



ANNUAL REPORT 2015

FAIR PRACTICES COMMISSION

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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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FROM THE COMMISSIONER

Everything we do at the Fair Practices Commission is aimed at achieving fairness for injured workers, service providers, and employers in their dealings with the Workplace Safety and Insurance Board (WSIB). Each resolution to individual concerns and system-wide problems contributes to a culture of fairness.

In 2015, the year covered by this report, the culture of fairness expanded. The Ontario Legislature amended the *Workplace Safety and Insurance Act* to enshrine the position of the Fair Practices Commissioner into law. The new law brought Ontario into line with Manitoba and Saskatchewan. It requires the WSIB Board of Directors to appoint the commissioner as the ombudsman for the WSIB. For its first 12 years, the Commission existed at the discretion of the WSIB Board of Directors.

The Board of Directors still sets the role and mandate of the Commission and commissioner, but the legislators determined that this office is permanent – charged with the responsibility to handle current fairness issues, acting independently, impartially, and confidentially.

We've seen the growth of the fairness culture over the past several years. As the Commission and its relationships with injured workers, service providers, and employers have become more established, there has been an accompanying rise in awareness of the Commission's role and mandate, and how to succeed with respect and efficiency to achieve fairness.

The Commission received more than 1,600 complaints in 2015. Four out of five of those were issues we have a mandate to review. That's the highest proportion of mandate complaints the Commission has ever received. Credit is due to those who brought their cases to us and also to WSIB staff to whom we advocate for better communication, timeliness, and consistent and fair decision-making.

In other news, the Commission has launched a new website to help those who may need our assistance to stay current with Commission activities and presentations, understand our mandate, see the types of issues we can help with, and file complaints online.

To share and continue to develop expertise, our office is linked with ombudsman offices across Canada through the umbrella organization, Forum of Canadian Ombudsman (FCO). Last May, I was elected to the FCO Board of Directors. In 2016, the FCO will again partner with Osgoode Hall Law School to deliver the one-week course, “Essentials for Ombuds”. The course examines the theory and practice of the ombudsman role and the challenges to those in the ombudsman field. In 2016, it will also be offered for the first time in French, in partnership with the University of Sherbrooke.

My last few words go out to the dedicated and professional people on staff at the Commission. They are fully mindful of how unfairness affects people’s lives, and they bring skill and passion to their work. With their support and commitment, the Commission continues to bring about fair outcomes for people who bring their complaints to us.

— *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.

“I had hit a wall. I had nowhere else to turn. The Commission took an interest in my case and took time to listen to me.”

THE VALUE OF THE COMMISSION'S WORK

“I don’t know how to thank the Commission. I highly recommend your service.”

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.

