

Mental Health
Commission
of Canada

Commission de
la santé mentale
du Canada

CivicAction

MINDSMAiTER

Workplace mental health just got easier.

Mental Health in the Workplace: The duty and benefits of accommodating employees with disabilities

February 28th, 2018 12:00pm-1:00pm E.T.

ORDER OF EXCELLENCE



MENTAL HEALTH AT WORK® RECIPIENT

Housekeeping Notes



Mental Health
Commission
of Canada

Commission de
la santé mentale
du Canada



Mental Health
Commission
of Canada

Commission de
la santé mentale
du Canada

CivicAction

MINDSMAiTER
Workplace mental health just got easier.

Mental Health in the Workplace: The duty and benefits of accommodating employees with disabilities

February 28th, 2018 12:00pm-1:00pm ET

ORDER OF EXCELLENCE



2017

MENTAL HEALTH AT WORK® RECIPIENT

Chat (Everyone)

Everyone

Files

Name	Size
------	------

Download File(s)

Q & A

CivicAction

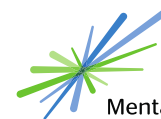


Mental Health
Commission
of Canada

Commission de
la santé mentale
du Canada

Guest Speakers

CivicAction



Mental Health
Commission
of Canada

Commission de
la santé mentale
du Canada



Muneeza Sheikh
Partner
Levitt LLP



Sal Cavaricci
Director of Mental Stress Injuries Program
WSIB



Jenny Winter
Vice President, Human Resources
CGI Canada



Mental Health in the Workplace: The duty and benefits of accommodating employees with disabilities

Muneeza Sheikh— Partner

February 28, 2018

Roadmap

1. Duty to Accommodate
2. Benefits of Accommodation

Part I: Duty to Accommodate

- THE CODE
- ACCOMMODATION
- UNDUE HARDSHIP
- BFOR

The Code

- ▶ Ontario *Human Rights Code* ensures
 - ▶ equal rights and opportunities freedom from discrimination the dignity and worth of every person
- ▶ Accommodation
 - ▶ individual arrangements involving needs linked to disability, beliefs and practices related to a person's creed or religion, family responsibilities, or gender so they can do their jobs, access services and buildings, and enjoy housing, equally

Principles of Accommodation

- ▶ Accommodation is a fundamental and integral part of the right to equal treatment. The principle of accommodation involves three factors: dignity, individualization and inclusion.
 - ▶ **Dignity:** Persons must be accommodated in a way that most respects their dignity, including their privacy, confidentiality, comfort and autonomy.
 - ▶ **Individualization:** There is no set formula for accommodation. Each person's needs are unique and must be considered afresh when an accommodation request is made. A solution may meet one person's requirements but not another's, although many accommodations will benefit many other people with similar needs.
 - ▶ **Inclusion:** Achieving integration and full participation requires barrier-free and inclusive design and removing existing barriers. Preventing and removing barriers means all persons should have access to their environment and face the same duties and requirements with dignity and without impediment.

Accommodation in Employment

- ▶ Accommodation may require...
 - ▶ require modifying duties, standards, rules, services, facilities or workstations,
 - ▶ providing assistive devices or other support
 - ▶ allowing some time off to address needs based on Code grounds.

Employee Responsibilities

- ▶ request accommodation
- ▶ explain why accommodation is required, so that needs are known
- ▶ make his or her needs known to the best of his or her ability, preferably in writing
- ▶ answer questions or provide information about relevant restrictions or limitations, including information from health care professionals, where appropriate and as needed
- ▶ take part in discussions on possible accommodation solutions
- ▶ co-operate with any experts whose assistance is required
- ▶ meet agreed-upon performance and job standards once accommodation is provided
- ▶ work with the employer on an ongoing basis to manage the accommodation process
- ▶ discuss his or her accommodation needs only with persons who need to know. This may include the supervisor, a union representative or human rights staff.

