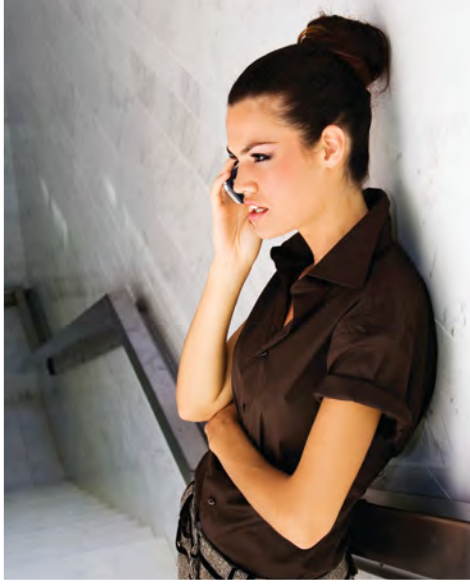

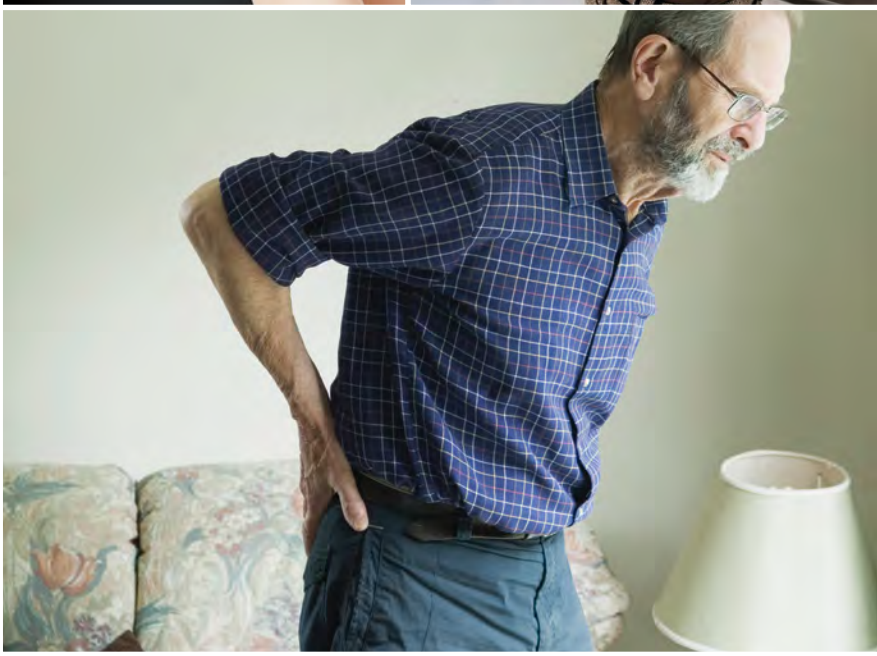

ANNUAL REPORT 2014

FAIR PRACTICES COMMISSION

FPC
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An independent office working to ensure fair practices at the Workplace Safety and Insurance Board of Ontario

Également disponible en français

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THE MISSION of the Fair Practices Commission is to facilitate fair, equitable and timely resolutions to individual complaints brought by workers, employers and service providers and to identify and recommend system-wide improvements to Workplace Safety and 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.

CONTENTS

FROM THE COMMISSIONER

Our goal at the Fair Practices Commission is to ensure fair process and fair treatment for all those who deal with the Workplace Safety and Insurance Board, be they workers, employers or service providers. The legislation governing the WSIB is complex and powerful. This makes the duty for fairness and the need for transparency even more important.

This past year we have dealt with many fairness issues. Some were complicated, some straighforward. Some affected many people; others affected only a few. For example, we have helped ensure that polices are applied fairly and consistently. We have facilitated corrective measures where it did not appear all of the information in a worker's claim had been considered. We prompted the WSIB to take immediate action to address the concerns of workers who were in crisis. We flagged problems about internal administrative procedures and unreasonable delays. In all this, we acted as an agent of change for better communication, timeliness and consistent decision-making.

I give credit to those who came forward with their fairness issues. By highlighting areas needing improvement they have helped many other users of WSIB services. As always, these improvements have come in collaboration with the staff of the WSIB.

Lastly, I want to acknowledge that our accomplishments in 2014 are largely the result of the professionalism and dedication of the Commission staff. It is their continued commitment to striving for fairness at the WSIB that makes the work of the Commission a success.

— Tom Irvine, Commissioner

AN INDEPENDENT OFFICE

The Fair Practices Commission is an independent office working to promote and ensure fair practices at the Workplace Safety and Insurance Board (WSIB) of Ontario. As the organizational Ombudsman for the WSIB, we

- listen to the concerns raised by injured workers, employers, and service providers
- resolve fairness issues quickly
- identify recurring fair practice issues and report them to the WSIB with recommendations for improvements.

Three main principles guide our work:

Impartiality

The Commission does not take sides in complaints. We advocate for fair processes.

Confidentiality

All inquiries are confidential unless we receive specific consent to discuss or disclose information.

Independence

The Commission serves injured workers, employers and service providers but works independently in the interests of fairness. The Commission reports directly to the board of directors, the governing body of the WSIB.