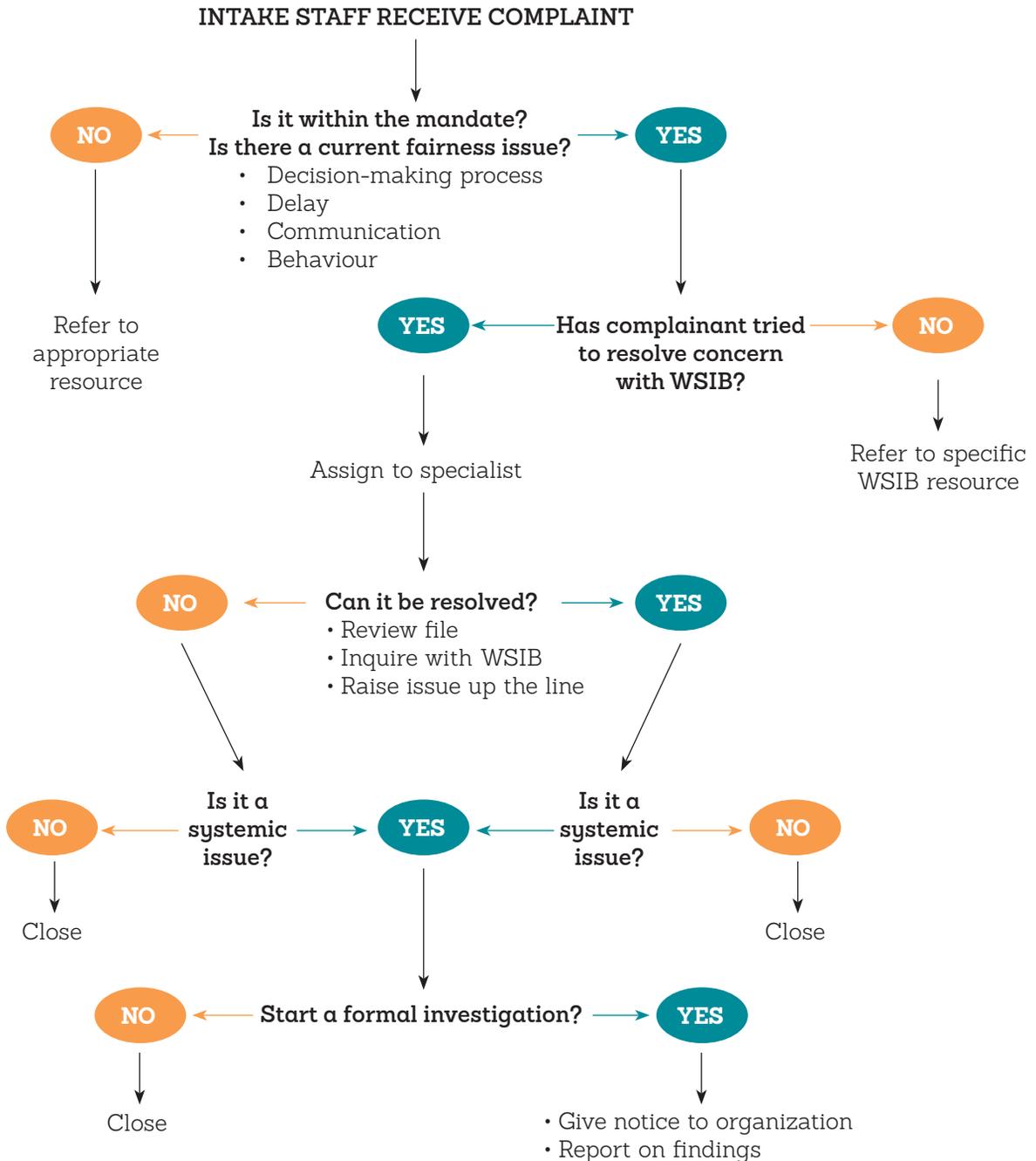
Preventing problems

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.

THE COMPLAINT PROCESS



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?

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?

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?

4. Behaviour

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

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.

UNRESOLVED CASE

WSIB ACKNOWLEDGES ERROR, BUT HAS NOT CORRECTED IT

Commission still seeking redress for worker treated unfairly by WSIB in 2015

A loss of earnings case remains open several months after the Commission began seeking fairness for a worker whose benefits were reduced even though the WSIB set aside the decision that led to the reduction.

“I am still in talks with senior management at the WSIB to achieve fairness for a worker who was harmed by an appeal that was decided without his knowledge,” said Commissioner Tom Irvine. “WSIB officials have so far not accepted my recommendation to make this right even though they acknowledge the mistake is theirs.”

A worker’s representative contacted the Commission about the case. In September 2013, a case manager decided that the worker was capable of earning \$27 an hour. That rate was used to lock in loss of earnings benefits at 72 months after injury.

The employer appealed the decision and argued the worker was capable of earning more than \$27 an hour, and should therefore receive lower benefits. Without notifying the worker’s representative, the appeal was decided in favour of the employer. The appeals resolution officer (ARO) ruled in January 2015 that the worker was capable of earning \$36 an hour.

The WSIB implemented the decision two weeks later and substantially reduced the worker’s loss of earnings benefits.

The worker’s representative contacted the Appeals Services Division (ASD) about how the appeal had been handled. The ASD agreed that the failure to notify the worker constituted a procedural flaw and, under ASD Practices and Procedures, declared the January 2015 ARO decision void. In a new written decision issued in October 2015, the ARO upheld the January ARO decision which reduced the worker’s benefits.

In the 10-month period between the two ARO rulings, however, the worker’s loss of earnings benefits remained at the lower level. The commissioner told the WSIB that once the January appeal decision

was set aside, benefits should have been restored to the higher level and remained there until the second decision in October. Although that second appeal decision sided with the employer, the worker received notice and had input.

“To set aside a ruling due to WSIB procedural errors, yet leave the effects of that ruling in place, is fundamentally wrong. I have said this to the vice-president of the Appeals Services Division,” said Irvine.

“This case goes to the heart of our mandate at the Commission. Our job is to review fairness issues brought to us on a case-by-case basis. There is no question that what happened to this worker is unfair. The case remains unresolved. Our work is not done.”

“There is no question that what happened to this worker is unfair. The case remains unresolved. Our work is not done.”

**Tom Irvine,
Commissioner**



RESOLVED CASES

MENTAL HEALTH

Traumatic mental stress claims reconsidered and allowed

Complainants: Four police officers

Problem: Three claims were denied; one allowed, then denied on recurrence.

Resolution: The four claims were sent to different case managers, and reviewed, some new information was gathered, and all four claims were allowed.

“I was on the phone every day with the WSIB. I had such a run-around. After I called you on Friday, I got a call from my case manager at 7:45 Monday morning.”

Four police officers asked for the Commission’s help with traumatic mental stress claims. The WSIB denied three of their claims and allowed the fourth, but then denied it on recurrence. The WSIB’s letters acknowledged that the officers had been exposed to numerous incidents, but stated there was no evidence to support “any psychological reaction”. The letters did not refer to any medical evidence.

WSIB policy allows for benefits when a worker is found to have suffered traumatic mental stress because of a sudden and unexpected traumatic event or the cumulative effect of multiple traumatic events.

A WSIB manager agreed to review the claims after the Commission asked for clarification as to what information the decisions were based upon and in fact, whether sufficient information had even been gathered to make decisions. The claims were separated, sent to different case managers, and all four were allowed.

Here’s what happened, case by case.

For one claim, the new case manager gathered further information, including statements from former colleagues of the officer and employer information about traumatic events and time missed from work. This information supported the officer’s claim of traumatic mental stress.