Employer Responsibilities

- ▶ accept the employee's request for accommodation in good faith, unless there are legitimate reasons for acting otherwise
- ▶ get expert opinions or advice where needed
- ▶ take an active role in making sure that alternative approaches and possible accommodation solutions are investigated, and research various forms of possible accommodation and alternative solutions as part of the duty to accommodate
- ▶ keep a record of the accommodation request and action taken
- ▶ maintain confidentiality

Employer Responsibilities

- ▶ limit requests for information to those reasonably related to the nature of the limitation or restriction, to be able to respond to the accommodation request
- ▶ grant accommodation requests in a timely way, to the point of undue hardship, even when the request for accommodation does not use any specific formal language
- ▶ pay the cost of any required medical information or documentation. For example, employers should pay for doctors' notes and letters setting out accommodation needs
- ▶ where accommodation would cause undue hardship, explain this clearly to the employee and be prepared to show why this is the case.

Undue Hardship

- ▶ High standard
- ▶ Factors
 - ▶ Costs
 - ▶ Health and safety risks
 - ▶ Outside sources of funding
- ▶ Onus on employer

Lane v. ADGA

▶ Facts

- ▶ Lane was hired by ADGA as a Senior Test Analyst and did not disclose during hiring process that he had bipolar disorder
- ▶ Terminated 8 days later after informed his supervisor of bipolar disorder

▶ HRTO

- ▶ Determined that Lane was dismissed because of disability and the perceptions of that disability on workplace performance
- ▶ Evidence clearly indicated that ADGA failed to even consider whether it could accommodate the disability

Lane v. ADGA

- ▶ undue hardship
 - ▶ *“Undue hardship cannot be established by relying on impressionistic or anecdotal evidence, or after-the-fact justifications. Anticipated hardships caused by proposed accommodations should not be sustained if based only on speculative or unsubstantiated concern that certain adverse consequences “might” or “should” result if the claimant is accommodated.”*

BFOR

- ▶ Bona Fide Occupational Requirement (BFOR) is an attribute that employers are permitted to consider when making hiring decisions that would otherwise constitute discrimination
 - 1. Rational connection
 - 2. Good faith belief
 - 3. Reasonable necessary

Simpson v. Commissionaires

- ▶ Facts

- ▶ Simpson suffered from neck and back injuries amounting to a physical disability
- ▶ Employer declined to provide her with alternate or modified duties

- ▶ HRTO

- ▶ Determined that employer had failed to accommodate Simpson
- ▶ “In order to trigger the duty to accommodate, it is sufficient that an employer be informed of the employee’s disability-related needs and effects of the condition and how those needs and effects interact with the workplace duties and environment. “

Simpson v. Commissionaires

- ▶ the accommodation provider does not have the right to know a person's confidential medical information, such as the cause of the disability, diagnosis, symptoms, or treatment
 - ▶ *"For the purposes of a request for employment accommodation, generally the focus should be on the functional limitations of the employee's condition (capacities and symptoms) and how those functional aspects interact with the workplace duties and environment. Consequently, an employer need not be informed of the specific cause of the employee's condition or the exact diagnosis in order to be put on notice that an employee has disability-related needs requiring accommodation."*

Part II: Benefits of Accommodation

- DIRECT BENEFITS
- INDIRECT BENEFITS

Direct Benefits

- ▶ Retained a valued employee
- ▶ Increased the employee's productivity
- ▶ Eliminated costs associated with training a new employee
- ▶ Increased the employee's attendance
- ▶ Increased diversity of the company
- ▶ Saved workers' compensation or other insurance costs
- ▶ Hired a qualified person with a disability
- ▶ Promoted an employee

Indirect Benefits

- ▶ Improved interactions with co-workers
- ▶ **Increased overall company morale**
- ▶ Increased overall company productivity
- ▶ Increased workplace safety
- ▶ Improved interactions with customers
- ▶ Increased overall company attendance
- ▶ Increased profitability
- ▶ Increased customer base