THE VALUE OF THE COMMISSION'S WORK

Building relationships

The Commission listens to the people who contact us and gives them options for resolving problems. The Commission assists the WSIB staff in understanding the concerns and frustrations of the people it serves.. Experience shows that this type of informal facilitation helps build better relationships and provides everyone with better tools for tackling future problems.

Resolving conflict

The Commission's independence from the WSIB provides an opportunity for a fresh look at a concern and a creative outcome. The Commission's intervention at an early stage may help prevent future unfairness and the expense and time of formal appeals.

Preventing problems

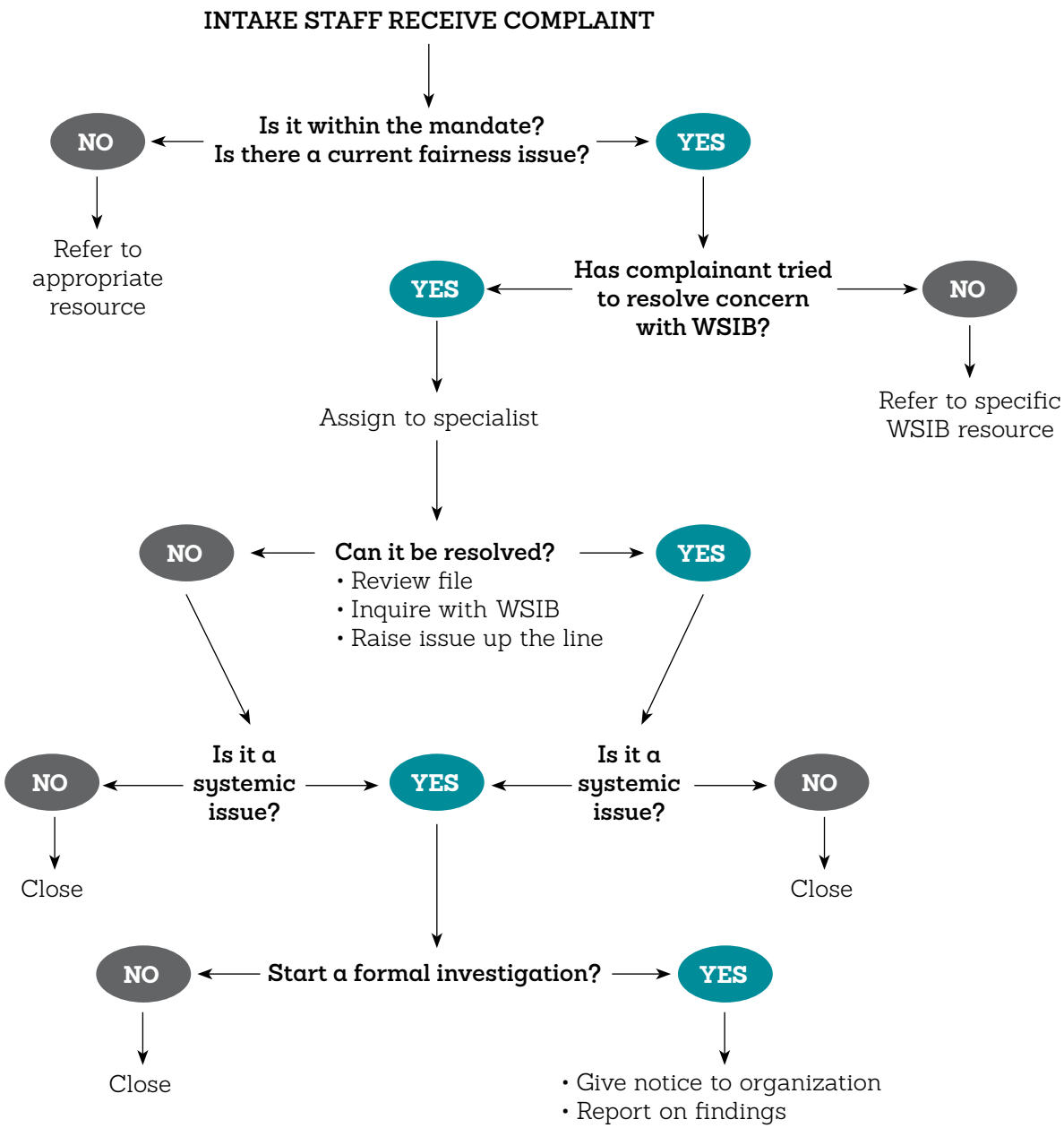
The Commission can prevent problems through our capacity to track complaints and identify recurring themes and patterns. The Commission identifies the WSIB's best practices and recommends changes to prevent similar problems.

Acting as an agent of change

By helping the WSIB understand how to resolve conflict and build better relationships, the Commission fosters a culture in which the WSIB adapts and responds to the needs of the people it serves.

IMPROVING THE SYSTEM

THE COMPLAINT PROCESS



SYSTEMIC ISSUES

Identifying and resolving a system-wide issue leads to fairer treatment for everyone. The Commission identifies systemic issues by looking for patterns and trends in the statistics and in the individual complaints. When we find a pattern that is a systemic issue, we work with the WSIB to make changes that improve the system for countless others.

Adjudication of non-organic claims

In 2013 we reported systemic concerns related to a new WSIB process to adjudicate non-organic (psychological and chronic pain) claims. The WSIB was telling workers it needed all the clinical notes for the five years prior to the accident. Workers said this practice was invasive as clinical notes can contain extremely sensitive, unrelated information. The Commission found the WSIB started this practice without notice or discussion with stakeholders, a fairness issue.

