

# Fair Practices Commission

# Newsletter

## **Fair Practices Commission: A New Resource for Workers, Employers and Service Providers**

The Fair Practices Commission is the newly created organizational Ombudsman for the Workplace Safety & Insurance Board. The Commission is an independent, impartial and confidential resource for workers, employers and service providers.

Laura Bradbury, the Fair Practices Commissioner, began the work of the Commission on September 1, 2003. Staff were hired by December 1, 2003. The office opened on a phased-in basis in January 2004, and began providing service to the whole province by April 5, 2004.

## Charter Document Approved by the Board of Directors of The WSIB

The Board of Directors of the WSIB approved the Fair Practices Commission Charter Document in a resolution dated March 4, 2004. The Charter sets out the key features of the Commission, including its role and mandate, its authority in investigating complaints and its practices and procedures.

The Commission's mandate is to receive and resolve individual complaints from workers, employers and service providers about alleged unfair practices at the WSIB. The Commission also has a mandate to identify systemic issues, policy issues and trends in complaints, and make recommendations to the Board of Directors for improvements. The Commission cannot make or change decisions or policies or investigate any issue where there is a right of appeal.

See the full text of the Charter on our web site at [www.fairpractices.on.ca](http://www.fairpractices.on.ca)

## The Commission's focus is on the fairness of the WSIB processes

The Commission looks into and helps resolve cases where there are **current** issues with the WSIB's processes. Commission staff use facilitation, negotiation and mediation to resolve concerns in a timely and fair manner. The Commission has developed Administrative Fairness benchmarks to help determine whether a complaint involves fairness issues. Some examples are:

**Delay:** Was there an unreasonable delay in taking action or in making a decision? Was the affected party informed of the delay and reasons for the delay?

**Communication:** Was the decision or action communicated clearly? Were reasons provided to those affected? Did staff explain what the decision was based upon?

**The Commission's skill is distinguishing between appealable issues and process issues. The Commission's strength is using individual complaints as the catalyst for an analysis of systemic issues.**

**Behaviour:** Were staff unbiased and objective when reviewing information? Did staff overlook any relevant information in their actions or in making a decision? Were the staff courteous and professional?

**Decision-making process:** Is there a policy or guideline related to the matter being decided? If so, was it applied fairly and consistently?

### ABOUT THIS NEWSLETTER

This is the first edition of the Commission's semi-annual newsletter. We will also produce a public annual report that will be available on our web site.

# Statistical Information and Trends

## Complaint Resolution Processes:

If your complaint is within our mandate, we can:

- Refer you to the appropriate WSIB staff if they have not had a full opportunity to try and resolve the complaint. We may provide some guidance to help you in your discussions with WSIB staff.
- Make inquiries of the WSIB to try to resolve the complaint.
- Investigate complaints raising potential fairness issues.
- Suggest actions or make recommendations to the WSIB if the complaint is supported.
- Identify and investigate broader systemic issues and make suggestions or recommendations for improvements. The Commissioner can investigate systemic issues on her own initiative.

*See the Complaint Guide on our website. The Guide explains recommended steps for making a complaint to the Commission.*

*If the issue is complex, you are encouraged to put your complaint in writing, using the Complaint Form, also available on our website.*

## Complaints to Date:

- Received 706 complaints by the end of September 2004.
- Average turn-around time is 7 days.
- 56% are within the Commission's mandate; the rest are referred to the WSIB or to alternative agencies more appropriate for the concern.