THANK YOU



Muneeza Sheikh
msheikh@levittllp.com

WSIB Overview: Mental Stress Injuries

Webinar by CivicAction and the
Mental Health Commission of Canada

February 28, 2018

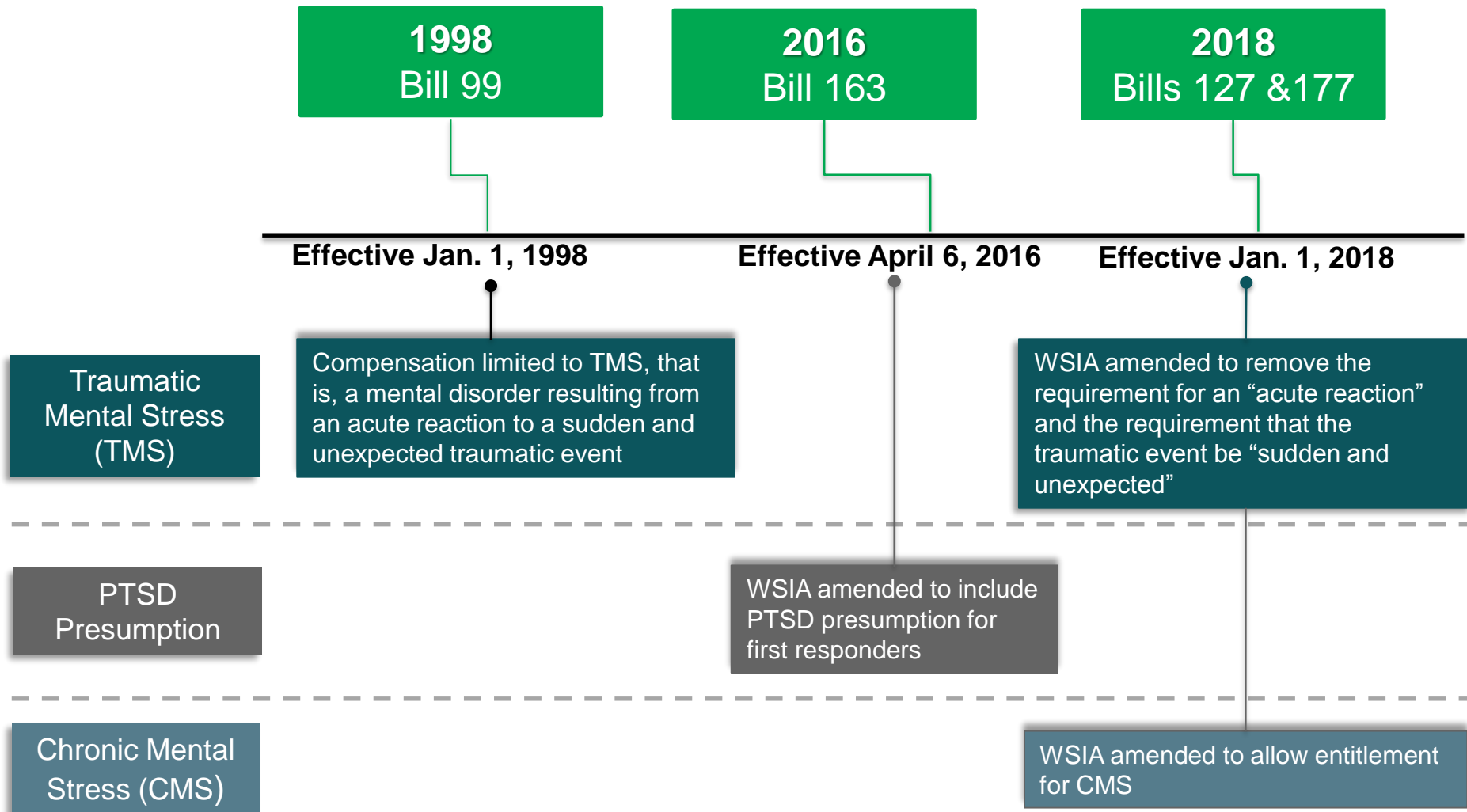
Presentation Overview

- ❑ *Workplace Safety and Insurance Act (WSIA): Entitlement for Mental Stress Injuries*
 - Overview of Legislative History