Another officer had been off work from 2006 to 2010, diagnosed with post-traumatic stress disorder (PTSD). Following the Commission’s inquiries, the WSIB determined that the officer was entitled to health care and loss of earnings (LOE) benefits.

The third case was initially allowed. The officer returned to work, but suffered a relapse six months later. The dispute was over benefits after the relapse. Following the Commission's inquiries, the case manager gathered more information. The WSIB reconsidered, allowed the claim, and referred the officer to the Psychological Trauma Program.

The fourth case was rooted in a 2001 incident. The officer began to show psychological symptoms in 2003. The case manager had wanted the officer to participate in an assessment to be diagnosed, determine the relationship between the 2001 incident and the officer's condition, and to review whether he had reached maximum medical recovery (MMR). The assessment would also help establish his ability to work, any barriers, and factors contributing to his condition. The officer argued the assessment wasn't necessary. He had recently attended a residential treatment program.

After discussion with Commission staff, the officer decided to participate in the assessment. He, his colleagues, and his employer provided additional information about his symptoms and changes in duties. The case manager allowed the claim.

All of worker's restrictions need to be considered, including mental health concerns

Complainant: Community legal clinic

Problem: Disagreement over worker employability.

Resolution: Worker deemed not employable, loss of earnings granted.

A community legal clinic asked the Commission to help with the case of a woman with minimal English skills, work-related physical injuries, and social anxiety. The WSIB maintained the woman could be retrained to work as a retail sales clerk or a greeter. The WSIB required her to participate in a work transition program, including English as a Second Language training, so she could be re-employed in the designated suitable occupation (SO).

The clinic asked the WSIB to explain the rationale for its decision, but received no response. The Commission reviewed the file, which showed the worker had chronic pain associated with a permanent injury to her right hand, work-related hearing loss, and major depression. These facts were not in dispute and the WSIB was paying for psychological treatment.

When Commission staff took the case up with the WSIB manager, they presented those facts along with the notes of the worker's work transition provider. The worker was frequently absent because of other

appointments, complained of severe headaches, and was having anxiety attacks. The provider had to twice ask a family member to come and take the woman home, once because she was motionless and unresponsive for a half hour, and once because they had called an ambulance but the woman refused to be treated in hospital.

Despite all the information documented, the WSIB manager insisted the woman could go back to work, that she needed to develop better coping strategies, and that her suicidal thoughts were “passive”. That meant, according to the WSIB, the woman was not at risk because she had no active plan to end her life.

The Commission moved the case up a level to a WSIB director, who committed to review the file. Several weeks later, the WSIB said the woman didn't have to work as a greeter or sales clerk because of her language barrier and significant anxiety in dealing with the public. Instead, she could work as a light assembler. No, said the legal clinic. Her work-related injury and physical restrictions prevented her from lifting her arms.

The Commission then contacted the vice-president, who committed to a further review. That's when things changed. The WSIB decided there was no suitable job for the worker and asked that she apply for Canada Pension Plan disability benefits.

The WSIB then confirmed by letter that the woman was, in fact, not employable and was awarded loss of earnings benefits until age 65.

Benefits restored and locked in for former nurse

Complainant: Treating psychologist

Problem: WSIB cut benefits for former nurse with mental health problems and head injury; told her to “go out and find a job”.

Resolution: WSIB consulting psychologist agreed woman is fully disabled and not employable.

A psychologist asked for the Commission's help on behalf of an injured worker whose benefits had been reduced and locked in without the WSIB properly taking the worker's mental health issues into account.

The worker, a 53-year-old nurse, had not worked in years, and, according to her psychologist, was completely disabled. She had bipolar disorder with depression, which had been aggravated by conditions at work. She had also suffered a head injury. But, her case manager called her prior to locking-in her benefits, and told her to “go out and find a job”. When she didn't find work, her benefits were cut from full to partial loss

of earnings even though there was no current information in her claim file about her condition or fitness to work.

The WSIB had determined the former nurse could work full-time at minimum wage in customer service. The psychologist said the woman had problems with attention, concentration, and memory. The Pain Treatment Program previously found the worker needed extensive treatment before being able to participate in work transition services, which had been put on hold because the worker was unable to attend. There were other medical conditions and the worker was at risk for self-harm, the psychologist said.

When the Commission became involved because of the decision-making process at the WSIB, the case manager had a consulting psychologist assess psychological reports on file and new medical information from two other service providers, both of whom deemed the worker incapable of returning to work.

The consulting psychologist agreed. A WSIB director accepted that the worker was not employable and was entitled to full loss of earnings benefits. The benefits were paid retroactively and locked-in until age 65.

ACCOMMODATION

Oral appeal hearing granted for worker with limitations

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Complainant: Worker
Problem: Accommodation needed for worker with neurological problem.
Resolution: Accommodation provided for worker.
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Any claim or appeal with the WSIB involves filling out forms, sometimes lots of them. That's a problem for workers who have trouble doing that, such as this worker with neurological problems. He was trying to handle an appeal on his own. He requested from the WSIB's Appeals Services Division an oral hearing rather than in writing.

