given similar treatment by workers’ compensation systems. Whether the special treatment given to psychological injuries, for example, remains viable is unclear. This case also demonstrates how the broader web of rules governing employment can affect the operation of workers’ compensation.

CONCLUSION

Workers’ compensation is a useful political solution to the problems caused by workplace injury. Workers get stable and predictable compensation. Employers get a liability shield, significantly reduced worker militancy, and making predictable
accident costs. Governments receive a way to reduce and manage conflicts over work-related injuries and an administrative body to deflect political pressure onto. Despite the enduring nature of this compromise, workers’ compensation does not resolve the structural conflicts embedded in workplace injury. Hundreds of thousands of workers are injured and killed each year and the interests of workers and employers conflict in the adjudication and administration of resulting claims.

On the surface, claims adjudication appears neutral. Claims are decided by a neutral third party (the WCB), decisions reflect the application of complex policies to the available (often medical) evidence, and decisions are based on the individual merits of a claim. Yet looking beneath this veneer suggests injury-recognition for compensation purposes is just as politicized as it is for injury prevention. Over time, a pattern of claim denial has emerged, wherein legislatures and WCBs have made political decisions about the standard of causation used to adjudicate a claim, thereby limiting employer liability. A combination of properties appears to make some types of injuries (e.g., WMSDs, occupational diseases, psychological injuries) particularly vulnerable to such treatment. Such injuries typically exhibit one or more of the following characteristics:

- they emerge over or after a long period of time, which obscures their connection to work and also facilitates terming the injury “an ordinary disease of life;”
- they do not demonstrate a clear pathology, thus violating the biomedical approach to causation and creating an opportunity to suggest that they injury reflects psychological problems or malingering,
- they tap into an established social prejudice, thereby facilitating the marginalization of the claim and/or the claimants, and/or
they entail a significant economic cost to employers (including an increase in workers’ compensation premiums), if deemed compensable.47

When combined with the tendency of WCBs to limit benefit entitlements through deeming workers employable (even if they are not employed) and encouraging early return to work programs (which may or may not be in the interests of workers), it appears that workers’ compensation seeks to minimize employer claim costs where politically feasible. These latter techniques are examined in Chapter 6. This tendency offloads the costs of compensating work-related injuries on workers, their families, and government-funded medical and social assistance programs. This is often justified as protecting the system from abuse (i.e., worker fraud).

The state is able to maintain its political legitimacy while doing this in several ways. By focusing on individual worker claims, workers’ compensation makes it difficult to view workplace injury as a structural feature of employment that transfers production costs to workers. Where an injury can be subject to different treatment due to its inherent properties, the state may take action to limit the acceptance of such an injury. Precluding some forms of injury from compensation serves to divide workers: those who are marginalized in this process may have difficulty finding support from those who expect to receive benefits for their more “legitimate” injuries and don’t care to risk the loss of such benefits through collective resistance.