- ❑ Policy Overview
 - Posttraumatic Stress Disorder (PTSD) in First Responders and Other Designated Workers Policy (15-03-13)
 - Amended Traumatic Mental Stress (TMS) Policy (15-03-02)
 - New Chronic Mental Stress (CMS) Policy (15-03-14)

- ❑ Case Management Approach
 - Mental Stress Injuries Program
 - Service Delivery Model

Overview of Legislative History



PTSD Presumption Policy (15-03-13)

A first responder's PTSD is presumed to be work-related if the following three criteria are met:

- | | |
|----------|--|
| 1 | The worker must have been employed as a “first responder” for at least one day on or after April 6, 2014 <ul style="list-style-type: none">• First responders include firefighters, fire investigators, police officers, emergency response team members, paramedics, emergency medical attendants, ambulance service managers, workers in a correctional institution or a place of secure custody or secure temporary detention, and workers involved in dispatch |
| 2 | The first responder must have been diagnosed by a psychologist or psychiatrist with PTSD: <ul style="list-style-type: none">• on or after April 6, 2014, and• no later than 24 months after the day he or she ceases to be employed as a first responder if he/she ceases to be employed as a first responder on or after April 6, 2016 |
| 3 | The first responder must have been diagnosed by a psychologist or psychiatrist with PTSD as described in Version 5 of the <i>Diagnostic and Statistical Manual of Mental Stress Disorders</i> (DSM) |

Rebutting the presumption

The presumption may be rebutted if it is established that the employment was not a significant contributing factor in causing the first responder's PTSD

Entitlement exclusion – Employer's decisions and actions

- Entitlement for PTSD is excluded where it is caused by an employer's decisions or actions that are part of the employment function (e.g., terminations, demotions, transfers, discipline, changes in working hours, or changes in productivity expectations)
- The exclusion does not apply where the employer's actions include violence or threats of violence

Amended TMS Policy (15-03-02)

Entitlement criteria (all three must be satisfied)		Additional guidelines
1. Diagnostic Requirements	A diagnosis under the DSM	<ul style="list-style-type: none"> ➤ Diagnosis can be from a regulated health professional (<i>i.e.</i>, physicians, nurse practitioners, psychologists, or psychiatrists) ➤ For complex claims, the WSIB may require an assessment by a psychologist or psychiatrist to help clarify initial or ongoing entitlement ➤ Example of DSM diagnoses include acute stress disorder, PTSD, adjustment disorder, an anxiety or depressive disorder
2. Injuring Process	One or more objectively traumatic events that arose out of and in the course of the worker's employment	<ul style="list-style-type: none"> ➤ Event(s) must be clearly and precisely identifiable and objectively traumatic ➤ This means they can be established through information or knowledge of the event(s) provided by co-workers, supervisory staff, or others and is/are generally accepted as being traumatic
3. Causation	Significant contribution	<ul style="list-style-type: none"> ➤ WSIB decision-maker must be satisfied on a balance of probabilities that the traumatic event(s), or the cumulative effect of a series of traumatic events, <u>caused, or significantly contributed to</u>, an appropriately diagnosed mental stress injury
Entitlement exclusion – Employer's decisions and actions		
<ul style="list-style-type: none"> ➤ Entitlement for TMS is excluded where it is caused by an employer's decisions or actions that are part of the employment function (<i>e.g.</i>, terminations, demotions, transfers, discipline, changes in working hours, or changes in productivity expectations) ➤ The exclusion does not apply where an employer's actions include violence or threats of violence, or conduct that a reasonable person would perceive as egregious or abusive 		