In 2014 the commissioner met with the WSIB's president and chief operating officer to discuss the importance of transparency when significantly changing an adjudicative practice. The WSIB and the Commission agreed the WSIB will inform the Commission in advance of any proposed significant change. In turn, the Commission will advise the WSIB of any potential fairness issues resulting from the proposed change and, where appropriate, how such a change should be communicated.

The Commission continued to receive a number of complaints related to this practice. While reviewing them, we identified inconsistencies in the decision-making process when the clinical notes could not be obtained or workers chose not to provide the notes to the WSIB. For example, the WSIB told some workers that if they did not submit the information there would be no decision. In other cases, the WSIB said this would affect their benefits because they were deemed to be "not co-operating."

In response to the Commission's inquiries, the WSIB said they will make an entitlement decision even when the five years of notes is not available, subject to requesting an assessment of the worker by a third party or other investigations. As well, they said that if clinical notes are not provided when requested, this does not constitute non-cooperation.

We also received complaints from injured workers who requested entitlement for chronic pain disability (CPD) and were being told that no decision would be made without a diagnosis. Yet, in other cases decisions were made without a diagnosis. The WSIB responses to the Commission about this were also inconsistent. For example, one said, "In the absence of

a diagnosis, we don't issue a decision." Another said, "We cannot refuse to make a decision." Without a decision, these workers could not appeal.

In addition, the Commission heard from injured workers and their representatives who wanted organic and non-organic issues dealt with together at the Appeals Services Division but could not do so because of the WSIB's refusal to provide decisions on CPD.

The Commission reviewed these issues with the director and assistant director of the Secondary Entitlement branch. They said a diagnosis is not required to issue a decision, and they committed to reviewing the examples the Commission brought to them. The assistant director later told the Commission the WSIB would send a notice to all Service Delivery directors and to the Post-Lock-In team to identify clearly the process for determining entitlement for CPD and inform staff that a diagnosis on the claim file is not required.

We continue to monitor and bring individual complaints to the WSIB's attention.

Older worker option

In 2014 the Commission received several complaints about the Older Worker Option (OWO). Under this policy, workers who are 55 or older when the WSIB determines they are entitled to loss-of-earnings benefits and require a work transition plan can either participate in a work transition plan or choose a 12-month self-directed transition plan.

In one complaint, a 63-year-old worker attended a meeting with WSIB staff to discuss his options. At the end of the meeting he signed the form choosing the self-directed plan. WSIB policy says if the worker chooses the self-directed plan, the decision is irrevocable and not appealable. The worker said he signed the form without clearly understanding the consequences. He felt coerced into signing.

The Commission discussed this particular instance, as well as the general information provided to workers about the OWO, with the director of the Work Transition Division. The director agreed that workers should receive general information in writing about the details of the OWO before they choose an option. The director said she would work with WSIB staff to develop a draft of the information sheet.

The information sheet was completed and is being used.

Possible future appeal dates out of letters

In reviewing complaints about how the WSIB considers medical information, Commission staff noticed a trend. Decision-makers were writing to the workers saying their claims would be closed some weeks or even months in the future. The letters said that, based on a third party assessment, there would be no permanent impairment and the workers

would be expected to perform regular duties and the claims closed. The letters framed the anticipated outcomes as appealable decisions including an appeal deadline six months from the date of the letter.

These letters raised several fairness concerns. They did not invite the worker to provide additional information or indicate that a final review would take place close to the projected recovery date. The decisions were based on expected outcomes rather than on the merits of the evidence on the claim file. And, the appeal deadlines were from the date of the letter rather than the date of projected full recovery, reducing the timeframe a worker has to appeal.

The Commission spoke with an executive director in Operations about the letters. After he looked into the Commission's fairness concerns, he said that, in general, case managers talk with workers about the findings of a third party assessment and confirm with them what the specialist concluded. The executive director thought it appropriate for the case managers to put in writing that the workers are likely to recover. However, it is not appropriate to date a decision in the future and include a paragraph about appealing. He committed to speak to the senior staff about the letters. The Commission was subsequently advised that such letters will not include an appeal paragraph.

FEEDBACK

- "Thank you so much for what you guys did. I got my finances back. I got my job back. None of that would have happened without you guys."
- "I'm so thankful for you. It makes a difference to know that someone is helping you. I know I will have to wait and see what rolls out … but I know I can call you … God Bless you."
- "You guys are fantastic and always helpful in getting things moving."
- "Thank you for your work. You helped to get the ball rolling even though WSIB's position is often intractable."
- "I don't know what I would do without you – all this uncertainty with the WSIB has been extremely stressful which impacts on my condition. I really really truly appreciate all your help."
- "You are fantastic. It has been so helpful and wonderful talking to you knowing I can talk freely and the information won't go anywhere else."
- "I just passed my 65th birthday. I will never forget your office and hope you will continue to help others who need it."

HELPING INDIVIDUALS

THE RESOLUTION PROCESS

When the Fair Practices Commission receives complaints or inquiries, we respond according to what is appropriate to the circumstances of each individual.

We encourage everyone first to discuss their issue with the WSIB staff person most directly responsible and, if that does not resolve it, raise it with the manager.