The worker's permanent psychological impairment worsened when he was under pressure to submit forms or information in writing. He was frustrated by the time he called the Commission, which in turn contacted the manager. WSIB staff had, on other occasions, met with the worker to help him complete forms. The manager agreed to look at options to help the worker while respecting the appeals process.

“At your office, there was a level of professionalism from the first person I spoke to. I did not feel that I was one of many. Your office has been fantastic.”

The WSIB agreed to an oral hearing and said the worker would be given a direct contact to call for help in filling out an essential form.

EMPLOYERS

Departure premiums confuse employers

Complainants: Not-for-profit agencies (employers)

Problem: Process for opting out of WSIB and calculating departure fees is difficult for employers to understand.

Resolution: Cases reviewed and clarified; premiums adjusted for one. Also, at the recommendation of the Commission, the WSIB created a new resource document for staff.

Ontario law requires most employers to have WSIB coverage. In return for premiums paid, the WSIB provides benefits to workers whose injury or illness is ruled work-related.

Employers who are not required, but volunteer, to pay premiums must pay a “departure premium” if they decide to end WSIB coverage. This can be complicated, and the Commission received complaints from several employers who found it difficult to navigate the departure premium process. They said they felt “scoffed at” and “dismissed” when they persisted in challenging or even trying to understand the calculations.

Here are two cases, both not-for-profit employers, one a childcare centre and the other a group home.

The childcare operator’s departure premium was set at \$5,738 in 2015, slightly less than the 2014 figure offered, and about 30 per cent more than in 2007. It took several conversations with the Employer Service Centre, a five-month appeal, and several discussions with the Commission before the information was clear as to how the calculation was done, that the WSIB’s unfunded liability was partly responsible for the changing amounts, why the fee exists, and that payment plans are available with WSIB Collections to ease cash flow pressure.

The process and calculations were so confusing for the **group home**, that management hired a lawyer. Despite the fact that the WSIB’s unfunded liability was \$3 billion less in 2014 than in 2012, the employer’s departure premium stayed much the same. Following the lawyer’s inquiries and the escalation to the Commission, the WSIB offered a departure fee of \$441,931, down from the \$597,537 first put to the employer. The WSIB neither acknowledged nor apologized for the error.

“I was getting nowhere and it was pretty frustrating. Keep up the good work.”

The childcare centre operator felt the WSIB Employer Service Centre was dismissive, something echoed by other employers who said calculations were poorly explained and the WSIB was slow to respond.

The Commission recommended the WSIB provide better resources to staff that deal directly with employers to:

- Avoid errors in calculation of departure premiums;
- Explain how calculations are done;
- Explain what grounds employers may have to appeal; and,
- Reply in a timely manner to employer questions.

WSIB staff is now working from a new resource document, "Understanding Departure Premiums".

Employer account adjusted and penalties reversed

Complainant:	Small business owner
Problem:	Employer's personal bank account frozen and funds garnished.
Resolution:	Employer account proven not in arrears and WSIB advised to communicate clearly to employers.

The owner of a paint store paid quarterly WSIB premiums for five years. She did this at a chartered bank, where she also submitted the bottom portion of her Premium Remittance Form (PRF). When she sold her business, she paid her final premium remittance at the bank. Knowing there would be an outstanding amount for the last 17 days she remained in business, she added a small amount to cover it.

She advised the WSIB via a note on her premium statement that she had sold her business. When she couldn't reach the WSIB by phone, she asked by email if she owed anything on her account. In response to the email, the WSIB closed her firm account, but did not reply as to whether there was a balance owing.

The WSIB subsequently sent the employer a letter, but she said she never received it. The WSIB froze her personal accounts and garnished \$844 for WSIB payments. The employer found out about this when her mortgage payment bounced. She called the WSIB and was told she hadn't reported her 2013 and 2014 payroll. She took a day off work to take her date-stamped PRF's to the WSIB. As a result, the charges were reversed.

The employer asked the Commission to help, as she believed the actions taken by the WSIB on her account were unfair. After the Commission stepped in, a WSIB collections manager reviewed the account and reversed the garnishment. The employer was told it would take 30 days for the Sheriff to release the money to her.

The Commission also discovered that some financial institutions had changed their practices and no longer submitted PRFs to the WSIB. The WSIB was aware of that. The Commission suggested that the WSIB revise the premium remittance form to be clear about employer reporting obligations and, that employers must not rely on their banks to submit the bottom portion of the PRFs to the WSIB.

RETURN TO WORK

Fired after work-related injury, worker gets benefits and job back

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Complainant: Worker

Problem: Worker fired after injury, in financial crisis, and benefits delayed.

Resolution: WSIB paid benefits and employer re-hired worker.
.....

The worker was in financial crisis and had filed for bankruptcy when he complained to the Commission that he hadn't received his loss of earnings (LOE) benefits from the WSIB. The WSIB responded quickly to Commission inquiries and said the worker's benefit cheque would be ready that week.

But, that wasn't the end of the story. The worker was out of a job and not receiving employment insurance benefits because his employer filed a Record of Employment that said he had quit his job. The worker said he'd been fired.