Application Date & Transitional Provisions

Application date

- ❑ The amended TMS Policy took effect on January 1, 2018

Scope of policy's application:

- ❑ The amended TMS Policy applies to all TMS claims with accident dates on or after January 1, 2018
- ❑ The amended TMS Policy also applies to all TMS claims that fall within the transitional provisions (reflecting Bill 177's transitional provisions)
- ❑ Under these transitional provisions, the amended TMS Policy applies to the following claims:
 - new TMS claims with accident dates on or after April 29, 2014, where the worker has not filed a claim with the WSIB for the TMS before January 1, 2018, so long as the worker or worker's survivor files a claim on or before July 1, 2018, and
 - TMS claims that are pending a final decision by the WSIB or the WSIAT as of January 1, 2018

New CMS Policy (15-03-14)

Entitlement criteria (all three must be met)		Additional guidelines
1. Diagnostic Requirements	A diagnosis under the DSM	<ul style="list-style-type: none"> ➤ Diagnosis can be from a regulated health professional (<i>i.e.</i>, physicians, nurse practitioners, psychologists, or psychiatrists) ➤ For complex claims, the WSIB may require an assessment by a psychologist or psychiatrist to help clarify initial or ongoing entitlement ➤ Example of DSM diagnoses include acute stress disorder, PTSD, adjustment disorder, an anxiety or depressive disorder
2. Injuring Process	Substantial work-related stressor, including workplace bullying or harassment	<ul style="list-style-type: none"> ➤ Stressor(s) must be beyond the normal pressures/tensions experienced by workers in similar circumstances
3. Causation	Predominant cause	<ul style="list-style-type: none"> ➤ WSIB decision-maker must be satisfied on a balance of probabilities that substantial work-related stressor is the <u>strongest or main cause</u> of the worker's CMS for there to be entitlement ➤ Consistent with other workers' compensation boards (Alberta and British Columbia) across Canada that also compensate for CMS
Entitlement exclusion – Employer's decisions and actions		
<ul style="list-style-type: none"> ➤ Entitlement for CMS excluded where it is caused by an employer's decisions or actions that are part of the employment function (<i>e.g.</i>, terminations, demotions, transfers, discipline, changes in working hours, or changes in productivity expectations) ➤ The exclusion does not apply where an employer's actions include violence or threats of violence, or conduct that a reasonable person would perceive as egregious or abusive 		

Application Date & Transitional Provisions

Application date

- ❑ The new CMS Policy took effect on January 1, 2018

Scope of policy's application:

- ❑ The new CMS Policy applies to all CMS claims with accident dates on or after January 1, 2018
- ❑ The new CMS Policy also applies to all CMS claims that fall within the transitional provisions (reflecting Bill 177's transitional provisions)
- ❑ Under these transitional provisions, the new CMS Policy applies to the following claims:
 - new mental stress claims with accident dates on or after April 29, 2014, where the worker has not filed a claim with the WSIB for the mental stress before January 1, 2018, so long as the worker or worker's survivor files a claim on or before July 1, 2018, and
 - mental stress claims that are pending a final decision by the WSIB or the WSIAT as of January 1, 2018

Mental Stress Injuries Program

- ❑ The Mental Stress Injuries Program (MSIP) (formerly the Traumatic Mental Stress Program) is a specialized unit dedicated to managing claims involving mental stress injuries including:
 - presumptive PTSD cases from first responders and other designated workers
 - traumatic mental stress
 - chronic mental stress

- ❑ The unit includes Case Managers, Nurse Consultants, Team Managers and is supported by Specialized Work Transition Specialists (WTS)

- ❑ The MSIP is responsible for the entire management of the claim from eligibility through to resolution/closure of the case

