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Fair Practices Commission

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

**First
Annual Report
2004–2005**

Aussi disponible en français

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Fair Practices
Commission

Commission des
pratiques équitables

“Your assistance has been immeasurable. You have been excellent at providing me with information that I would have otherwise been unaware of. Regardless of what happens with my claim, it has been very meaningful to have my concerns heard.”

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 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.

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From the Commissioner

This, the Commission's first annual report to the WSIB board of directors and to the public, reports on the initial 15 months of the Commission's existence and one full year of service to the workers, employers and service providers of Ontario.

The Commission opened on a phased-in basis between January 2004 and April 2004. As of April 5, 2004, our services were available across the province. Future reports will cover the Commission's fiscal year, from April 1 to March 31.

The report is fairly detailed and comprehensive. I believe it is essential to provide our users, and the public generally, with a thorough understanding of our activities and our role so that they can truly assess our performance and accomplishments.

I am indebted to our staff for their commitment and talent. Our intake staff do a remarkable job of understanding the difference between process issues, which we can investigate, and appealable issues, which we cannot investigate, and explaining that difference. Even callers whose concerns are not within our mandate feel they have been heard. They also receive a referral to an appropriate resource.

Our specialists excel at resolving complaints informally whenever possible. But they also excel at looking beyond the individual complaint to identify and address broader systemic issues. Our part-time specialists have proved invaluable in helping us provide timely service to complainants and in taking on special projects. Our administrative assistant keeps the office functioning smoothly and responsibly.

The effectiveness of any organizational ombudsman depends, not only on the quality and abilities of its own staff, but also on the organization's willingness to respond to the office's recommendations. When we ask callers to complete the WSIB's internal complaint resolution process before coming to the Commission, WSIB staff are serious about taking that opportunity to resolve matters without the Commission's intervention. And, when the Commission inquires into a complaint, WSIB adjudicators, managers, directors and senior staff cooperate with our attempts to resolve both individual and systemic issues.

The WSIB board of directors is to be congratulated for its initiative in establishing the Fair Practices Commission. It is the act of a mature organization committed to improving the fairness and quality of its service delivery.

I have found the experience as Commissioner to be challenging in the best sense of the word, and also very satisfying.



Laura Bradbury
Commissioner

History

In the summer of 2002, two members of the board of directors of the Workplace Safety and Insurance Board, Pat Dillon and Chris Griffin, conducted an injured workers consultation tour to get information about WSIB service delivery issues. They travelled throughout Ontario and met with injured workers and their representatives.

A significant number of workers expressed frustration about the lack of an independent area in the WSIB to address concerns about unfair treatment. Dillon and Griffin researched ombudsman offices at other workers' compensation boards including those in British Columbia and Manitoba. They also researched private-sector ombudsman offices.

Their October 2002 proposal to set up the Fair Practices Commission resulted from the information they obtained on the tour and from their research. Their report said, "We recommend that the WSIB institute a Fair Practices Commission as an independent body to ensure fairness and accountability between the WSIB and its clients."

The main role of the Fair Practices Commission, as set out in the recommendation, was to address concerns about fair practice and process raised by WSIB stakeholders. The office was also to track trends, identify systemic issues and make recommendations for improvements to the WSIB.

The board of directors established a working group to recommend terms of reference for the Commission, including its mandate, its authority and any limits to it, and its operation.

The board approved the working group's recommendation on December 5, 2002. Commissioner Laura Bradbury was hired following a public search. She began the work of the Commission in September 2003.

The Charter of the Fair Practices Commission

The WSIB board of directors approved the Commission's charter on March 4, 2004. (Full text on page 52.)

Role and mandate

The Commission is an organizational ombudsman, addressing service delivery issues raised by workers, employers and service providers. It operates impartially and consistently with the WSIB principles of high quality services, fairness, equity, openness and transparency.

The Commission's mandate is to

- receive, investigate and resolve complaints about alleged acts, omissions and unfair practices by the WSIB.
- identify complaint trends, policy matters and systemic issues and recommend improvements.

The Fair Practices commissioner can act on her own initiative to identify and make recommendations about systemic service delivery issues within the WSIB. The commissioner has the discretion to decline a complaint based on its timeliness or whether it falls within the mandate. Generally, the Commission accepts complaints that have current implications for fair practices.

The commissioner issues quarterly reports to the board on the Commission's activities, findings, statistics and systemic issues. The commissioner provides information to the president and senior managers as required. The commissioner also issues a public annual report.

Arm's-length relationship

The charter safeguards the Commission's arm's-length relationship with the WSIB by providing that "just cause" for terminating the commissioner's appointment "does not arise in the case of disagreement over a recommendation or report made by the commissioner with respect to a complaint or other type of investigation within his or her mandate."

Core qualities

Independence

The Commission is free from interference in the legitimate performance of its duties. The commissioner and staff are not part of the line management or operations of the WSIB. The commissioner reports directly to the board of directors through the chair.

Impartiality

The Commission conducts investigations and makes recommendations in an impartial manner, free from bias and real or apparent conflicts of interest. The Commission treats all the parties to a complaint with respect and open-mindedness.

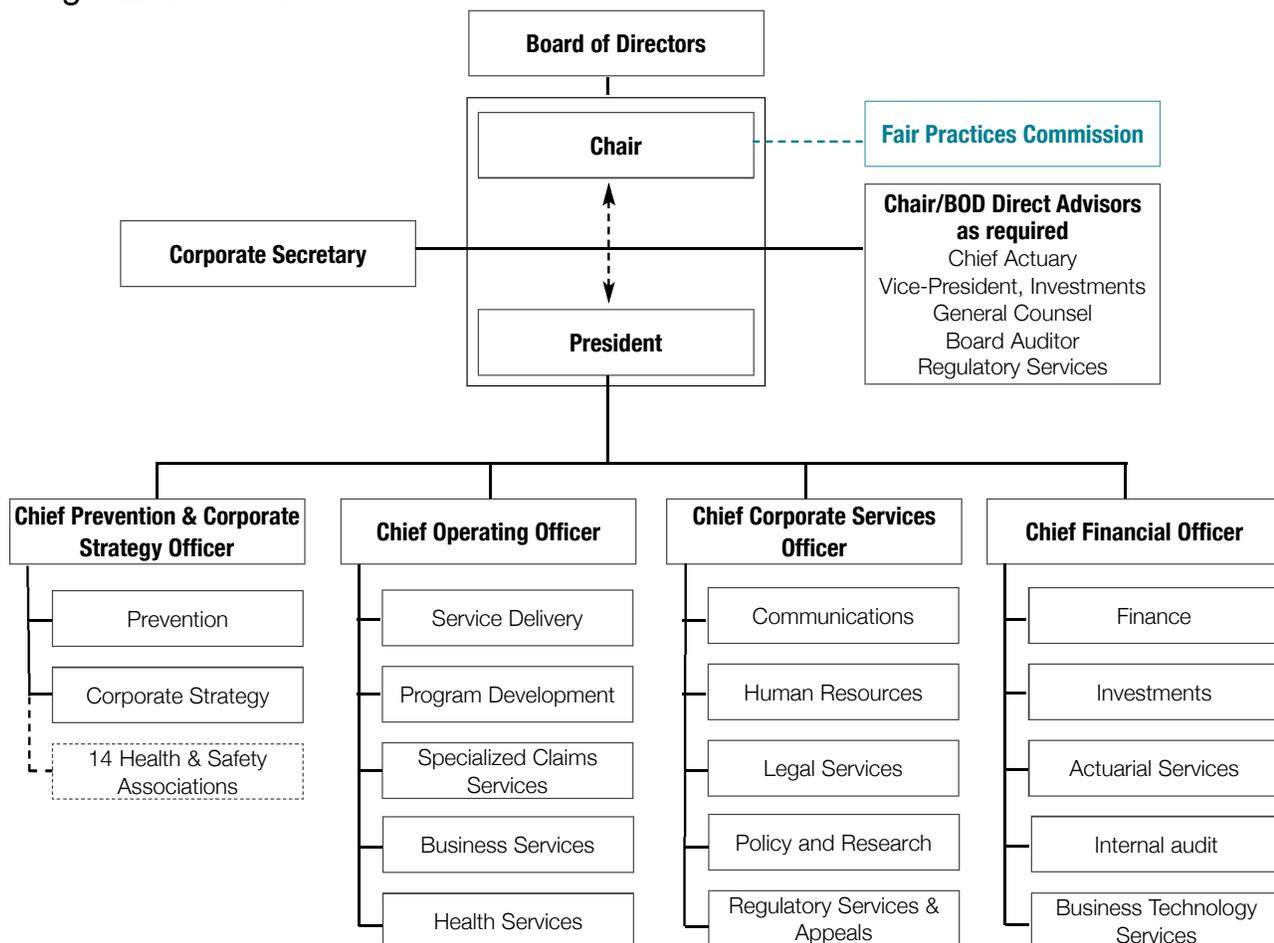
Confidentiality

The Commission ensures that all privacy matters applicable under the *Workplace Safety and Insurance Act* and *Freedom of Information and Protection of Privacy Act* are fully safeguarded. The Commission operates consistently with any guidelines established by the WSIB Privacy Office and consults on privacy issues with that office and with WSIB general counsel as necessary.