If the concern is unresolved, the Commission determines whether there is a current fairness issue. The Commission may consider the following questions in deciding if the issue is about the fairness of the process:

- Is there an issue of timeliness?
- Is there a communication issue?
- Does the person need more information to understand WSIB processes and policies?
- Did the person have a chance to make a case to the decision-maker?
- Did the WSIB consider all the relevant information?
- Did the WSIB explain clearly the reasons for the decision?
- Is the decision consistent with WSIB law and policy?
- If the WSIB did make a mistake, did they acknowledge it and correct it?
- Did the WSIB respond fairly and respectfully if someone felt poorly treated?

If the Commission determines that a fairness issue is not involved, we explain this.

If there appears to be a fairness issue, the Commission contacts WSIB management to get their perspective and to discuss steps to resolve the issue. If the issue remains unaddressed, the Commission approaches senior management to discuss options for resolution.

We call the person with the results.

FAIRNESS CATEGORIES

1. Decision-Making Process

Did the person affected by the decision or action know it would happen? Did the person have input or an opportunity to correct or respond to information? Was information overlooked? Is there a policy or guideline related to the matter? If so, was it applied in a manner consistent with how it was applied in similar matters?

The Commission received 485 complaints in 2014 about the decision-making process. This category is 26 per cent of all incoming issues, up from 21 per cent last year.

2. Delay

Was there an unreasonable delay in taking action or in making a decision? Was the affected party informed of the delay and the reasons for it? Were letters answered or calls returned in a timely fashion?

Issues about delays always constitute the highest number of complaints. In 2014, the Commission received 509 complaints about delay. This is a decrease to 27 per cent of all incoming issues, down from 31 per cent in 2013.

3. Communication

Was the decision or action communicated clearly? Were reasons provided to those affected? Did staff explain what the decision was based on? Were next steps or options explained?

The Commission received 339 complaints about communication issues, primarily about unavailable or unclear communication. Communication complaints make up 18 per cent of incoming issues, the same as in 2013.

4. Behaviour

Was the staff unbiased and objective when reviewing information? Was the staff courteous and professional? Were mistakes acknowledged and apologies offered?

In 2014 the Commission received 111 complaints about the behaviour of WSIB staff, almost all about unprofessional behaviour or critical comments. This category is now six per cent of incoming issues, up from four per cent.

When we receive a complaint about behaviour, we first advise the person to raise it with the manager. Then, if needed, we speak to the manager.

INDIVIDUAL RESOLUTIONS

Changing interpretation, or policy

WSIB policy says that, if a worker must be escorted to health care appointments, it pays a standard fee and any approved travel and related expenses. Mr. P, who has needed to be escorted to health care and WSIB-arranged appointments since 2005, received less than the usual amount for escort expenses. He called the WSIB and the nurse consultant told him he was entitled only to an hourly rate of $10.25, not the daily rate of $82 he had been receiving. He then received a letter saying payment of a daily escort fee was incorrect and payment was based on the amount of time the escort assisted the worker. He contacted the Commission.

The Commission spoke to the manager about the change in payment. She confirmed there was no change to the policy, but there was a correction in the interpretation of the policy. She agreed, however, that the nurse consultant failed to notify Mr. P before making the change. The WSIB would pay the full amount retroactive to one week from the date they told Mr. P about the change.

Mr. P still thought the change was unfair. He sent a letter to the nurse consultant attaching pages from the Guide to Independent Living, which he had received from the WSIB in 2009. The guide said, "Escort fees are paid at a daily rate. This is a set amount established by the WSIB."

The Commission also spoke to the assistant director, who confirmed that the change resulted from a closer review of the policy. However, as the Guide to Independent Living said the escort fee is paid at a daily rate, she would investigate further. A week later she told the Commission the WSIB would return to paying workers in the serious injury program the full daily rate for escort fees.

Reviewing the decision-making process

Ms. B was injured in 2009, at the age of 60. She received a 15 per cent non-economic loss (NEL) for her injuries, in addition to a 14 per cent NEL for a prior back injury.

In 2009 and in 2011, the WSIB referred her to work transition services (WTS). They found no suitable job options and sent her a letter saying her full benefits would continue until age 65. In 2012, they again referred her to WTS. Ms. B expressed reservations about her capacity to participate, and in response the case manager terminated her loss

of earnings beneifts on the basis that she was not co-operating. Ms. B agreed to participate and benefits were reinstated.

WTS proposed a plan for a return to work as a crisis and bereavement counsellor. As she had the qualifications, her program was a 10-week job search training and employment placement. The WTS was unable to find a suitable placement, but Ms. B found a position on her own providing counselling at a nursing home for two hours a day, two days a week. All agreed she was participating to the best of her ability. At the end of the program, the WTS accepted that Ms. B was unable to work more than four hours a week and, therefore, effectively removed her from the labour market. WTS also concluded that the occupation of crisis and bereavement counsellor was not a viable option. The WTS set a new work goal as a customer service representative. The case manager deemed her capable of working 20 hours a week.

Ms. B spoke with the Commission about her concerns. She called the WSIB operations manager and the director. Both reviewed the file and supported the WSIB decisions. The Commission called the director of the work transition program. After a thorough review of the file and more discussions, the WSIB confirmed that the medical evidence supported a finding that Ms. B could return to work, but all other evidence confirmed it was unlikely she would be employable.

As a result, Ms. B's entitlement to full loss of earnings benefits was confirmed to age 65.