The Commission spoke with a WSIB re-employment manager about the dispute over the worker's employment status and the WSIB did some searching of its own. Following interviews with the worker and employer, the WSIB declared that the employer had, in fact, fired the worker after his work-related injury.

The four-page decision letter stated that the employer did not offer suitable work to the injured worker, and the time he was away from work was due to his work-related injury.

"This being the case, a severing of the employment relationship as a result of that lost time is considered to be related to the workplace injury and is therefore a breach of the re-employment obligation," the letter said.

The employer offered the worker his pre-injury job. The WSIB paid LOE benefits up to the date he was re-employed.

Benefits threatened for worker’s “non-cooperation”

Complainant: Electrician
Problem: Work Transition Plan not suitable for single parent with learning disability.
Resolution: Suitable training program ordered and support provided.

A single parent of three children turned to the Commission after the WSIB said he would receive no benefits if he did not participate in the Work Transition Plan set up for him. The worker argued that the computer-aided design course was a poor fit for him because of his documented learning disability and poor computer skills.

The former electrician further argued the program schedule and location – nearly an hour’s drive from his hometown – did not take into account his parenting obligations.

The worker and WSIB staff met and discussed his objections. Still, he was directed to follow through or see his benefits reduced to zero for non-cooperation. Following the Commission’s inquiries, the WSIB placed him in a program better suited to the worker’s skills, abilities, and personal circumstances. As per WSIB policy, he suffered no loss of benefits during the brief period of time he was unable to participate in the plan to retrain and return to work. He received psychological support and after a month, was able to resume his program.

“I’m not sure what I’d do without you, but it sounds as if things are in motion now.”

OVERPAYMENT

WSIB dropped court case after its own overpayment error brought to light

Complainant: Worker’s representative
Problem: WSIB tried to recover overpayments contrary to its own policy.
Resolution: WSIB dropped court action and stopped pursuing injured worker.

The WSIB launched a court action against an injured worker who was behind in repaying an overpayment in benefits. The worker’s representative contacted the Commission to say the worker had no obligation to repay because the overpayment was the WSIB’s mistake.

“Thank you for everything you’ve helped me through.”

The WSIB’s policy prevents it from trying to recover overpayments made because of an appeal, a reconsideration of an earlier decision, or an administrative error. In this case, the representative believed that the WSIB had made an administrative error.

The worker had severe depression, did not have money to make the payments, could not afford a lawyer, and was worried about the court proceedings.

The deciding issue was whether the worker could have been aware that the benefits he received were incorrect. After reviewing the case at the Commission’s request, the manager determined the benefits were non-recoverable. The manager explained the new decision to the worker’s representative, and provided a letter for the worker to take to court stating the WSIB was no longer pursuing the collection of the overpayment.

LOCK-IN

Former machine operator not able to work full-time as social worker

Complainant: Spouse of injured worker
Problem: Dispute over whether worker is completely disabled or can go back to work.
Resolution: WSIB overturned earlier decision and reinstated full benefits.

The WSIB called it one way. The injured worker and spouse disagreed. And there was a lot at stake.

The WSIB said the woman was able to work 40 hours a week as a social worker. She was receiving benefits for a back injury when she worked as a machine operator. Her benefits were reduced for not cooperating in her work transition plan. The benefits were locked in at that lower rate.

The spouse contacted the Commission on his wife’s behalf. He said his wife was totally disabled and unable to work at all, never mind full-time or in a job she had never done.

The Commission reviewed the case and asked a WSIB manager to clarify the process used to make the decision. The manager said the worker was partially disabled, but the Commission questioned whether WSIB’s position was at odds with documented medical information, which showed that the worker’s abilities were highly impaired.

The Commission pursued the case with a WSIB director, who reviewed the case and advised the lock-in decision would be reconsidered. The director determined that the case manager had given too much weight to medical information that did not reference the injured worker's psychiatric restrictions and too little weight to the information that did.

The woman's physical and psychological condition meant she was not able to participate in training and the work reintegration program, the WSIB decided. The WSIB discontinued the work transition services (WTS) and reinstated full benefits to cover the woman's lost earnings. The benefits were paid retroactive to the date the WTS was closed.

COMMUNICATION

Workers' claims still not accepted, but at least they know why

Complainant:	Representative for injured workers
Problem:	Concern that WSIB had rejected claims without gathering information needed to make a decision.
Resolution:	The WSIB did not gather more information, but explained more clearly why the claims were denied.

Four health care workers filed claims for respiratory problems, and were denied. Neither they nor their representative understood why. Had the WSIB even gathered the necessary information required to fairly adjudicate the claims?

The decision letters for each of the four claims stated that because respiratory illnesses like the flu are common, it was not possible to determine whether the workplace had significantly contributed to their illness. The public health unit had documented an outbreak of respiratory illnesses at the workplace, but the WSIB's letters made no mention of it.

The Commission asked for clarification and discussion. The WSIB told the Commission that there is no policy on communicable illness, and that they make decisions on a case-by-case basis.

The WSIB manager reviewed the claims, and said he was confident in the decision-making process and the decision itself. The public health unit's declaration is only one factor used to make a decision, he explained. But, the Commission said, the decision letters didn't contain enough detail about the reasons for denying the claims.