The Commission maintains systems and records separately from the WSIB.

Workplace Safety and Insurance Board of Ontario

Organizational Structure



Staff Profiles

Full-time staff

Laura Bradbury, commissioner, is a lawyer with a long history as a neutral adjudicator in workers' compensation matters in Ontario and British Columbia. In the early 1980s Laura was an investigator into workers' compensation complaints with Ombudsman Ontario. She was appointed to the Workers' Compensation Appeals Tribunal (WCAT) as a vice-chair in 1985. From 1988 to 1991 she served as alternate chair at WCAT. Laura chaired two other tribunals in Ontario, the Social Assistance Review Board and the Office of Adjudication, before moving to British Columbia in 1998. From 1998 to 2002 she was an appeal commissioner with the Appeals Division of the British Columbia Workers' Compensation Board, then the final level of appeal in that province.

Anna Martins, intake co-coordinator, came from the Workplace Safety and Insurance Appeals Tribunal (WSIAT) where she had worked in a variety of capacities since 1988, including acting manager, Early Review Department; manager, Registrar's Desk; and case description writer. Prior to the WSIAT Anna worked as a law clerk at the Ministry of the Attorney General, Crown Law Office, and various private law firms.

Amal Abboud-Hewitt, bilingual intake officer, most recently was employed as an early review officer at the WSIAT. Prior to that, Amal worked as a bilingual customer service representative at the CIBC for three years. She graduated from the University of Ottawa with a Bachelor of Science in civil engineering and had seven years of experience as a site inspector and contract administrator with an engineering firm.

Tom Irvine, Fair Practices specialist, was employed as the senior advisor with the Ombuds/Diversity Group of Ontario Power Generation (OPG). Tom began working at OPG in 1999 as the complaints resolution manager, Ombudsman Nuclear. Before that, Tom had 10 years of experience working as an investigator and team leader at Ombudsman Ontario. Tom graduated from the University of Waterloo with a Masters in regional planning and resource development and has worked as a resource and land use planner.

Marie Metcalfe, Fair Practices specialist, has seven years' experience as a disability management consultant and senior medical resources advisor with Manulife Financial. Before that, Marie established the Medical Liaison Office at the WSIAT and managed that office for 10 years. Marie is a registered nurse (retired) and has worked in a variety of clinical settings.

Mary Carl, Fair Practices specialist in Thunder Bay, was employed as an Ombudsman representative with Ombudsman Ontario between 1989 and 2000. More recently, Mary worked as an associate negotiator with the Ontario Native Affairs Secretariat. Mary has a Bachelor of Administration and certificate in dispute resolution from Lakehead University.

Lalita Kulkarni, administrative assistant, has held various administrative positions over the past 16 years, including most recently, administrative assistant at Deloitte & Touche LLP and secretary to the manager, Fire Protection Department at Ontario Power Generation. Lalita has a Bachelor of Science and is currently enrolled in a certificate in management program at Centennial College.

Part-time roster

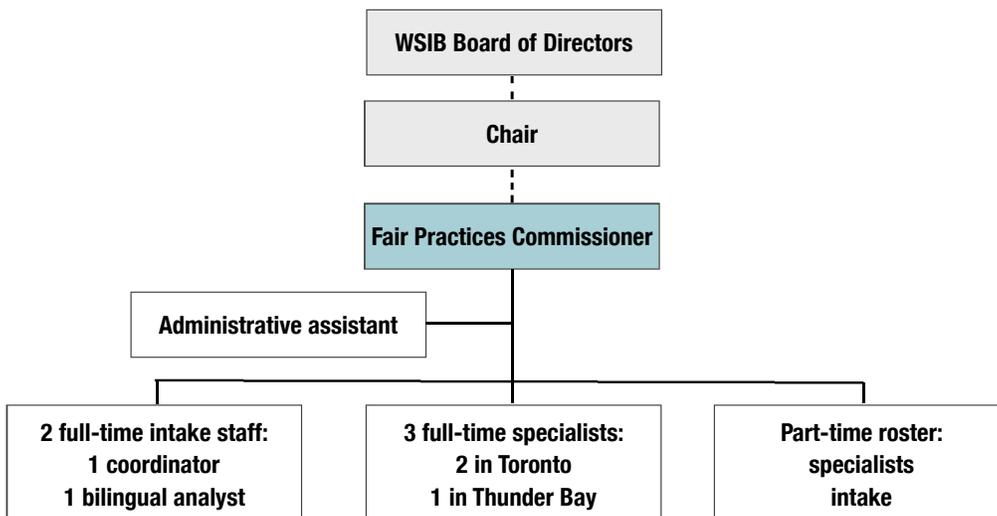
Janice Sandomirsky, Fair Practices specialist, was a vice-chair at the WSIAT from 1990 to 2001. Prior to that appointment, Janice held counsel positions in the chair's office at WSIAT and in the Tribunal counsel office. Currently, she also is a part-time arbitrator at the Financial Services Commission of Ontario.

Susan Copeland, Fair Practices specialist, was the executive director of the Occupational Health Clinics for Ontario Workers between April 2002 and February 2003. Prior to that, she was appointed as an employer representative to the WSIAT from 1993 to 2002. Susan also worked as a compensation and benefits officer for Ontario Hydro for 16 years.

Mary Ferrari, Fair Practices specialist, was a part-time worker representative at the WSIAT from 1986 to 2001. Since then, Mary had a practice as a consultant in WSIB matters. Prior to 1986, Mary was a community legal worker at the Industrial Accident Victims Group of Ontario and Injured Workers' Consultants. Mary has a Bachelor of Arts in sociology and French from the University of Guelph.

Gloria Persaud, intake officer, has held a number of positions with the Employment Standards Branch of the Ministry of Labour over the last 10 years, including intake representative, audit assessment clerk and program assistant. Before that, Gloria worked for 15 years in a variety of other Ontario ministries.

Fair Practices Commission



Start-Up

Office and staff

The Commission's offices are separate from the WSIB head office to ensure their arm's-length relationship. The Commission rented space at 123 Front Street West and the offices were ready for occupancy in October 2003.

Descriptions for the intake and specialist jobs were prepared and the positions advertised in newspapers in Toronto and Thunder Bay. The Commission received a large number of applications and chose staff members in a competitive process.

The staff started work December 1, 2003, with an extensive training program. In addition to the WSIB staff and trainers, the Commission brought in other experienced people from the Office of the Worker Advisor (OWA), the Office of Employer Advisor (OEA) and the Workplace Safety and Insurance Appeals Tribunals (WSIAT) to assist with training.

Outreach

Between January and June 2004, the commissioner conducted 92 information sessions throughout Ontario for the public and WSIB staff. The sessions were designed to explain the Commission's mandate and complaint process. Sessions were conducted as follows:

- 29 sessions for WSIB staff in every district office
- 24 sessions for WSIB staff in Toronto for all 1000 operations staff
- 15 sessions for worker and employer groups in Toronto
- 24 sessions for worker and employer groups throughout the rest of Ontario.

The commissioner also made presentations to OWA, OEA, WSIAT and other groups.

Outreach materials

The Commission developed pamphlets, posters, a mission statement document and a question and answer sheet. The materials are available at all WSIB offices and on the Commission's website. The Commission distributes them to the public at all outreach and educational sessions.

Copies of the materials are on pages 44 to 47.

Website

The Fair Practices Commission website went live on February 25, 2004. The site includes:

- information about the Commission
- a complaint guide and form and instructions on making a complaint
- frequently asked questions
- links to WSIB internal and external resources and to other ombudsman organizations
- news and information on current issues
- publications and reports
- case summaries
- information on confidentiality and privacy
- all Fair Practices Commission outreach materials.

The text of the complaint guide and form are on pages 48 to 49.

Complaints Resolution Manual

The Commission completed its manual by the end of June, 2004. The manual, prepared by and for Commission staff, outlines the Commission's processes for ensuring consistency in complaint handling. It also establishes timeliness goals for complaints and inquiries as follows:

- intake—telephone calls are acknowledged within one business day; written complaints receive acknowledgement the same day
- inquiry—should be completed within one to three weeks
- investigation—more complex matters should be concluded within four to six weeks.

The average turn-around time for all complaints has been six days.

“Thank you very much for your intervention... This proved to be an effective and unique means to address a fairness consideration, without proceeding to a formal appeal.”

Newsletter

The Commission produced its first semi-annual newsletter in November 2004, and its second is scheduled for June 2005.