Service Delivery Model Key Features

- ❑ The Service Delivery Model applies to all mental stress injury claims and includes the following features:
 - robust triage function to render timely decisions and stream cases for further inquiry or case management based on case characteristics
 - customer-centric approach which drives cases to the right people at the right time for ongoing case management
 - dedicated case management teams to manage acute cases where there is significant opportunity to support stay at work (SAW) or return to work (RTW) with the injury employer as well as teams dedicated to managing chronic/persistent cases involving recovery and RTW challenges
 - support for recovery through timely psychological assessments and treatment
 - RTW support provided by dedicated Work Transition Specialists (WTSs) including dedicated teams and employer dedication



Experience the commitment®



CGI's approach to mental health in the workplace

Spotlight on **CGI** – Jenny Winter, Vice President, Human Resources, Canada

Mental health at CGI: Our proactive approach



Education and Awareness

Annual *Mental Health Month*
Annual *Break the stigma week*
In-house Resiliency training
Mindfulness training
Financial health education and training
Mental health related trainings
Online health portal

Risk identification

Health risk assessment*
(Health Click Questionnaire)

Leaders' training

Healthy business training and EAP toolkit for leaders
Resiliency training for project teams
Mental health presentation to all new leaders at CGI during the leadership integration (CGI 101)
Coming in May: Stress management training for leaders

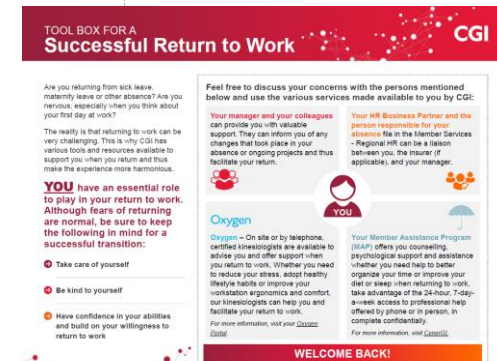
Support

Peer to peer recognition through use of our *Applaud* platform
Giving back to the Canadian community through a yearly donation to the Canadian Mental health Association (CMHA)
Strong and structured return to work processes
Active promotion of our *EAP*
Employees in the GTA certified as *Mental Health First Aid responders* (*Mental Health Commission of Canada*)

Our duty to accommodate, to yield the best outcomes

For members facing issues or returning to work from a short/long term disability, related to a mental health issue.

Best practices	Benefits
<p>At CGI, our primary approach is to be proactive and to tailor the solution to each situation</p> <p>Examples of best practices:</p> <ul style="list-style-type: none">▪ Collaboration: includes all stakeholders and a rehab counselor in <u>every</u> mental health disability case▪ Communication : When working on an accommodation or return plan, communications and roles are clearly defined▪ Environmental needs: Modifications to the physical environment, such as lighting, noise and comfort. Our wellness team may run a full ergonomic assessment▪ Flexibility in job scheduling according to medical recommendations including graduated return to work if required▪ Respect	<ul style="list-style-type: none">▪ Better alignment and understanding▪ Smoother transition▪ Reduction in reactivated claims▪ Focus on employee with positive outcomes▪ Leaders feel better equipped▪ Employees feel we care▪ Win-win solution



What we believe is key to success



- Collaborative efforts between all stakeholders (HRBP, Return to work team, TC team, Wellness team, business and insurer group)



- Proactive vision



- Holistic approach



- Corporate social responsibility matters!



- Continuous education and involvement with Canadian organizations in order to stay on top of current trends



- Aiming for the best for our workforce



At CGI we have a DREAM... « To create an environment in which we enjoy working together and, as owners, contribute to building a company we can be proud of.»

CivicAction's MindsMatter program provides an online assessment tool offered in French and English to help employers quickly know where their organization is at in supporting people's mental health and how to do more.

MindsMatter is:

- ✓ **Free to take**
- ✓ **Easy to use**
- ✓ **Confidential**
- ✓ **Takes less than 3 minutes**

Participants are connected to existing resources aligned with their needs, and benefit from peer-to-peer learning opportunities including testimonials, webinars, and story-telling.