Although the four claims were reconsidered, the denial stood. The new decision letters, however, were more substantial. They described:

- Whether there was a Form 7 on file or other information relevant to the decision-making process;
- Whether the worker had sought medical attention; and,
- Time away from work and whether those dates correlated with the timing of the respiratory illness outbreak at work.

Travel expenses rejected, no reason given

Complainant: Injured worker

Problem: Worker submitted a claim the same way he had for years, but new eyes at the WSIB said no.

Resolution: Travel expenses were reimbursed and decision letter explained the process to follow for future claims.

The injured worker was mystified as to why the WSIB rejected his expense claim for travel from Northern Ontario to see his doctor in the southern part of the province. He'd been making this regular trip for years and had never had a problem getting reimbursed.

He did this four times a year, approved by the WSIB, so his doctor could prescribe and monitor his medication. What changed?

The WSIB's nurse consultant was new on the file and rejected the claim because the clinic hadn't signed or stamped the expense form or provided any new medical information.

The nurse consultant was correct about WSIB practice, but because other nurse consultants had approved the claims for years, the worker was unaware that he needed to do anything differently.

Following inquiries by the Commission, the WSIB agreed to pay the expenses in this instance, but sent a new decision letter to the worker, which explained the process to follow for future claims.

DELAY

WSIB delay jeopardized migrant worker's chance of staying in Canada

- Complainant:** Representative for migrant worker
- Problem:** Worker needed to disclose her finances on her immigration application, but had not received a decision on WSIB benefits.
- Resolution:** The worker received prompt action after the Commission became involved, and was able to meet her immigration application deadline.
-

WSIB decisions rendered – or not – can affect a worker's life beyond the immediate claim. In this case, the delay in adjudicating a claim jeopardized a migrant worker's chance of staying in Canada.

The worker's representative contacted the Commission about the delay. Without the decision and related benefits, the worker appeared on paper to be less financially stable than she was, potentially weakening her immigration application. If she waited for the decision and benefits, she could have missed the immigration application deadline.

The WSIB had allowed her claim for a work-related injury. She went back to work on modified duties. When her contract ended, the WSIB approved job search training and attendance at a function and pain program. The WSIB noted that the worker would likely have a permanent impairment.

Following the Commission's inquiry, the WSIB manager agreed there had been a delay, and directed the case manager to complete the decision letter within two days. The worker received the letter confirming her entitlement to benefits, received retroactive benefits, and met her immigration application deadline.

“With your help, the WSIB staff worked faster on my claim.”

Delay after delay before success

Complainant: Worker
Problem: Claim was denied. There was much back and forth to have new medical information considered.
Resolution: WSIB approved claim.

“Thanks so much for helping us. You have been like a buffer for us and brought clarity to my dad and me. We were in the dark so much about my dad’s claim.”

The worker hurt his shoulder and arm in a fall at work. The WSIB adjudicator decided that the worker was not eligible for benefits. The WSIB received new medical information, which can often trigger a reconsideration, but the worker heard nothing.

The worker left a voicemail for the adjudicator, but didn’t get a response. He contacted the Commission, and was advised to give the adjudicator’s manager a chance to work this out.

The worker contacted the manager, who told him to expect a reconsideration decision by a certain date. This didn’t happen. The Commission then contacted the manager, who said that the reconsideration request was in process. The manager apologized, and said she would call the worker. She explained to the worker that the claim had been referred to a medical consultant for an opinion. The worker received a new time frame for a decision, but there was no decision within that time.

The worker went back to the Commission, which went back to the manager. The manager apologized again and committed to get this done as quickly as possible. Within a few days, the initial rejection was overturned. The worker was declared eligible for benefits.

DECISION-MAKING PROCESS

Worker who fell downstairs may have fainted, said WSIB

Complainant: Injured worker
Problem: Procedural flaws behind denied claim.
Resolution: The WSIB gathered required information and determined the injury was work-related.

A worker was able to drop his appeal of a WSIB decision after the Commission took his case up, first with the manager who had denied the claim, and then with an assistant director.

The worker fell downstairs at work and suffered head and back injuries. He couldn't understand why the WSIB denied his claim. The WSIB's decision letter stated that the worker may have fainted and then fallen since there was no reason for his fall.

He filed an Intent to Object (ITO) form and explained that he had tripped because the toe guards on the stairs were not in good condition. The Commission asked the manager to clarify why the claim had been denied, and noted that there is no policy on fainting. The manager maintained that the decision and rationale behind the denial were correct.

The assistant director acknowledged to the Commission that the case manager had not considered the mechanism of the injury. She further noted that there were significant procedural flaws in the decision-making because no accident statement had been taken from either the worker or employer.

After that information was gathered, the WSIB determined that the fall was work-related. The worker's claim was allowed for loss of earnings and health care benefits.

WSIB investigation into work disruption not complete

Complainant: Worker

Problem: Worker was denied loss of earnings (LOE) benefits for a five-day suspension from work. The worker and employer disagreed about the modified work offer.

Resolution: The WSIB investigated further and gathered more information. Benefits were still denied, but the WSIB did a more comprehensive assessment of the facts and issued a new decision letter based on that.