The bilingual newsletter is mailed to workers' and employers' representatives, service providers, advocacy groups, MPPs, the Ministry of Labour, agencies, ombudsman offices and other workers' compensation boards in Canada. Each issue is currently mailed to 800 addresses.

The newsletter is on CONNEX (the WSIB's intra-net site) for WSIB staff. It is also available on the Commission's website and by e-mail.

The newsletter reports on current Commission activities as well as case summaries, statistical information and trends in complaints.

Future goals

Commission staff participated in a planning session on October 14–15, 2004, to review the Commission's effectiveness in complaint handling and resolution and to identify areas for improvement. They identified the following objectives for 2005:

- develop a backlog prevention plan
- develop a code of ethics and standards of practice
- obtain feedback from the community, complainants and WSIB staff on the Commission's performance.

In pursuit of the feedback goal, the Commission has contacted the Institute for Citizen Centered Service (ICCS), a Government of Canada organization, for their input and assistance. ICCS maintains a benchmarking database of research, analysis and results. The Commission has also contacted the WSIB Research and Evaluation Division for help in developing survey questions and analyzing the results.

Complaint Process

Fairness benchmarks

The Commission looks into and helps resolve cases where there are current issues about the fairness of the WSIB's processes. To help determine whether a complaint involves fairness issues, the Commission developed administrative fairness benchmarks. These are some examples:

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? Was correspondence answered or were calls returned in a timely fashion?

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?

Behaviour

Was the staff unbiased and objective when reviewing information? Did staff overlook any relevant information in their actions or in making a decision? Was the staff courteous and professional? Were wrongs acknowledged and apologies offered?

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?

Intake

Intake staff are the "face" of the Commission, as they talk directly with callers.

They first encourage callers to try to resolve a complaint with the WSIB. They give callers the name and phone number of their adjudicator and the adjudicator's manager, or account manager if the caller is an employer. The Commission finds that if something has been overlooked or misunderstood, the WSIB staff may quickly and easily solve the problem at this early stage.

The intake staff help callers focus on their fairness concern and may provide guidance to help in their discussions with the WSIB staff.

If a complaint is complex, intake staff encourage the caller to complete the Commission's complaint form. They get consent from complainants to let the Commission look at their file and discuss the concern with their representative and the WSIB staff.

They review a worker's imaged WSIB file to review the status of a caller's concern.

If a concern is not within the Commission's mandate, the intake staff provide information about and contact numbers for resources that may be able to help the caller.

Specialists

If a complaint raises a potential fairness issue that the WSIB has not dealt with, Commission specialists become involved.

They review the claim or account file and discuss the concerns with the complainant and his or her representative.

Specialists contact the appropriate WSIB staff for their perspective and information. If the complaint does not raise a fairness issue, the specialist explains the reasons to the complainant.

If the complaint does raise a fairness issue, the specialists suggest possible remedial action to the WSIB. If a matter is not resolved, they take the matter "up the line," for example, to the WSIB manager, assistant director, director or vice-president.

Specialists consider whether a complaint has broader implications that may affect other workers or employers. If it does, they consult with the commissioner and may raise the systemic concern at the appropriate staff level, usually the director level. Specialists review with WSIB management whether a complaint identifies training needs. They report outcomes to all the parties.

"I'm just so glad you guys are out there so I can bounce things off you and get a straight answer. You've been a great help."

Commissioner

The commissioner investigates systemic issues that she identifies or that arise from individual cases. The commissioner also approves investigations conducted by the specialists.

As well, the commissioner

- gives notice of systemic issues to the WSIB
- advises the WSIB an inquiry or investigation is underway
- meets with senior staff to get information about the issue and the WSIB's perspective
- makes suggestions and recommendations to resolve the issues
- reports the outcomes to the WSIB and the parties as necessary
- reports quarterly to the board of directors
- provides quarterly summaries of its inquiries and investigations to the WSIB senior managers
- issues a public annual report.

The value the Commission brings to WSIB processes

The Commission's work focusses on resolving conflict, preventing problems and acting as an agent of change.

Resolving conflict

The Commission explains to complainants how the WSIB operates and educates callers about their options and potential remedies. It helps to facilitate the relationship between complainants and the WSIB.

WSIB staff are asked to consider whether the process can be improved.

The Commission's help with informal resolution may make formal appeals unnecessary.

Preventing problems

By intervening and resolving a complaint early, the Commission can prevent future unfairness. The Commission identifies WSIB's best practices that can be used to prevent similar concerns. The Commission also identifies recurring themes in complaints and suggests systemic resolutions.

Acting as an agent of change

The Commission helps complainants and the WSIB understand how to resolve conflict. This fosters a culture in which the organization adapts and responds to the needs of its clients. The Commission looks at each complaint for the possibility of a pattern and can recommend changes to the structure to prevent a similar pattern in the future.

Important Initiatives

Promoting “Fairness Awareness”

The Commission now delivers “Fairness Awareness” sessions to all newly hired adjudicators, account managers and customer service representatives as part of the WSIB’s training program. The focus of these sessions is recognition, prevention and early resolution of potential unfairness. Participants learn

- the Commission’s purpose and process
- the principles of administrative fairness
- recognition of potential unfairness
- examples of complaints and their resolution
- best practices.

From August 2004 to March 2005 the Commission delivered eight fairness awareness sessions to new staff.

The Commission has also arranged to provide quarterly interactive fairness awareness sessions for all new managers. As well, by the third quarter of 2005, the commissioner will have met with all the district office managers to promote fairness awareness.

The Commission sees the sessions as an important part of its role in the prevention of future systemic problems and in incorporating principles of fairness within the WSIB setting.

Fairness checklist for decision-makers

The Commission’s fairness benchmarks, which help determine whether a complaint raises a fairness issue, have been incorporated into a fairness checklist for decision-makers.

The Commission provided the checklist to the WSIB Quality Improvement Branch for use in staff training programs. The Commission also distributes the checklist during its fairness awareness training for staff. WSIB adjudicators and managers have found the checklist to be very useful.

The checklist is on pages 50–51.

Code of fairness

The Commission’s charter says the Commission “will assist WSIB in developing a Code of Administrative Fairness.” The Commission prepared research materials, including a review of WSIB’s current initiatives to improve service delivery, a summary of initiatives in other Canadian workers’ compensation boards and other jurisdictions throughout the world, and

examples of other agencies' initiatives. The materials also addressed the necessary components of a code of fairness. The materials were distributed to the president and interim chair, the chief operating officer, the vice-president of appeals and the executive director of policy and research.

The Commission proposed considering the Canada Revenue Agency's (CRA) Fairness Initiative as a model. At the president's request, the Commission organized a meeting at the WSIB offices on December 14, 2004, with the two individuals who conducted the CRA's Fairness Initiative project. The CRA representatives provided a history of their fairness project and the lessons learned. The commissioner and the president have met to review options for moving forward.

Delay review project

To identify potential systemic issues and to provide better information to the WSIB about the causes of delay, the Commission conducted an in-depth review of 19 "delay" cases in which the Commission had been involved during the last quarter of 2004.

The average length of delay in the 19 cases was 5.3 months. This held true even when a WSIB manager was involved. The average delay was somewhat longer where representatives were involved (6.8 months). These were the most significant factors affecting delay:

- An agreed-upon action plan was not kept or no action was taken in 53 per cent of the cases. There was no explanation in the file for the lack of action.
- Complex cases accounted for 47 per cent of the delayed cases.
- Multiple claim cases represented 37 per cent.

Cases that involved multiple claims and were complex totaled 68 per cent of the cases. In complex cases, it appears that dealing with issues one by one rather than following an action plan with specific objectives plays a significant role in delay. The commissioner is reviewing the results with senior management and will continue to monitor the issue.

Intake clinics

The Commission's 2005 business plan includes a commitment to conduct intake clinics in areas where resources such as legal clinics are limited. The purpose is to ensure awareness of and access to the Commission's services throughout the province.

The Commission planned its first two clinics for Dryden and Kenora in May 2005. Two Commission specialists will meet with complainants. The clinics will be advertised locally on radio, television and in the newspapers.

The Commission is planning similar clinics for Sarnia, Ear Falls and Red Lake.

Systemic Issues

One of the Commission's core functions is to identify system-wide issues and recommend improvements. Set out below are the systemic issues the Commission identified in this reporting period.

Issues identified and resolved

Psychological consultation backlog

The Commission received 10 complaints about delays in obtaining psychological consultation reports. The Commission's inquiries found about 500 backlogged referrals. It was taking up to five months to provide written reports.

On June 15, 2004, the commissioner met with the chief operating officer and the vice-president of Health Services to review the commissioner's letter, which set out the factors contributing to the delays, the effects of the delays, and possible options for addressing them.