Moving quickly when needed

The WSIB told Mr. M, who was 57 and an inpatient at the Canadian Centre for Addiction and Mental Health (CAMH), that he had to attend an independent psychological assessment within 10 days or his benefits would be affected. Mr. M's claim had been accepted in 2008 after he fell while carrying equipment. Psychological entitlement was later allowed for a major depressive disorder, and there was an additional claim for an injury to his hand. He had seven psychiatric admissions over the last few years. A recent physician review said he had spoken with hospital staff about plans to take his own life.

The legal clinic representing Mr. M was concerned that the extra assessment would delay his lock-in. He was already being assessed in the hospital admission under the Mental Health Act. Worried about him, the clinic phoned the Commission.

The Commission contacted an assistant director to ask if he could review the claim file immediately and, in particular, the letter about the independent assessment and deferral of the lock-in. A few days later the assistant director told the Commission the request for the independent psychological evaluation was not appropriate. The file would be referred

back for review of Mr. M's worsening psychological condition. He believed Mr. M was no longer in hospital.

When the Commission contacted the legal clinic they said Mr. M was back in CAMH. Police had taken him there as they thought he was determined to be a danger to himself. Commission staff relayed the information to the assistant director and asked for an update on the decision to defer the lock-in. The assistant director said their review found Mr. M's condition to be work-related and there was no additional treatment that could ensure his return to work. The lock-in was completed at full loss of earnings.

Referral leads to resolution

A work transition plan was placed on hold while Mr. D received treatment for a non-compensable medical condition. The case manager told Mr. D his benefits would be reduced if he could not resume the work transition plan by the required date. Two days later the case manager told his representative that the work transition plan was closed and the 72-month lock-in would be completed. A specialist had just assessed Mr. D, and he was cleared to resume the work transition plan in two weeks. The case manager, however, said the decision to close the plan and lock in his benefits at a reduced rate was final.

The representative contacted the Commission, who suggested he call the manager. After speaking to the representative, the manager agreed to reconsider the decision. The case manager adjusted Mr. D's benefits until he was able to resume the work transition plan and deferred the 72-month lock-in.

Making sure WSIB follows own policy

Ms. C received a letter from the WSIB saying that, as a result of surveillance, they found she was able to function at a higher level than shown in an earlier function and pain program assessment. She was no longer entitled to benefits.

Ms. C contacted the Commission, describing how terrified she was at being followed, especially as she lived alone in a rural area. She believed the decision was unfair.

The Commission first reviewed the WSIB policy. It says a worker has an opportunity to view any surveillance evidence and respond to the WSIB before a decision is made. Ms. C did not see the evidence. A WSIB manager agreed with the Commission that what had happened was not in line with the policy. The manager directed the case manager to give Ms. C an opportunity to visit the closest WSIB office to view the surveillance DVDs.

Commission staff contacted Ms. C, who said she would consider making arrangements to see the DVDs.

Incomplete information leads to poor decision

At the time of his workplace injury, Mr. H was unrepresented and spoke little English. His claim was denied and he appealed. The appeals resolution officer denied the appeal. The decision said, "The worker reported sustaining a low back injury as a result of the regular job duties. There is no medical diagnosis on file other than what the worker has reported...." Despite that, the legal clinic now representing Mr. H later found that the file had an x-ray and medical notes that Mr. H lost four weeks of work due to a dislocated disc.

The clinic contacted the Commission, who reviewed the file and found:

- no Form 8 (Health Professional's Report)
- no investigation into the employer's statement about the type of work
- no inquiries into the employer's statement that the worker had not missed work, although the legal clinic found he was off work for four weeks
- no contact with any of the worker's witnesses
- medical information consisting of an x-ray report and a prescription note from the worker's family doctor recommending that he stay off work for four weeks with physiotherapy.

The Commission spoke with the Appeals Services Division (ASD), who, after looking at the file, acknowledged the decision was "thin." The ASD agreed to provide a reconsideration decision if Mr. H asked and said they were prepared to be more flexible in this case to allow him the opportunity to gather any additional evidence.

The representative proceeded and the ASD allowed the reconsideration request. The Appeals manager then wrote to the representative, saying a field investigator would obtain statements from the workplace parties and share the information before making a new decision.

WSIB does it right

Mr. A, who has a compensable brain injury, was concerned about his loss of earnings, entitlement to medication, reimbursement for expenses and lack of communication from the WSIB. He was agitated and frustrated about how the WSIB was treating him.

His file showed he had a significant permanent injury for post-traumatic stress disorder under a prior claim. His current claim was for a mild traumatic brain injury with a concussion. According to the file, his behaviour was problematic and his conversations with WSIB staff difficult. The file also showed that the case manager, nurse consultant,

manager and senior management were all trying to address Mr. A's issues. When he contacted the Commission, the WSIB had already:

- facilitated medical care
- spoken about the possibility of reviewing future economic loss benefits under his prior claim
- simplified his access to drug benefits and facilitated a referral to the Psychological Trauma Program
- facilitated contact between the worker and the Office of the Worker Advisor, recognizing that he would likely need help to pursue further benefits under his prior claim.

The Commission told Mr. A there were no issues for the Commission to review, as the WSIB was addressing his concerns in a reasonable manner.