The employer suspended the worker for five days over a dispute about the suitability of the modified work offered to the worker on his post-injury return to work. The worker told the Commission that his case manager had denied his loss of earnings (LOE) benefits without considering the information he provided.

The worker had contacted the case manager immediately to offer his view of the dispute, submit witness statements to support his position, and discuss the employer's position. Although the case manager noted in the file that further inquiries were needed, none were made.

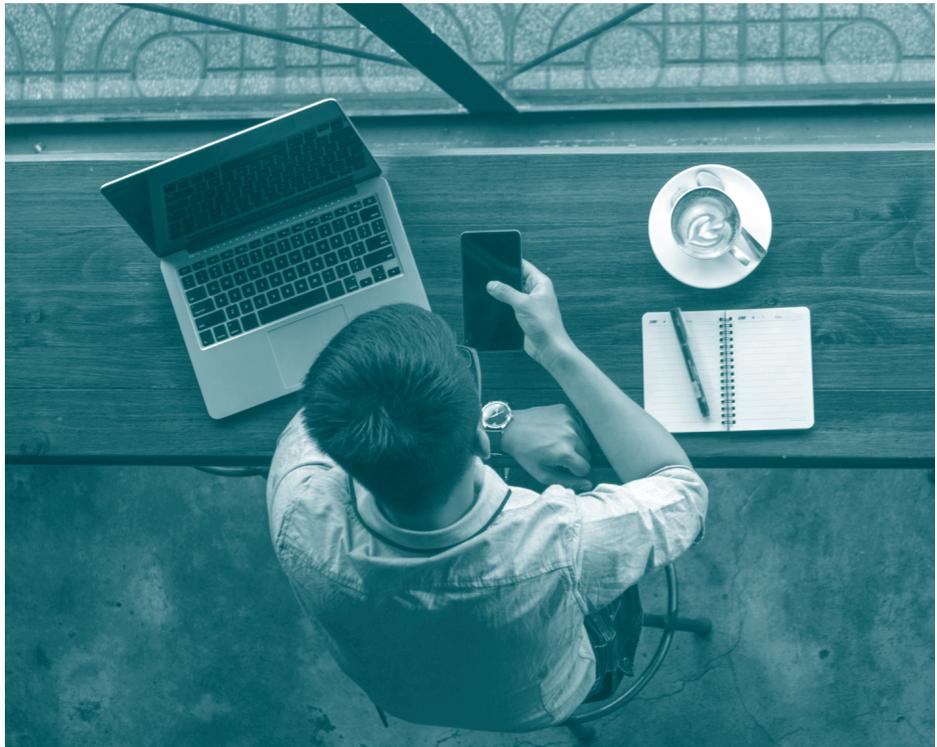
The Commission contacted a WSIB manager, who directed the case manager to make the necessary inquiries and provide a decision without

delay. The Commission closed the complaint, but checked two weeks later to see if there was a more complete decision on file. There wasn't, and none of the parties had been interviewed.

The file contained two new contradicting memos. The first documented the case manager's notice to the worker representative and employer that she would allow LOE for the suspension period. The other went on the file the following day, denying the LOE, but with no new information.

The Commission went back to the manager who had issued the directive for further investigation. The manager re-assigned the claim to another case manager and directed that the file be referred to a claims investigator to conduct inquiries with the parties to the dispute. Again, the order went out for a timely written decision based on all the facts. The manager kept the Commission informed of progress and the final decision when issued.

The new case manager reached the same conclusion as the first case manager and denied the LOE, saying the worker's suspension had nothing to do with the modified duties and accommodation issue. But, this time, the decision was based on evidence and substantiated. In a fair decision-making process, the parties are entitled to see that the facts of the case are gathered and are the basis for a clearly-explained decision.



OUTREACH AND EDUCATION

The Commission runs information sessions for individuals and groups affected by the WSIB. All interested parties, including legislative and non-legislative advocates, learn:

- The Commission's areas of responsibility.
- How to best use the Commission's expertise and assistance to resolve complaints and often to prevent escalation and further complication of issues.

The Commission also provides education sessions to new WSIB staff about administrative fairness and the role of the Commission.

In 2015, we ran education sessions for eight groups of new eligibility adjudicators and a group of new nurse consultants at the WSIB. We held open houses in Sudbury and Thunder Bay. We met with staff for MPPs and presented via webinar to constituency assistants. And by teleconference we met with staff at the complaints office for the Commission de la santé et de la sécurité du travail du Québec (Occupational Health and Safety Commission of Quebec).

In some cities, we met with staff from the Office of the Worker Advisor (OWA) and Office of the Employer Advisor (OEA). When OEA staff held their semi-annual meeting, we made a presentation. We also attended the Schedule 2 Employers Group Conference.

The commissioner and staff benefit from our meetings as well. We develop a better understanding of issues, concerns, and responsibilities of other organizations and advocates. We attended the Community Legal Education Ontario webinar on issues for injured migrant workers and the annual conference of the Society of Adjudicators and Regulators.