At a follow-up meeting on August 23, the WSIB reported it had taken the steps suggested by the Commission: using outside resources including resources in the districts, screening incoming matters for gaps in information, using other specialty clinic services, and hiring staff to replace those lost to illness and retirement. The chief operating officer and the vice-president reported that more than half the backlogged matters were completed and they expected the rest to be done by mid-October.

The commissioner met twice with the director of Clinical Services (December 8, 2004 and March 23, 2005) to review progress on the backlog. At the March 23 meeting, the director reported that 126 cases were waiting for review, most of which were less than two weeks old. All 371 backlogged cases referred to Toronto Western Hospital had been returned to Clinical Services. The 77 backlogged cases referred to an outside psychologist had also been returned. The division's database is monitored weekly, and weekly reports go to the director on the number of cases waiting, who has them, the age of the referral, and the number and age of cases in the queue. The director reports that the goal of a two-week turnaround for all cases is realizable and sustainable this year.

Clinical Services now has 5.4 full-time equivalent (FTE) psychologists, which is a full complement. Part-time psychologists have been recruited from Hamilton and Toronto, all of whom maintain a private practice in addition to their WSIB work. The division still has a 0.6 FTE salary for any unforeseen needs.

Clinical Services is training all new psychologists and will conduct random reviews of their work to ensure their reports meet WSIB standards.

“Please pass on our thanks to Ms. Bradbury, as her meeting with the WSIB director of Clinical Services will result, hopefully, in a more prompt response to other injured workers.”

The Commission is satisfied that the referral of backlogged cases outside the WSIB, the addition of staff, the database monitoring, and the communication of criteria for referrals on CONNEX have helped make the workload manageable. The Commission has received no new complaints about delays.

Information about interpreter services

In response to a letter from a legal clinic, the commissioner raised the issue of WSIB notifying injured workers about the availability of interpreter services in letters concerning non-economic loss (NEL) assessments and NEL doctor selection. The commissioner noted there is a good precedent in letters to pre-1990 clients about interpreter services for medical assessments.

The manager agreed to review the issue with the director. On August 17, the manager confirmed that letters about NEL doctor selection and assessments had been changed. They now include a clear notice to workers that interpreter services are available as well as information on how to access the service.

Appeals resolution officer as mediator

The Commission received a complaint from an employer representative that the Appeals Branch Practice and Procedures (ABPP) did not say that an appeals resolution officer (ARO) who engages in settlement or mediation discussions with the parties just prior to a hearing must first obtain the parties' consent. Concerns may arise if the parties do not settle and then the same ARO takes on the adjudicator role.

The commissioner brought this concern to the director of Appeals. The director discussed the issue with the representative, reviewed the representative's submissions, and agreed to amend the ABPP. Appendix D, Guidelines for Conducting In-Person Hearing, Section C, Para.xi now says: "If both parties request the ARO engage in mediation discussions, the ARO must first secure consent concerning decision-making. If the parties will not allow the ARO to render the decision, before beginning any facilitation, the ARO must explain to the appellant the delay if a consensual outcome is not reached."

Highlighting changes to ABPP

In discussions with the director of Appeals, the commissioner noted that a number of representatives had commented on the difficulty of identifying changes to the ABPP, since the changes were not highlighted. Even experienced representatives were spending a considerable time reviewing the document each time changes were made.

The director acted immediately. The on-line version of the ABPP now has recent changes highlighted in blue. The printed version has the changes in italics.

The director has said all changes will be highlighted in the same way.

Consistency in time limit guidelines and noting changes to ABPP

The Commission received a complaint from an employer representative about the September 2004 changes to the ABPP. The changes say broad discretion will be applied to extend the time for filing an appeal when the appeal is made within one year, rather than six months, of the decision date. The representative felt there should have been public consultation prior to the change and policy direction from the board of directors. The representative was also concerned about inconsistent approaches by WSIB staff to the new guideline and possible inconsistent approaches by WSIB and WSIAT.

The commissioner told the complainant the mandate of the Commission allowed it to look into two matters related to the complaint:

- what steps the WSIB took to ensure that changes are applied consistently and that workers and employers are treated the same way
- how the WSIB informed people of the change, both internally and externally.

The commissioner made inquiries with the director of Appeals and the chief corporate services officer and reported the following:

- The Appeals Branch has set up a screening process to ensure consistency in applying the new time limit guideline. All incoming appeals are scanned. If a decision-maker has denied an extension of time and the appeal is within one year, the Appeals Branch refers the matter back to the decision-maker with a copy of the ABPP guideline on time limits.
- Internally, the time limit guideline changes were communicated broadly to WSIB staff on CONNEX (WSIB's intra-net site); managers were given notice of the changes and asked to review them with their teams; the Claims Quality Loop was notified; and the WSIB bulletin included information on the changes.
- Externally, the chief corporate services officer has undertaken to establish a protocol to ensure that any changes to the ABPP occur at the same time every year to make the process predictable and transparent. The protocol will also include a communication plan so that the broader community learns of any revisions. In addition, revisions will be highlighted in the document itself.

The commissioner was satisfied that these efforts will provide adequate notice of changes and alleviate any potential for inconsistency by WSIB adjudicators or between WSIB and WSIAT.

Overlooked medical information

Several complaints about overlooked medical information resulted in the Commission identifying a problem with incoming mail. The Commission noted that attachments can be missed if each page is not reviewed before it is scanned. In one instance, a medical note attached with receipts to a health care travel expense form was not scanned and therefore not seen by the adjudicator.

The director of Administrative Services responsible for health care payment processing offered to issue a written reminder to all staff who process health care expense forms to be mindful of the importance of reviewing all attachments. The director also agreed to consider adding this to training for new staff.

Meal payment policy

The Commission inquired into two complaints from injured workers who had travelled to another community for medical treatment. The inquiry found that the hotel where the workers were staying may be applying the WSIB meal payment policy inconsistently, resulting in inappropriate treatment of some workers.

The WSIB manager responsible agreed to discuss the correct policy with the hotel. When this was not done, the Commission contacted the director who took immediate steps to inform the hotel of the appropriate action when there is an issue with the meal allowance.

Although WSIB policy says the meal allowance is \$10 for breakfast, \$13 for lunch and \$22 for dinner, the WSIB is flexible as long as the maximum of \$45 is not exceeded, provided the worker is entitled to the full daily allowance. If a worker exceeds the allowance, WSIB will pay the hotel for the meals and request reimbursement from the injured worker.

The hotel was advised that the workers were embarrassed by the way the hotel approached them.

Transfer-of-cost employers

A representative of a “transfer of costs” employer complained about the WSIB’s decision to deny access to the worker’s claim file. The representative was concerned that the transfer-of-cost employer could not meaningfully participate in the claims management process or in an appeal without access to the file. He asked the Commission to help obtain access to the file or request that WSIB consider some form of cost relief.

The Commission made a number of inquiries and learned that the WSIB is developing a policy addressing the issue of access to a worker’s file by a transfer-of-cost employer.

The Commission agreed that the lack of access raises a potential fairness concern for these employers and that it would continue to monitor the development of the policy.

Systemic issues in process

The new Program Development Division is responsible for reviewing and acting on systemic issues identified by the Commission. They have developed a system to track the issues, with timelines for action. The Program Development Division is currently addressing several of these systemic issues, as set out below.

The Best Practices Working Group is also addressing the issues of delays in reconsideration and chiropractic maintenance treatment.

Delays in reconsideration

A number of process issues contribute to delays in reconsiderations. There is no time limit for the process. Complex cases are often delayed significantly, therefore delaying access to appeal. The lack of manager involvement in the process may also delay the reconsideration.

The commissioner suggested that managers review an adjudicator's response to ensure all points have been considered and addressed. The WSIB could consider a one-month limit for reconsideration decisions. Objection forms with no new evidence or arguments could be sent directly to the Appeals Branch.

The Program Development Division is reviewing the issue, focussing on the manager's role and a 30-day timeline.

Delays in obtaining information from the accident employer

Significant delays in claim processing may occur if an accident employer delays in providing necessary information to the WSIB. The problem is aggravated if the system does not set consequences for the delay.

The commissioner suggested that the WSIB set a date for providing the information. If an employer delays, the adjudicator could proceed to decide the issue based on information in the file.

The Program Development Division is reviewing the issue of an employer's obligation to report.

Delays in obtaining medical reports from workers' doctors

Workers' physicians are often slow to provide information to the WSIB and, as a result, decision-making in a worker's claim may be delayed. There is also an apparent inconsistency among adjudicators in following up on requests for medical information. Some go to a nurse case manager (NCM) or medical consultant to ask for assistance in getting the information. Others do not or wait a long time before they do, increasing the delay. The problem is

compounded because the Act requires doctors to provide information but has no consequences if they do not.

The commissioner suggested the WSIB establish protocols for staff on follow-up procedures to help prevent inconsistencies. The WSIB could consider a general practice of having the NCM telephone doctors in problematic cases. Doctors could be provided with information on their legal obligation to provide information. Also, the WSIB may want to address the issue with the Ontario Medical Association.