## Referrals

Cases are referred to the Commission from a wide range of sources including:

- Ombudsman Ontario
- Legal clinics
- Employer representatives
- Office of the Worker Adviser
- Unions
- WSIB Staff
- Internet
- MPP Offices

## Complaint Resolution Outcomes:

Of the cases closed by the FPC by the end of September, 86% were resolved as follows:

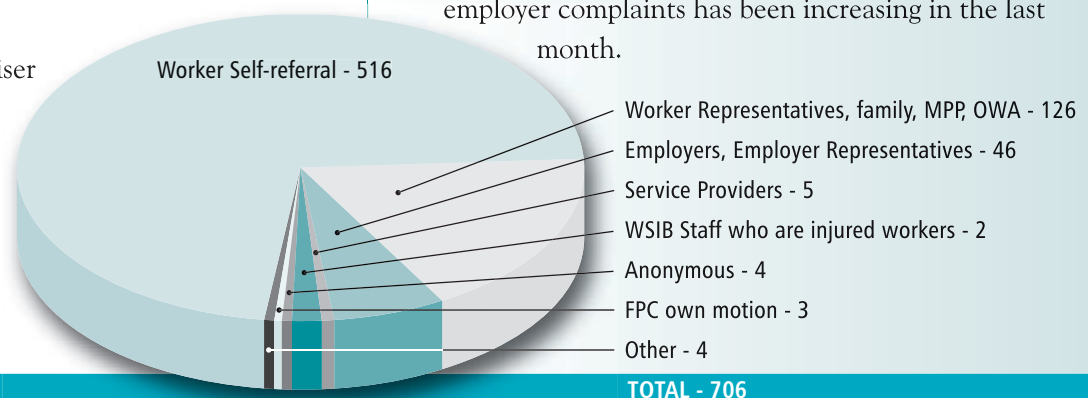
- Advice provided to complainant  
no further action required by FPC 24
- Referrals to WSIB (Claims Adjudicator, Account Manager, Manager, Director) (Mandate) 244  
(Non-mandate) 82
- Inquiries made by FPC (including systemic issues)
  - Action required by WSIB; complaint resolved 63
  - No action required by WSIB 25
- Systemic investigations conducted by FPC
  - Concern substantiated/suggestions made/implemented by WSIB 1
- No current fairness issue identified 17
- Right of appeal exists (Non-mandate) 86
- Issue under WSIB appeal/review (Non-mandate) 46
- Concerns withdrawn 7

The remaining 14% include:

- Issue is with Ombudsman Ontario
- Abandoned by Complainant
- Under WSIAT appeal

## User Groups

The Commission is available to workers, employers and service providers. Self-referred workers represent the largest user group to date, however, the number of employer complaints has been increasing in the last month.



# Case Summaries

These case summaries and others are set out in more detail on our web site. New summaries are added regularly to the site.

## Examples of Resolutions in Individual Complaints:

### Behaviour

Some inquires from FPC Specialists resulted in written apologies to the complainant. One apology came from a Director who assured the complainant that the Claims Adjudicator was made aware of the problem of inappropriate comments in written and verbal communications. The Director also directed the Manager to conduct general education and training for all claims adjudicators in that service delivery team about appropriate communication.

### Communication

An employer complained about a delay in processing an objection to a decision in a worker's claim. The Commission inquired and found there was no unfair practice, however, there was a concern that the employer did not fully appreciate what constituted a 'notice of objection.' The Manager offered to contact the employer to ensure he understood the objection process, and provided the employer with information about the Office of the Employer Adviser for appeal advice and/or representation. The Commission undertook to raise the issue of clear, more detailed information, about the objection process with the WSIB.

"I was told you're really good at helping people and I need help."

### Decision-making process

A legal clinic contacted the Commission about four clients who were experiencing significant delays in obtaining WSIB psychiatric consultation reports. In one case, after inquiries made by the Specialist, the psychiatric consultation was completed and the injured worker was granted benefits retroactively for a period of two years. In another case, the Claims Adjudicator decided

there was sufficient information on file to make a decision. Although it was a negative decision, the representative was satisfied that a decision had finally been made and that the worker could now proceed with his appeal. In two other cases, decisions were made based on previous psychological consultation reports completed about one year earlier. Again the representative was satisfied to have a decision that could be appealed.

All four complainants were advised that the Commissioner is investigating systemic issues around psychological consultations.