<http://mindsmatter.civicaction.ca/>

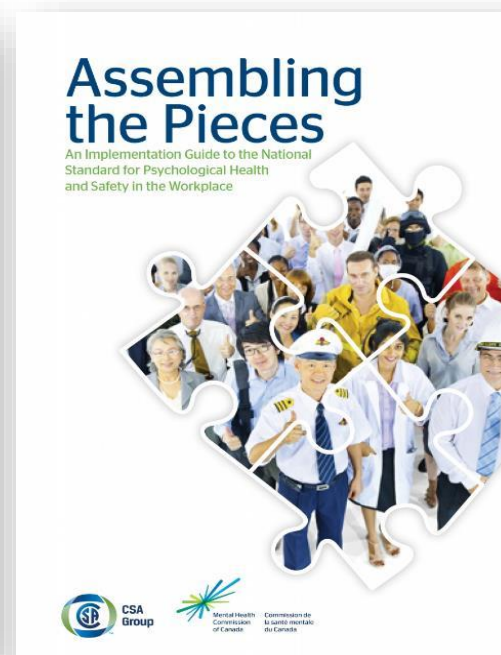
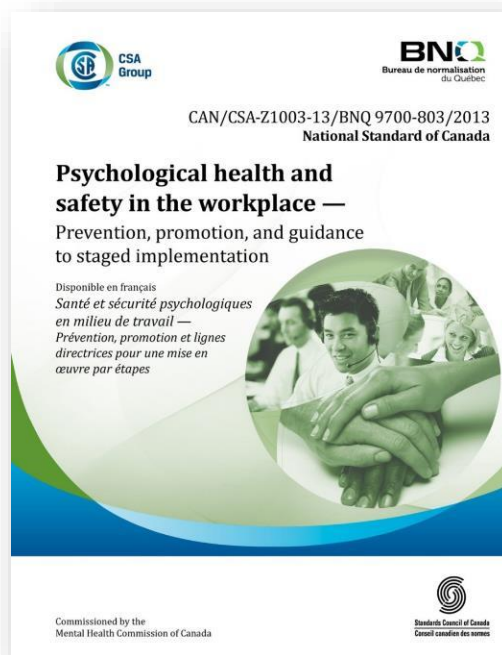
<http://www.civicaction.ca/soutienbienetre/>



Mental Health
Commission
of Canada

Commission de
la santé mentale
du Canada

The National Standard for Psychological Health and Safety



<https://www.mentalhealthcommission.ca/English/national-standard>

<https://www.mentalhealthcommission.ca/English/workplace-webinar-series-archive>

Questions?



Next Workplace Webinar

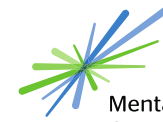
March 28, 2018 at 12:00pm E.T.

To watch our past webinars, visit our [website](#)



How did we do?





Mental Health
Commission
of Canada

Commission de
la santé mentale
du Canada

CivicAction

Thank you!

webinar@mentalhealthcommission.ca

@MHCC_ @CivicActionGTHA

 @MHCC_
 @theMHCC

 /theMHCC
 /1MHCC  /Mental Health Commission of Canada

Financial contribution from



Health
Canada

Santé
Canada

Contact information:

Leslie Domenico

Senior Project Manager

CivicAction

(416) 309-4480 ext. 506

Leslie.domenico@civicaction.ca

Laura Mullaly

Program Manager, Healthcare Sector

Mental Health Commission of Canada

(613) 683-3755

lmullaly@mentalhealthcommission.ca

Muneeza Sheikh

Partner

Levitt LLP

(416) 597-6482

msheikh@levittllp.com

Jenny Winter

VP, Human Resources

Canada

CGI Inc.

(905) 409-3130

jenny.winter@cgi.com

Sal Cavaricci

Director, Mental Stress

Injuries Program

WSIB

(416) 344-2846

sal_cavaricci@wsib.on.ca

Sue Timlin

Director, Return to

Work Program

WSIB

(905) 521-4278

susan_timlin@wsib.on.ca