The Program Development Division is reviewing the issue, focussing on a best practices guideline for staff and discussions with the Ontario Medical Association and the Ontario Hospital Association.

Chiropractic maintenance treatment

The WSIB policy on chiropractic treatment addresses the acute period (12 weeks plus a possible extension) of treatment. Beyond that, adjudicators are to consider each case on its merits. However, there are no practice guidelines for staff to review when considering non-acute treatment, or for other health care expenses not specifically covered by WSIB policy. Misunderstanding of policy or refusing to consider requests for treatment on a case-by-case basis leads to unnecessary appeals to WSIAT. Tribunal decisions have stated repeatedly that WSIB policy does not prevent chiropractic treatment after 12 weeks.

The commissioner suggested that a practice guideline be developed. The WSIB could also consider further training for staff on exercising discretion and evaluating each case on its merits.

The Program Development Division is reviewing the issue and is considering a best practices guideline for staff on chiropractic maintenance treatment.

Complex cases and workload issues

Claims adjudicators are now responsible for all adjudication, from straightforward to complex cases. Team managers may not have the technical expertise to support adjudicators who are handling complex cases. Adjudicators often report stress from handling these cases.

The commissioner suggested the WSIB consider adopting processes, procedures and administrative structures to give more attention, expertise, and experience to complex cases.

The Program Development Division is reviewing the issue, focussing on increased expert support to claims adjudicators, a technical training program for WSIB managers, and a working group to consider approaches to complex cases.

Case Summaries

Set out below are examples of cases where the Commission addressed individual complaints. These cases demonstrate the value of the Commission's interventions to provide fast, informal resolutions wherever possible. The Commission is effective in reducing delays, helping to avoid unnecessary appeals and facilitating the relationship between the complainants and the WSIB.

Some of the summaries highlight systemic problems in the WSIB processes, which the Commission has identified for senior management's attention.

Delays

In decision-making

Initial entitlement decision

A worker's representative contacted the Commission with a number of concerns about the WSIB's handling of his client's file. The most serious was a nine-month delay in reaching a decision on initial entitlement.

In most cases, the Commission speaks directly to the staff involved to review the issues raised by a complainant. In this case, however, the Commission wrote to the sector assistant director to set out the concerns about the decision-making process and provide an opportunity for the WSIB to review the claim and consider the Commission's observations.

The WSIB then decided to pay health care benefits to the worker. However, the subsequent response from the assistant director did not address the process concerns to the satisfaction of the Commission. The Commission followed up by writing to the sector director. A further review of the claim by the WSIB determined that the employer was in breach of its re-employment obligations. As a result, the WSIB determined the worker was entitled to full loss of earnings benefits and he was recommended for a Labour Market Re-Entry program assessment. The Commission is continuing to review the systemic decision-making issues raised by this case with the vice-presidents of Service Delivery and the Program Development Division.

Adjudication

A worker complained he was unable to resolve a persistent delay in getting a decision from the WSIB. He telephoned the manager and wrote several letters a month to the adjudicator but had not received a response.

The Commission contacted the manager who, after speaking to the adjudicator, concluded the complaint was justified. Although the adjudicator had looked into the worker's concerns and partially prepared a letter, she had not kept the worker informed of her actions or of the reasons for the delay. She also did not respond to the worker's requests that she contact him.

The manager arranged a conference call with the worker to acknowledge and apologize for the inadequate service delivery and to clarify what issues still needed to be resolved. He confirmed with the worker the next steps and an action plan to address outstanding issues. He said he would monitor the progress of this claim to ensure that agreed-upon actions were completed in a timely fashion. The manager also followed up with a letter to ensure there was no confusion about what was agreed on in the call.

The Commission uses this case as an example when discussing best practices with WSIB staff and management.

Home modifications

A seriously injured worker contacted the Commission about a delay in obtaining home modifications. He had requested a chair lift six months earlier. The worker received two visits from occupational therapists and was told he would have to wait for a visit from an independent living consultant, which could take some time. The Commission found the Serious Injury Program of the WSIB was experiencing significant staff changes that had resulted in the loss of nine of its 10 independent living consultants. Recruiting, hiring and training of replacements was in process. The WSIB acknowledged the staff changes had an adverse impact on the level of service.

The worker's complaint was initially resolved when the WSIB arranged for its independent living consultant to assess the home for a stair lift as well as bathroom renovations and other structural changes.

Four months later the worker contacted the Commission again as the stair lift was still not approved. The Commission found that, although the WSIB had determined what work needed to be done, there were problems in getting qualified contractors to bid on the renovation project. The WSIB arranged for the independent living consultant and the project management company to assess the bids and hire a firm to do the work.

Two months later, the worker's spouse called the Commission after they were told it would take two to four more weeks to obtain approvals and a work permit before the renovations could commence. The worker was finding the further delays very stressful. Even though the stair lift had been approved, it had not yet been ordered. It was now more than a year since the worker had asked for a stair lift. As a paraplegic, he found using the stairs a difficult daily task. The Commission contacted the WSIB director who took immediate action to get the approvals and building permit. Construction began within a week of the Commission's call. The worker contacted the Commission to report that the work was done and expressed his gratitude for the assistance.

NEL re-assessment

A worker called the Commission with a concern about his request for a re-assessment of a non-economic loss (NEL) benefit. The worker told the Commission that his request had been with the WSIB for more than a year. The WSIB had not kept commitments during that year to review the request and reach a decision. The worker also complained that the WSIB did not return his calls.

The Commission reviewed the worker's file and decided to discuss his concerns with the sector director. The director agreed there had been unacceptable delays. The director also agreed that the slow response to the worker's inquiries was a serious breach of customer service.

The director wrote to the worker and apologized for the manner in which the WSIB had handled his request. The director also gave the worker an update on the review and a date by which a decision would be made. The worker subsequently confirmed that he received a decision by the promised date.

“Thank you for your participation in this matter. I was satisfied with the system and feel it worked exactly the way it should in this particular matter.”

In the Appeals process

Referral to Appeals Branch

A worker representative contacted the Commission because of an eight-month delay by the WSIB in referring his client's file to the Appeals Branch. The representative said he contacted the WSIB several times about the delay, and during the month prior to contacting the Commission he had sent two faxes to the manager without receiving a response.

The Commission spoke to the manager and learned that the team's file-handling protocol required the manager to review all files before they were sent to the Appeals Branch to ensure that they were appeal-ready. In this case, the claims adjudicator had reviewed the file four months earlier but failed to send it on for review. The manager also said that, although he had instructed staff to send him all correspondence addressed to him, the two faxes sent in this case were inadvertently not given to him.

Once the outstanding faxes and delays were brought to the manager's attention, the manager immediately contacted the representative and apologized for the oversights and sub-standard service and arranged for the file to be referred to the Appeals Branch. The Commission then contacted the manager in the Appeals Branch who indicated his willingness to process the appeal as a priority.

Scheduling an Appeal hearing

A worker's representative contacted the Commission because of a delay in the scheduling of an appeal hearing for his client.

Between August 2001 and February 2003, the representative objected to a number of decisions in the worker's file. There were delays in processing the appeal because of issues with the objection forms and authorizations.

During this period, there were also new decisions. The worker's claim to entitlement to benefits for psychotraumatic injury was denied. In addition, the accident employer requested Second Injury Enhancement Fund (SIEF) relief, which was also denied.

Both decisions were appealed. The worker's representative sent the objection form in February 2003. In May 2003, he asked the claims adjudicator about the status of the appeal and was told the file had been sent to the Appeals Branch. In September 2003, the representative confirmed with the Appeals Branch that the file was received on June 2, 2003.

The representative was troubled when he learned that the employer's SIEF appeal had been heard and decided while the worker's appeal was still waiting to be scheduled.

The Commission contacted the Appeals Branch. The branch found that an error occurred at intake when the staff mistakenly believed the worker's appeal was part of the employer's appeal. Thus, they did not process the worker's appeal separately.

As soon as the Appeals Branch learned of the mistake, the manager contacted the representative to apologize for the delay and took immediate steps to process the worker's appeal.

Caused by workload

Claims adjudicator workload

A worker complained he was unable to get a response from his adjudicator after many calls, faxes and letters. He also complained he did not get a response to a fax he sent to the manager.

The Commission contacted the manager who said he had not received a fax from the worker because the wrong name was on the fax. The manager looked into the delay and confirmed that the adjudicator had not responded to the worker's many calls, faxes or letters. The manager agreed this was unacceptable.

The manager spoke to the adjudicator and nurse case manager, reiterating his expectation that a worker requesting information should receive a prompt response, even if there was nothing new to report. He reported that, immediately following his review of the file, he had the nurse case manager contact the worker to provide an update. The worker confirmed this

had taken place. The manager also agreed to contact the worker to apologize for the poor service and to say the worker should contact him directly if he was dissatisfied with future service.