### Delays

A seriously injured worker contacted the Commission about a delay in obtaining home modifications. Inquiries from the FPC Specialist revealed that the Serious Injury Branch of the WSIB had recently experienced significant staff changes and was in the process of recruiting. The WSIB acknowledged that staff changes were affecting the level of service provided to seriously injured workers. In this case, the WSIB arranged for an Independent Living Consultant to conduct a personal visit and assess the home for a stair lift and other necessary modifications.

## Examples of Systemic Issues:

*Most of the systemic issues are resolved at the senior management level and several are still in process. For this reason, the Commission has not yet made formal recommendations to the Board of Directors. The following examples show some recurring themes in matters coming to the Commission.*

### Psychological Consultations

The Commissioner has met with the Chief Operations Officer and the Vice President of Health Services about complaints concerning delays in obtaining psychological consultation reports. The

WSIB is taking a number of important steps to reduce the current backlog and reduce the risk of a backlog occurring in the future. The Commission continues to monitor the changes.

"Thank you very much for assisting me as I didn't know what else to do."

### Delays in Appeals

Several workers complained about undue delays in processing their appeals. In one case, the Commission found there had been a particularly long delay in obtaining and reviewing medical information. The Commission concluded that the delays could have been avoided if there had been appropriate attention to follow-up and an effective process in place to solve problems when they arose. The Commission met with the Sector Director and Assistant Directors and discussed this case and explored possible options for minimizing the risk of similar occurrences in the future.

The Director initiated a number of responses, including a written apology to the worker. The Director also reported to the worker on the specific measures put in place in the sector to improve the handling of claims, including developing protocols for follow-up on medical information requests. The worker was also invited to forward any suggestions for improvement.

### Information about Interpreter Services

A legal clinic, on behalf of its clients, wrote to the Commission concerning the lack of notice of interpreter services in letters about Non-Economic Loss assessments and doctor selection. The Commissioner raised this issue with the WSIB. As a result, the letters now include a clear notice to workers that interpreter services are available and how to access the service.

## Mission Statement

*The Mission of the Fair Practices Commission is to facilitate fair, equitable and timely resolutions in individual complaints brought by workers, employers, and service providers and to identify and recommend system-wide improvements to Workplace Safety & Insurance Board (WSIB) services. In carrying out its mission, the Commission will contribute to the WSIB's goals of achieving greater openness, better relationships and improved services*

### CONTACT INFORMATION

*The Commission can be contacted by phone, fax or mail, but not by e-mail for confidentiality reasons.*

**Phone:** (416) 603-3010  
**Toll-free:** 1-866-258-4383  
**TTY:** (416) 603-3022  
**TTY Toll-free:** 1-866-680-2035  
**Fax:** (416) 603-3021  
**Toll-free fax:** 1-866-545-5357

This Newsletter is  
available on our website at  
[www.fairpractices.on.ca](http://www.fairpractices.on.ca)

### OUTREACH

*If your organization would like to learn more about the Fair Practices Commission, our staff can facilitate an information or educational session. We will explain how to make a complaint and how we can help resolve problems. Pamphlets and other materials are available. For further information call:*

*Lalita Kulkarni at: 416-603-3017  
or Toll free at: 1 866-258-4383*

Let us know if you prefer to receive this newsletter by e-mail

## THE STAFF

### Commissioner

Laura Bradbury

### Fair Practices Specialists

Tom Irvine

Marie Metcalfe

Mary Carl (Thunder Bay)

### Roster (part-time) Specialists

Susan Copeland

Mary Ferrari

Janice Sandomirsky

### Intake

Anna Martins (Intake Co-ordinator)  
Amal Abboud-Hewitt (Bilingual Analyst)

### Administrative Assistant

Lalita Kulkarni

*One of our specialists, Mary Carl, is located in Thunder Bay to ensure access to the Commission's services in the northern parts of the province. All incoming matters go first to the Intake Staff who are located in Toronto. The office is separate from the WSIB head office to ensure an arm's-length relationship. Our services are available in English and French and we can arrange for an interpreter in other languages if required.*

**FAIR PRACTICES COMMISSION**  
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