Recovery of overpayment revisited

Mr. F thought the WSIB was not paying him what they should. His file showed an initial entitlement for a shoulder injury. This decision was reconsidered and benefits terminated after the WSIB reviewed surveillance evidence from the employer. The WSIB told Mr. F he would have to pay back some of the benefits.

The Commission cannot change an entitlement decision. However, there was an issue related to recovering the overpayment. WSIB policy is not to pursue recovery of a benefit-related debt if the debt results from overturning an entitlement decision. The Commission contacted a manager, who confirmed that it was a reconsideration decision and thus the overpayment was not recoverable. The WSIB contacted Mr F and he also received a letter confirming that legal proceedings to recover the overpayment had stopped.

Lost letter leads to delay

Ms. E, a registered nurse, was injured at work and received benefits for two years. Then the WSIB terminated the payments. She appealed but did not hear from the Appeals Service Division (ASD) for some time. On her behalf, a legal clinic contacted the ASD and received a copy of an Appeals Resolution Officer (ARO) decision issued two weeks after the appeal was filed. As Ms. E had not received the first one, the clinic asked the ASD to re-release the decision with the current date. The ASD said they would provide a letter saying the clinic reported it had not received the ARO decision, but the letter would not say they had not sent the decision letter. The clinic thought this was unfair, saying the worker could lose her right of appeal. The clinic contacted the employer representative who also said he had not received the decision letter.

The Commission contacted the ASD manager, who said that if the clinic submitted written confirmation from the employer that they also

had not received the ARO decision, the WSIB would re-release the decision with the current date. The clinic contacted the employer, who wrote the ASD confirming that they, too, had not received the decision. Ms. E received the new, current, decision and then sent her appeal to the Workplace Safety and Insurance Appeals Tribunal.

Getting correct info corrects mistake

Mr. K's wife did not see how the WSIB determined the long-term wage rate used to calculate her husband's benefits. She raised her concerns with the case manager, manager, payment specialist and the payment specialist's manager, but it was still not clear how the rate was calculated. She then contacted the Commission.

After the Commission spoke with a WSIB manager, the WSIB found the long-term wage calculation was incorrect, caused by the payroll practices of Mr. K's employer. The manager concluded Mr. K was suffering a wage loss and directed the case manager to ask the employer to clarify payroll information. WSIB recalculated Mr. K's benefits based on the updated information.

Delay upon delay

Mr. R, a firefighter, has been off work since September 2012. The WSIB was not making a decision on his claim for work-related traumatic mental stress although he had given the medical records and other requested documents. He received no benefits.

The Commission contacted a manager, who confirmed that the file appeared complete. But, due to a staffing issue, the claim had not been reviewed. The manager reassigned the file the next day. The new case manager called Mr. R that day to say the WSIB would allow the claim.

However, the Commission later noted that Mr. R did not receive a decision letter — or payment — and called the manager. A few days later Mr. R received the letter and cheques for benefits from September 2012.

Getting the process moving, without the personal info

Mr. S sustained a back injury in 2006 while performing heavy lifting. The WSIB allowed his claim for lumbar strain and subsequently awarded a 25 per cent non-economic loss (NEL) benefit. He returned to work on modified duties but was unable to continue. He began receiving Canada Pension Plan disability benefits.

On his behalf, a legal clinic requested entitlement for Mr. S's psycho-traumatic disability, which arose from his back injury. In response, the WSIB made repeated requests for medical information the clinic said was already on file. The clinic contacted the Commission saying that the delay in making the decision was unreasonable.

The Commission found the case manager had recently written Mr. S requesting medical and mental health records from 2001–2006, even though the file already included extensive medical reports. The letter included details about Mr. S's personal and medical history, totally unrelated to his workplace injury.

The Commission contacted a WSIB manager about the delay and the personal history in the letter. The manager directed a case manager to review the claim and make a decision on psycho-traumatic entitlement. The manager said that including the personal information was inappropriate. The subsequent review determined that Mr. S did have a psycho-traumatic disability arising from the workplace injury and allowed entitlement. WSIB recognized his permanent psychological impairment and referred his file for a NEL rating, which resulted in his total NEL award being increased retroactively to 40 per cent.

Phone call avoids an appeal

Mr. J received a letter telling him his benefits were now locked in at the wage rate of an experienced person in the job category of a retail sales clerk, as he had not co-operated in his work transition program. This reduced his benefits significantly, and he wanted to appeal. He contacted the Commission for help.

Commission staff reviewed the file and found that, despite his having missed a couple of appointments during the program, the WSIB confirmed in writing that Mr. J had successfully completed the program. The Commission suggested he discuss this with the manager, which he did. The manager reviewed the file and agreed Mr. J had completed the program. The WSIB issued a retroactive cheque to reflect the proper wage rate and adjusted his benefits. Thus, Mr. J did not have to appeal.

Poor communication leads to poor decision

Mr. T received a letter from the WSIB saying he had been overpaid and asking for the money back. The letter explained that the WSIB can recover benefit-related debts that arise from the duplication of benefits, a failure to report material changes in circumstances, fraud, and administrative errors where the worker was aware of the error. Mr. T spoke to a WSIB assistant director who told him the overpayment was created when the WSIB did not adjust his benefit payments when he got an increase of $0.50 an hour in his pay rate in July 2013. Mr. T thought this unfair since he had informed the WSIB of his pay increase and provided his tax returns confirming it.