The manager said the underlying reason for the persistent and prolonged delays was workload. According to the manager, this adjudicator was conscientious but worked part-time and had a full-time caseload. The manager said the adjudicator had previously alerted him to her claim volume and the service delivery impact. The manager reported there was a process underway to transfer some of this adjudicator's files to another team member.

“Thank you. Speaking to you really helped me out a lot. I felt like I was talking to someone who cared.”

Decision-making process

Notice of adverse decision

While reviewing a worker's complaint, the Commission found there had been some unfairness in the decision-making process in terminating the worker's Labour Market Re-entry (LMR) program. The sector director and the assistant director met with the Commission to review the unfair practice and explore ways to prevent similar occurrences.

As a result of discussing the complaint, the director indicated he planned to review two important messages with his teams:

- The importance of providing adequate notice and rationale for decisions: The party affected should first receive a phone call so that the written decision is not a surprise. The party must also have an opportunity to provide new information for reconsideration.
- The importance of case conferences: When a claims adjudicator is new to the file or disagrees with an LMR provider's recommendation, the adjudicator is expected to consult with the previous adjudicator or their manager before making an adverse decision.

While not excusing the service problems that occurred in this case, the director and assistant director noted that workload issues were part of the problem. The commissioner agreed to track that issue in her next quarterly report to the board of directors.

Determining work restrictions

A representative contacted the Commission and complained that the medical restrictions the WSIB identified for the worker were not stringent enough. The representative was concerned that the worker was unable to perform modified duties and was at risk of re-injury.

The Commission found that the medical restrictions were identified as a result of a number of reports, including:

- an ergonomic assessment four years ago
- a functional abilities evaluation within the last year
- an ergonomic assessment within the last year
- numerous completed functional abilities forms
- numerous other medical reports.

The WSIB was also requesting a further ergonomic assessment in light of the worker's continued difficulties in performing modified work.

The Commission advised the representative that it appeared the WSIB had taken reasonable steps to ensure that the worker's medical restrictions were identified appropriately.

Representation

A father who was assisting his son with his WSIB appeal contacted the Commission with concerns about WSIB processes and representation.

The father said his son suffered psychological problems as a result of his injury and difficulties in dealing with WSIB. The son, once gainfully employed in a factory, was now homeless and living in a shelter. The decision to terminate the son's WSIB benefits was under appeal. However, the appeal process was suspended because the lawyer who had been representing the worker was no longer able to do so. The worker's father did not feel confident that he could adequately represent his son in the appeal. The father had approached the Office of the Worker Adviser (OWA) but was told that, because his son was a member of a union, the OWA was unable to represent him.

Although the Commission does not have a mandate to review the OWA processes, a request was made for clarification of the worker's situation. The OWA manager said the merits of the case could be reviewed to determine if it met the OWA's criteria for representation. The worker had been out of the work force for a long time and had had no contact with his union for several years.

The father was pleased with this assistance but expressed concern about the lack of information about WSIB processes and the resources available to workers. The father was encouraged to contact the WSIB directly with his questions. The Commission also sent him a copy of the WSIB publication, *Injured at Work? We're here to Help*, which contains helpful information about the WSIB and the claims process.

Psychotraumatic disability entitlement process

A worker and his representative contacted the Commission to complain about the delay in adjudicating the worker's psychological entitlement for loss of earnings (LOE) and his return

to a Labour Market Re-entry program. The worker was experiencing severe financial hardship since his benefits were terminated. He had been living in Toronto on \$88 a week.

The Commission's review of the worker's file indicated that adjudication of the worker's benefits was delayed for two reasons:

- the worker's psychiatrist had not responded to numerous requests to provide information on the worker's current medical condition
- a WSIB medical consultant who reviewed the file recommended that the WSIB obtain an independent psychological assessment of the worker, and that review had not been scheduled.

The Commissioner reviewed the worker's circumstances with the director of Clinical Services as part of their ongoing discussion on psychological consultations. The director was able to obtain appointment dates for the worker's independent assessment through the Psychological Trauma Program.

The director also confirmed that an expedited review of the treating psychiatrist's report had been done. As a result, a decision was made to extend full LOE benefits retroactively to the worker.

Implementation of WSIAT decision

A worker representative complained that the claims adjudicator unfairly implemented a WSIAT decision by arbitrarily recalculating his client's short-term earnings along with the long-term earnings that WSIAT directed to be recalculated. The effect was a lower benefit than the representative believed was intended by the WSIAT decision. The representative attempted to raise his concerns with the manager, but the claims adjudicator informed him that the manager had approved her action.

It appeared to the Commission that the WSIAT decision could have been interpreted according to the representative's expectation. However, there was no support for the representative's belief that the WSIB acted arbitrarily. In reviewing the claim file with the manager, the Commission learned that the claims adjudicator followed the WSIB protocol on ambiguous WSIAT decisions by consulting with the payment and operations managers and a legal policy analyst before acting on her interpretation. The manager undertook to speak to his team about the importance of documenting the action in the file when consulting with a legal policy analyst about an ambiguous WSIAT decision.

Communication

Dental benefits

A worker called the Commission with a concern about his dental benefits. The worker had suffered an injury at work some time ago that required emergency dental work as well as

follow-up treatment. When he contacted his dentist to arrange for the follow-up, he was told the WSIB would pay only a small portion of the total cost. The worker's claims adjudicator advised that WSIB policy would allow payment for only part of the treatment.

The Commission reviewed the worker's file, including a report from the WSIB dental consultant. It appeared there was some misunderstanding about the processing of this claim. The Commission facilitated communication between the adjudicator, the worker, the treating dentist and the WSIB dental consultant. As a result, the worker learned that the treatment plan from his dentist included dental work not related to the injury. The worker then understood that the decision to pay part of the cost was not due to WSIB policy, but due to the fact that only a portion of the proposed dental work was related to the injury. The worker was satisfied he now had all the information he needed to decide whether to undergo the additional work.

Information on claims status

An injured worker complained to the Commission about a three-month delay in a decision about his entitlement to benefits and about the lack of information from the WSIB on the status of his claim. The worker told the Commission that the WSIB had contacted him to obtain some information about his job. However, he had no information about whether he would receive benefits or when a decision would be made.

The Commission reviewed the worker's file and discussed his concerns with the claims adjudicator, the manager and the sector director. The Commission learned that for some time the WSIB had been having on-going discussions with representatives of the industry sector about whether individuals employed in the same type of job as this worker were independent operators or workers. The WSIB advised the Commission that its decision on paying benefits for this worker would have implications for any future claims in this industry. Therefore, it was reviewing this claim carefully.

Although benefits were approved, the WSIB acknowledged that once it knew it would take some time to make a decision, the adjudicator should have told the worker there would be a delay. The director undertook to remind staff of the importance of keeping workers informed about the status of their claim.

Reconsideration decision

An injured worker contacted the Commission with a number of concerns about several of his claims. One of his complaints was about the WSIB's delay in making a reconsideration decision on a claim for which he had submitted further medical information.

In reviewing the worker's concerns, the Commission noted that a reconsideration decision had been made recently and a letter sent to the injured worker. However, the Commission noticed that the decision was sent to a different address than the one in the worker's other claim files. Also, the time limit for an appeal of this decision had lapsed.

The Commission discussed the situation with the manager, who confirmed that the address on the claim file was correct but that an old address had inadvertently been used on the decision letter. The manager immediately arranged for the reconsideration decision to be sent to the correct address and the appeal time limit was extended for two months. The Commission was satisfied with the prompt remedial action.

Behaviour

Bias complaint

A worker's representative complained about the way an adjudicator and manager handled his concern. The representative thought the adjudicator's attitude was biased. The worker believed the adjudicator's attitude and decision contributed significantly to the termination of his employment. The worker requested an apology and wanted the Commission to review his concern because he felt his experience highlighted a systemic problem.

The Commission contacted the manager to discuss the worker's concerns about bias. The manager agreed that the adjudicator made inappropriate comments in the original decision letter but did not feel the decision-making process itself was flawed.

The Commission contacted the sector director to explore options for providing a satisfactory remedy to the worker. The director reviewed the file, then contacted the Commission to report the following actions:

- The director wrote to the worker apologizing for the way the worker had been treated and for the inappropriate comments and sub-standard service.
- The director informed the worker that, although the manager had taken corrective steps with the adjudicator, the director also asked the manager to address this type of inappropriate practice with the entire service delivery team.

The Commission was satisfied with the WSIB response.

New evidence

A worker representative complained that the WSIB had acted unfairly by refusing to consider new information. The representative hoped the Commission would ask the WSIB to consider the new information so that he could pursue his client's entitlement to further benefits.