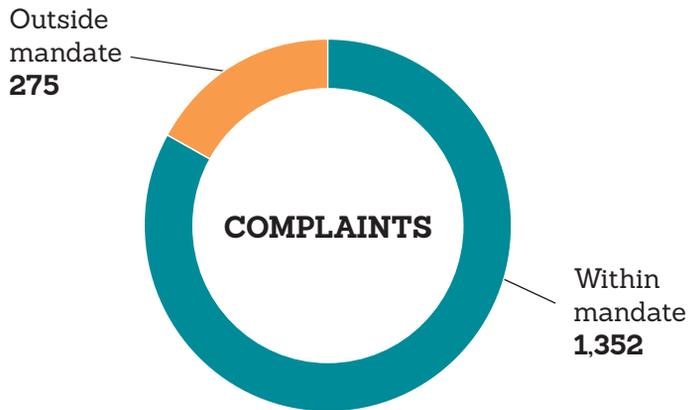
In our work to ensure fairness for all in their dealings with the WSIB, we share and source information and expertise with our peers through:

- Fairness Working Group, representing fair practices offices of workers' compensation boards across Canada.
- Forum of Canadian Ombudsman (FCO). Commissioner Tom Irvine is a member of the Board of Directors.
- Staff attendance at the "Essentials for Ombuds" course presented by the FCO in partnership with Osgoode Hall Law School's Professional Development Program.

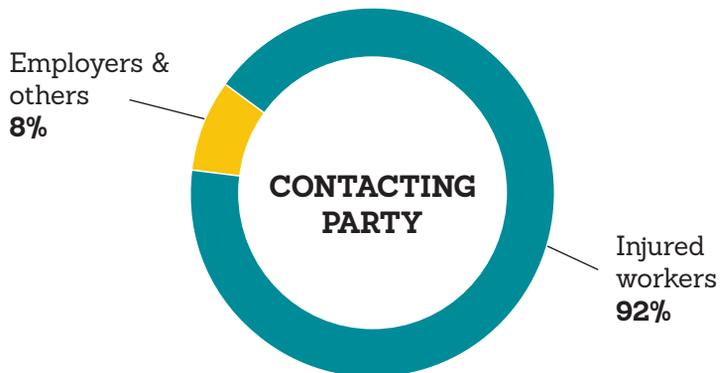
To request information or presentations or to invite the commissioner or staff to your meetings, teleconferences, or webinars: 416.603.3010 or 1.866.258.4383, www.fairpractices.on.ca.

COMPLAINTS BY THE NUMBERS

Complaints to the Commission in 2015



Who contacted the Commission in 2015

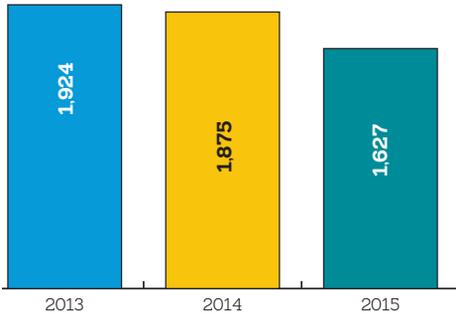


FINANCIALS

The Fair Practices Commission budget, approved by the WSIB board of directors, was \$1.15 million for the fiscal year ending December 31, 2015.

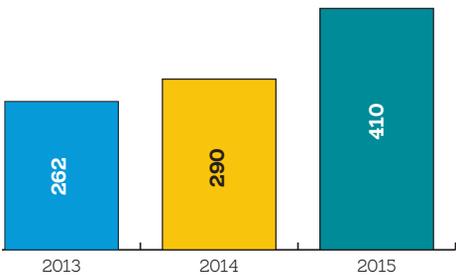
Three-Year Summary

ISSUES OPENED



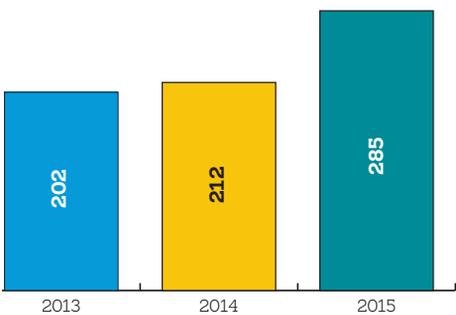
The Commission received 1627 issues in 2015, compared with 1875 in 2014.

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. There was a significant increase in the number of issues that required inquiries by the Commission. Most of those issues were about delay (183) and decision-making process (122).

ISSUES WSIB HAD TO ADDRESS



The number of fairness issues that required action by the WSIB increased in 2015. Most of those issues were about delay (144) and decision-making process (74). 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

2015	Subject	2014
1	Benefits	1
2	Health Care	2
3	Work Transition	4
4	Appeals Process	3
5	Non-economic Loss	5
6	Return to Work	6
7	Employer Assessment Issues	8
8	Permanent Disability	9
9	Expenses	7
10	Earnings Basis	12

Issues by fairness category

Fairness Category	2015	2014	2013
Delay	32%	27%	31%
Decision-Making Process	27%	26%	21%
Communication	19%	18%	18%
Behaviour	5%	6%	4%
Non-Mandate	17%	23%	26%

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.



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

123 Front St. W. Toronto, ON, M5J 2M2

Phone 416.603.3010 or 1.866.258.4383

Web fairpractices.on.ca