Mr. T contacted the Commission, who reviewed his file and the WSIB policy on the recovery of benefit-related debts. The file showed that the first case manager failed to act on Mr. T's information and the new

case manager reviewed the file, noted the difference in the pay rate, and determined that an overpayment was due.

Commission staff asked the manager if the overpayment met the exception criteria under the WSIB policy. The manager found the overpayment had been created in error. She said Mr. T's increase in pay was not a material change as it was less than 10 per cent. The case manager told Mr. T the WSIB would reimburse him for the earlier reduction in benefits. In addition, his ongoing loss of earnings benefits was restored to its previous rate.

Check reveals no modified work offer

Ms. G, who works in a highly skilled job, suffered post-traumatic stress disorder caused by an incident at work. Her claim was allowed. She returned to work, but her difficulties escalated and she was unable to continue. The WSIB allowed entitlement for a recurrence but not ongoing loss-of-earnings (LOE) benefits.

Ms. G's representative called the Commission. In reviewing her file, the Commission noted that the decision letter said ongoing LOE benefits were denied because the employer had provided modified work. However, there was no information in the file to say the employer had offered modified work. The Commission contacted a manager, who reviewed the file and directed the case manager to contact the employer to find out if they had offered modified duties. The WSIB found that the employer had not offered modified work. Thus, the WSIB reconsidered the earlier decision and told Ms. G she was entitled to LOE benefits while she was off work. As well, the manager looked into Ms. G's treatment needs and suggested Ms. G attend an assessment. She agreed, and after the assessment the WSIB also allowed treatment for her.

Delivering the mail

Ms. C, a worker representative, sent a letter to the WSIB Policy Branch requesting clarification on a particular policy. Months went by with no response. She sent another letter. Again there was no response. She wrote twice more. No response.

The Commission found that all the letters had been received and scanned into the files. However, the letters were never forwarded to the WSIB Policy Branch for response.

The Commission contacted the Operational Policy Branch manager who requested and received all four letters from the operating area and provided a response to Ms. C. The manager also said she spoke to the manager in Operations to ensure that this problem does not occur again.

BY THE NUMBERS

OUTREACH AND EDUCATION

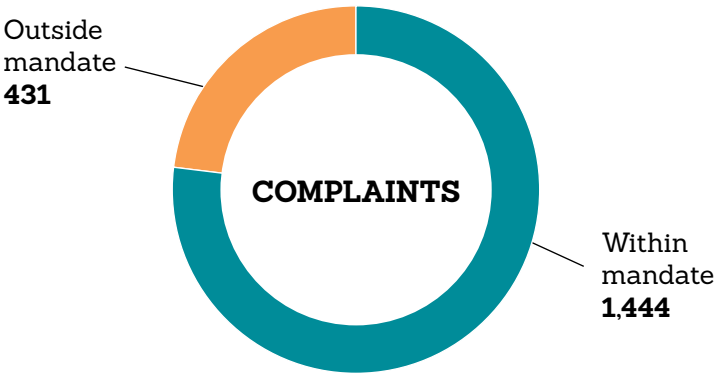
- Fairness education sessions for nine groups of new eligibility adjudicators and two groups of new nurse consultants
- Presentation to the London and District Injured Workers Group
- Panel presentation at a workshop organized by the Bancroft Institute for Studies on Workers' Compensation and Work Injury
- Presentation at the annual conference of the Injured Workers Outreach Services
- Three teleconferences with the Fairness Working Group, which is composed of fair practices officers at workers' compensation boards across Canada
- Forum of Canadian Ombudsman workshop
- Two seminars on workers' compensation issues sponsored by the Ontario Bar Association
- Part of faculty in the Essentials for Ombuds course presented by the Professional Development Program at Osgoode Hall Law School and the Forum of Canadian Ombudsman.
- Meeting with representatives of the Ontario Federation of Labour and the Office of the Worker Advisor to discuss worker compensation issues
- Attendance at Community Agency Fair in Scarborough to provide information about the Commission's services
- Schedule 2 Employers Group conference
- Annual conference of the Society of Ontario Adjudicators and Regulators

FINANCIALS

The Fair Practices Commission budget, approved by the WSIB board of directors, was $1.15 million for the fiscal year ending December 31, 2014.

COMPLAINTS BY THE NUMBERS

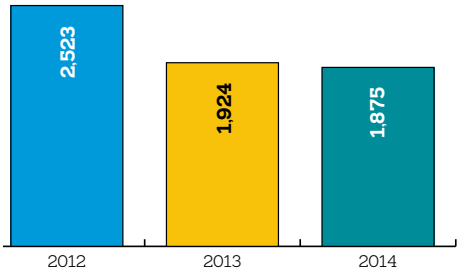
Complaints to the Commission



Who contacted the Commission

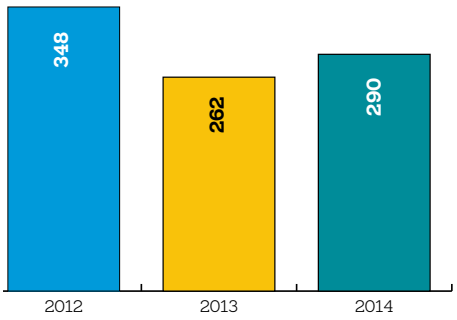
Three-Year Summary

ISSUES OPENED



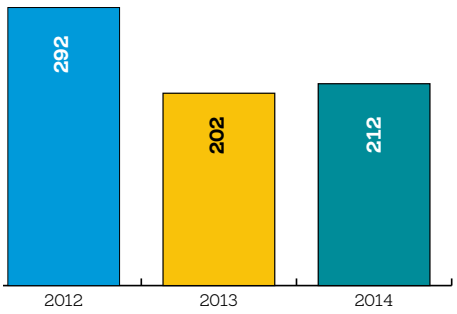
The Commission received 1,875 issues in 2014, compared with 1924 in 2013.