The issue appeared to be related to a disagreement about the interpretation of the WSIB's authority to consider new information after a WSIAT decision. The WSIB had considered the representative's position, communicated detailed reasons for not accepting further evidence and offered options to address his concerns. The Commission was satisfied that the WSIB actions were reasonable.

Policy

Inconsistent application

The complainant, an employer, was a member of a rate group affected by a revenue policy decision to add a new, much costlier, classification unit (CU) to the account of each member performing a particular business activity. The employer later discovered that the new CU was not added to a competitor's account, though the competitor was in the same rate group.

The Commission's investigation revealed that during the policy review process, all but one member of the rate group (the competitor) had the new CU added to their accounts. Thus, the competitor was treated differently from others in the rate group.

From interviews with the directors of the industry sector and Employer Audit Services, the Commission learned there were exceptional reasons for treating that one member differently. Thus, although there was inconsistent application of a revenue policy, no unfairness was found.

The WSIB reported that, since this instance occurred, a process was implemented to "level the playing field" for members of a rate group affected by a policy decision under review. The Commission and the employer were satisfied with the WSIB's response.

"Your assistance did expedite the process significantly and I appreciate your help."

Exercise of discretion

An employer's representative complained that the WSIB consistently and unfairly fails to apply discretion in decisions about retroactive premium adjustments. One example he reported concerned an employer who, for 20 years, was not obliged to pay insurance premiums. When, because of a change in WSIB policy, insurance coverage became obligatory, the WSIB adjusted the premium retroactively with no consideration for the significant financial burden this imposed on the employer.

The representative agreed with the Commission's assessment that it was premature to initiate an inquiry in this specific case since he was still in discussions with the sector director. The representative was asked to refer to the Commission any future cases that illustrated the potential unfairness. The Commission would consider initiating an investigation if it observed a trend in complaints about retroactive premium adjustments.

Fairness Initiatives by the WSIB in 2004

The WSIB took a number of initiatives in the past year that will improve accessibility to and transparency of WSIB processes.

1. Guide to the WSIB system: *Injured at work? We're here to help.*

- available on WSIB website
- mailed to workers who are in the system for 30 days or longer

2. Policies on-line

- the operational policy manual and the employer classification manual are now on the WSIB website
- guidelines and practices will be added in 2005

3. Joint workload task force

- in November 2004 CUPE Local 1750 and WSIB management representatives made 13 joint recommendations to senior management on workload issues
- senior management responded, in part, with a workload balancing initiative

4. Best practices working group

- identified five issues to improve service delivery
- developed roll-out plan

5. Fair Practices Commission's fairness awareness training

- training on procedural fairness by the Commission is now required for all new claims adjudicators, account managers, customer service representatives and managers

Professional Development

The Commission is part of an ombudsman community and participates actively in ombudsman organizations and training opportunities. The Commission is a member of the

- Forum of Canadian Ombudsman (FCO), an umbrella organization for ombudsman offices from all sectors to meet and exchange information. Commission staff attended the FCO's Ombudsman Basics course in March 2004.
- Ombudsman Association (TOA), which is committed to the training needs of organizational ombudsmen throughout North America. Commission staff attended the TOA basic program and other courses in 2004 and 2005.

The commissioner is a member of the Fair Practices Working Group that is composed of all WCB and WSIB fair practices commissioners across Canada. The group meets by teleconference every three months and is a valuable resource for its members who can share experiences and receive advice from colleagues. British Columbia, Saskatchewan, Manitoba, Ontario, Nova Scotia and Prince Edward Island are members.

The Commission received assistance during its start-up from Ombudsman Ontario. Clare Lewis, then the Ombudsman, reported in his 2003-2004 annual report: "Having an effective internal complaints process enables an organization to reflect upon and assess its operations and their effects. Effective internal complaints mechanisms can lead to service improvements and prevent future complaints.

"My office often acts as a resource to organizations establishing internal complaints systems. This year my office provided advice to the Victim Services Division of the Ministry of the Attorney General as well as to the new Fair Practices Commission of the Workplace Safety and Insurance Board regarding internal complaints resolution."

Staff continue to take in-house training to keep abreast of developments at the WSIB. The Commission conducted the following eight sessions in 2004-05:

- Feb. 24, 2004 Section 147 supplements
- Mar. 11, 2004 collections issues
- Apr. 6, 2004 future economic loss (FEL) system
- Apr. 28, 2004 second injury and enhancement fund
- May 18, 2004 psychotraumatic disability & chronic pain disability
- Nov. 29, 2004 mental health issues & suicide risks
- Dec. 16, 2004 employer audits
- Feb. 15, 2005 employer incentive programs

Statistics

January 14, 2004
–March 31, 2005

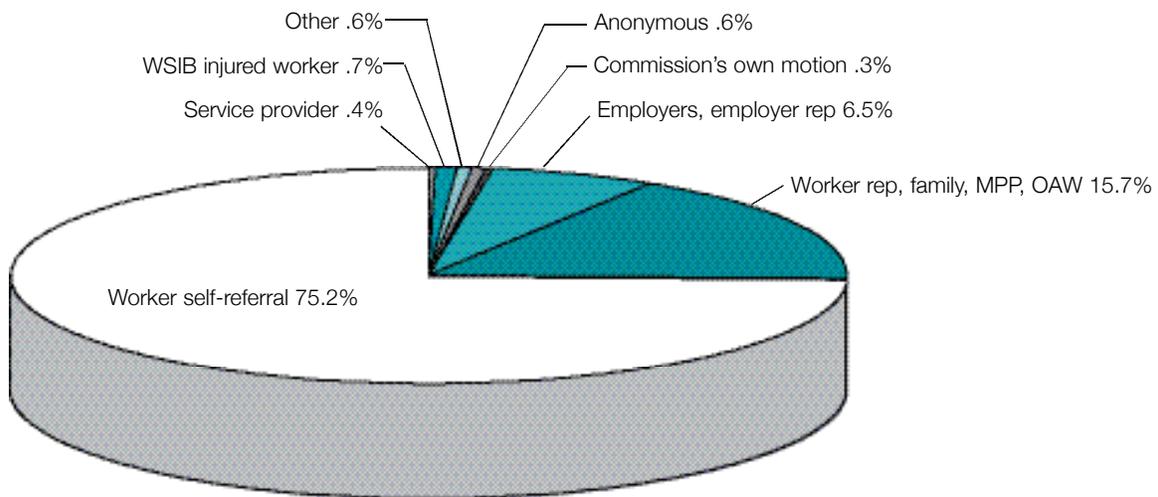
Number of complaints	
Complaints received Jan. 14, 2004–Mar. 31, 2005	1,404
Mandate vs. non-mandate complaints	
Mandate	59%
Non-mandate	41%
Number of complaints referred to specialists and commissioner	
Number	364
As per cent of total complaints	26%
Age of matters	
Average age at closing	6 days

Complaints broken down by user groups

January 14, 2004
–March 31, 2005

Workers	
self-referral	1056
representative, family member, MPP, OWA	221
Employers and representatives	91
WSIB staff who are injured workers	10
Anonymous	8
Service providers	5
Commission, own motion	4
Other	9

User groups



Nature of mandate concerns by administrative fairness categories

July 1, 2004–March 31, 2005

Administrative fairness category	1st quarter 2005	4th quarter 2004	3rd quarter 2004	Factors considered
Delay	35.6%	35.4%	32.5%	Was there an unreasonable delay in taking an action or making a decision? Was the person affected notified of reasons for the delay? Was correspondence answered, or were telephone calls returned, in a timely fashion?
Communication	11.0%	8.7%	12.5%	Were reasons communicated clearly, using appropriate language and in a timely fashion? Did staff explain what the decision or action was based on? Were reasons provided to all those affected? Were next steps or options explained?
Behaviour	7.3%	10.0%	11.4%	Were staff unbiased and objective when reviewing information? Were staff courteous and professional? Were wrongs acknowledged and apologies offered?
Decision-making process	10.4%	10.0%	12.5%	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? Was policy applied consistently?

The Commission began to collect information in this format on July 1, 2004.