INQUIRES MADE BY SPECIALISTS



Specialists conduct an inquiry where we identify a potential fairness concern and the person has been unsuccessful in resolving the concern directly with the WSIB.

ISSUES WSIB HAD TO ADDRESS



The number of fairness issues that required the WSIB to take action increased slightly in 2014. The WSIB took quick action once the Commission became involved. The Commission resolved most complaints within four days.

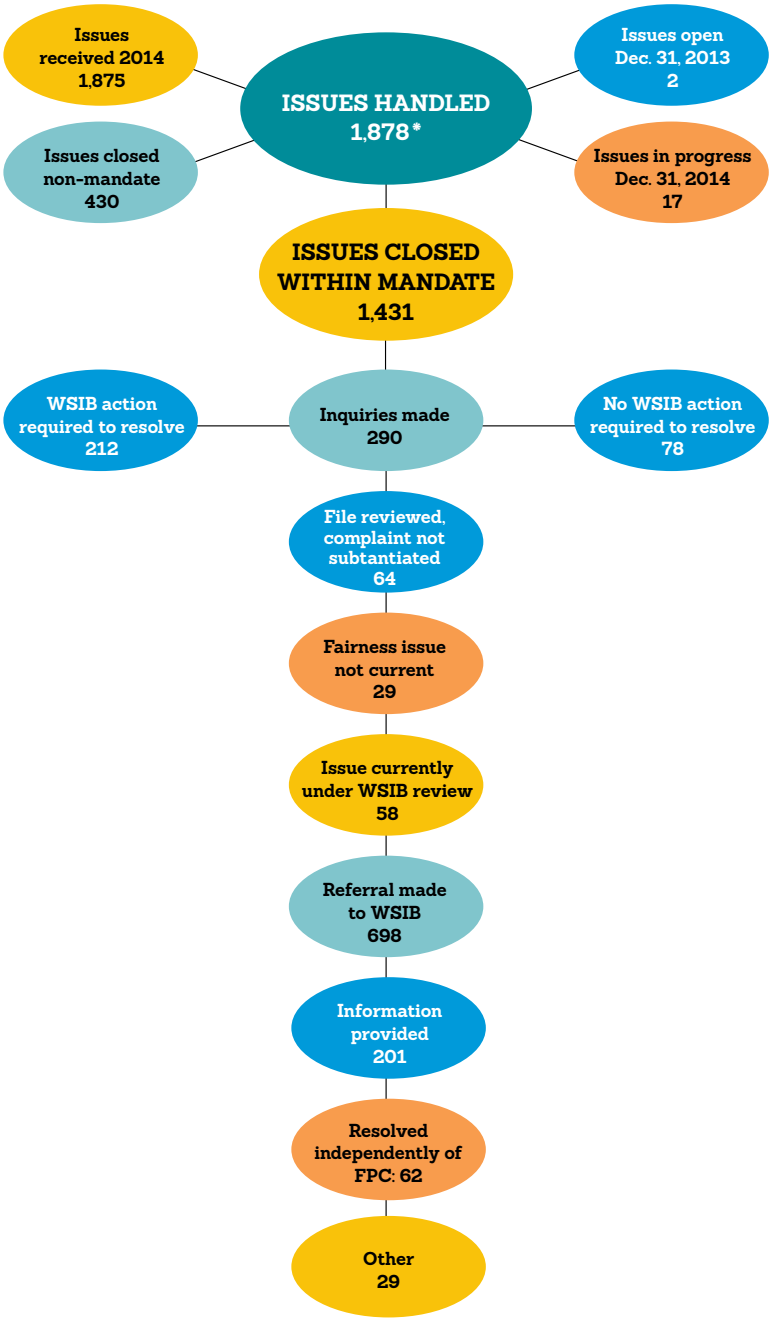
Top 10 ranking of complaints by subject

2014		2013
1	Benefits	1
2	Health care	2
3	Appeals process	3
4	Work transition	4
5	Non-economic loss	7
6	Return to work	9
7	Expenses	8
8	Employer assessment issues	6
9	Permanent disability	5
10	Psychotraumatic disability	15

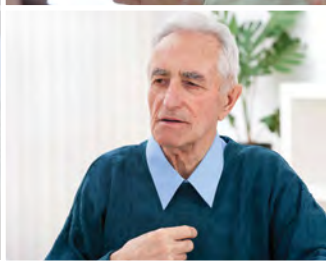
Issues by fairness category

Fairness Category	2014	2013	2012
Delay	27%	31%	33%
Decision-making process	26%	21%	18%
Communication	18%	18%	15%
Behaviour	6%	4%	5%
Non-mandate	23%	26%	29%

Resolution Outcomes



* includes issues re-opened



FPC
CPÉ

An independent office working to ensure fair practices at the Workplace Safety and Insurance Board of Ontario