Categories of complaints

July 1, 2004–
March 31, 2005

Categories	No. of complaints
Adjudication	107
No return phone call	76
Unprofessional (rude, hostile, dismissive)	76
Decision (release)	73
Disregard for evidence	59
Initial adjudication	38
Payment	35
Policy - unfair	33
Biased	28
Not determined	22
Written response	22
Medical examination	21
Reasons	20
Referral to Appeals Branch	20
Access (file copy)	17
General system complaint	17
Unclear	15
Internal consultation	13
Implementation of WSIAT decision	11
No contact	11
Scheduling of Appeal hearing	10
Lost/misplaced information	10
Reconsideration (WSIB)	10
Discrimination	9
Confidentiality	9
Incomplete (did not address all issues)	9
Opportunity to present information	7
Implementation of WSIB decision	6
Form	6
Policy improperly applied	5
Arbitrary	5
Mediation	4
Unavailable	4
Policy gap	4
Letter	3
Policy inconsistently applied	3
Reprisal	2
Contact restriction	2
Notice	2
Policy contrary to Act	2
Policy discriminatory	2
Acknowledgement	1
Other	
General inquiry	120
Not reported	25
Total	974

Complaints by subject

July 1, 2004–
March 31, 2005

Subject	Number of complaints
Benefits	406
Early and safe return to work (ESRTW)	150
Labour market re-entry	89
Health care	45
Non-economic loss (NEL)	40
Employer assessment	33
Earnings basis	30
Appeals processing	25
Expenses	17
Psychiatric/ stress	14
Deemed worker	10
Freedom of information (FIPPA)	9
Chronic pain disability	8
Future economic loss (FEL)	8
Psychotraumatic disability	6
Permanent disability	5
Collections	5
CPP	4
Indexing of benefits	3
Commutation	3
Regional Evaluation Centre (REC)	3
Supplement	2
Investigation	2
Independent operator	2
Interest	2
Retirement	2
Serious and willful misconduct	1
Date of accident	1
Invoice for services	1
Legal action	1
New Experimental Experience Rating (NEER)	1
Functional ability	1
Not identified	45
Total	974

Complaints by sector July 1, 2004–March 31, 2005

Until June 30 2004, the Commission collected information by district office. On July 1 2004, it began collecting by sector.

* Excluding directors and administrative staff.

Sector	Size	Complaints		
		Mandate	Non-mandate	Total
WSIB	*Total staff			
Operations/Small Bus./Construction	244	42	29	71
Operations/Industry/Service	178	67	30	97
Operations/Industry/Manufacturing	169	84	28	112
Operations/ Spec Claims/ Spec Advisory Service	153	4	2	6
Operations/Industry/Schedule 2	152	66	22	88
Operations/ Specialized Claims/ Central Proc	147	-	1	1
Operations/Specialized Claims/Pre-1990	131	20	23	43
Operations/Small Bus/Toronto	116	17	16	33
Health Services/ODSB	115	18	14	32
Operations/ Industry/Automotive	111	29	18	47
Finance Corp Services/ Rev Audit	107	1	-	1
Operations/Appeals	89	25	5	30
Health Services/Clinical Services	76	2	0	2
Operations/Industry/Transportation	75	46	21	67
Operations/Industry/Health Care	73	23	14	37
Finance Corp Serv/Collections	66	6	1	7
Oper./ Spec Claims / Serious Injury Program	46	16	4	20
Operations/Industry/Forestry Pulp Paper	45	4	8	12
Operations/Industry/Process Chemicals Plastics	41	30	5	35
Corporate Executive/ Legal Services	38	1	-	1
Operations/Small Bus./Ottawa Kingston	32	7	1	8
Operations/Industry/Mining Aggregates	31	9	8	17
Operations/Small Bus./Hamilton St.Cath.	29	6	8	14
Oper./Industry/Municipal, Education, Elec.Utili	27	5	4	9
Operations/Industry/Food and Beverage	26	12	8	20
Health services/ Health services management	26	1	0	1
Operations/Small Bus./ Kitchener	23	2	3	5
Operations / Industrial Agricultural	22	4	5	9
Operations/Small Bus./ Sudbury, Timmins, NB	20	5	3	8
Operations/Small Bus./London	17	2	1	3
Operations/ Small Business/ THB/SSM	16	1	0	1
Operations/ Small Business/ Windsor	15	1	1	2
Health Services/ Professional Practice	13	-	1	1
Operations/Industry/Primary Metals	12	6	3	9
Policy and Research/ Benefits Policy	10	0	1	1
Policy & Research/ Revenue Policy	9	1	-	1
Corporate Executive/ Office of the President	4	1	0	1
Operations/ Admin Services	444	1	-	1
Not applicable to WSIB	N/A	-	6	6
Not determined	N/A	18	81	99
WSIAT	N/A	0	16	16

Sources of referrals

July 1, 2004 –
March 31, 2005

Referral source reported by complainant	Number referred
WSIB website	141
WSIB staff	130
Prior docket with Commission (new issue)	104
Office of the Worker Advisor	82
Ombudsman Ontario	70
Injured workers' rep or group	52
Commission website	37
Union	31
Commission communication materials	29
Friend or co-worker	28
WSIB publication	28
MPP	16
WSIAT	16
Ministry of Labour	9
Family member	4
Employer rep or group	4
Ontario Human Rights Commission	2
Other	65
Not identified	126
Total	974

Complaint resolution outcomes

Of the cases opened and closed by the Commission
Jan. 14, 2004–Mar, 31, 2005 84% were resolved as follows:

Advice provided to complainant; no further action required	47
Referrals to WSIB	
mandate	486
non-mandate	188
Inquiries made to WSIB	
action required by WSIB –complaint resolved	129
no action required	71
no current fairness issue identified	16
Systemic inquiries conducted by commissioner	14
Complainant contacted and file reviewed; no current fairness issue identified	20
Right of appeal exists (non-mandate)	136
Issue under WSIB appeal or review (non-mandate)	63
Complaint withdrawn	7

The other 16 per cent of complaints include those under WSIAT appeal, those not about WSIB, or those abandoned by complainant.

Budget

The Commission's charter provides that the WSIB board of directors approve the Commission's budget, with input from the WSIB chair and the commissioner.

The commissioner manages the budget and hires and manages Commission staff. To facilitate the office's management and its arm's-length relationship to WSIB operations and management, the commissioner is authorized to execute agreements with third parties on behalf of the Commission and pay expenses in connection with ongoing operations, provided the expenditures are within the budget and generally follow the principles of WSIB administrative policies.

	2004 budget	2004 expenses	2005 budget
Salaries - permanent	590,397	518,219	571,259
Salaries - temporary	140,800	103,385	154,000
Total salaries	731,197	621,604	725,259
Benefits	71,134	67,832	75,049
Total salaries & benefits	802,331	689,436	800,308
Equipment & maintenance	48,085	23,638	25,000
Voice & data Communications	29,672	25,562	36,000
Publication & mailing	37,707	14,748	36,000
Occupancy	68,049	68,049	–
Travel	126,695	36,170	90,600
Supplies & services	20,910	17,217	24,000
Staff training	20,000	8,113	20,900
Specialized services	–	171	35,000
Other operating expenses	62,000	524	60,200
Total non-salary expenses	413,118	194,192	327,700
Total operating expenses	1,215,449	883,628*	1,128,008

*** Notes:**

- The Commission is a new organization with phased-in operations in the first quarter of 2004.
- The Commission was not fully operational until April 5, 2004.
- The 2004 budget was based on projected costs only, since it was prepared before staff were hired and before the Commission was open to the public.

Fair Practices Commission

MISSION:

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.

CORE QUALITIES:

- **Independent:** the Commission is separate from, and independent of, WSIB's operations; the Commissioner reports directly to the Board of Directors through the Chair.
- **Impartial:** the Commission treats complainants and WSIB staff with respect and open mindedness.
- **Confidential:** the Commission protects private information it receives in accordance with the requirements of the Freedom of Information and Protection of Privacy Act (FIPPA) and the Workplace Safety and Insurance Act (WSIA). The Commission will maintain systems and records that are separate from those of WSIB.

CORE FUNCTIONS:

- Facilitate resolution of complaints about alleged unfair practices, behaviour, acts and omissions by the WSIB.
- Recommend appropriate remedies if a complaint is supported and report findings and recommended resolutions to the parties concerned.
- On the basis of investigations, make recommendations to improve administrative systems and procedures.

CRITERIA FOR EFFECTIVENESS:

- **Accessible:** well publicized and easily accessible for all people, including those with special needs.
- **Timely:** provides an impartial, speedy investigation of complainants' concerns and recommends appropriate remedies, if warranted.
- **Fair:** considers the interests and concerns of all parties involved in an investigation of a complaint.
- **Responsive:** recommendations are recognized as being reasonable, appropriate, and consistent.
- **Credible:** reinforces a commitment to administrative fairness among all levels of the WSIB.
- **Effective:** addresses individual complaints and uses the information collected through this process to improve overall service delivery.
- **Open and accountable:** through the Commission's Annual Report, complainants can judge for themselves whether the complaint system is working effectively. The WSIB Board of Directors can also determine the Commission's effectiveness via quarterly reports.

THE COMMISSION'S MANDATE:

The Commission CAN:

- Receive, investigate and make recommendations about current complaints of alleged WSIB unfair practices.
- Identify system-wide trends, policy matters, and systemic issues and recommend system-wide improvements to WSIB services.
- Issue reports on the Commission's activities.

The Commission CANNOT:

- Make decisions, change decisions or overturn decisions.
- Make, change, or set aside a law or policy.
- Advise on an issue under appeal or involving a right to appeal.
- Address human resources issues for the WSIB staff, including issues under the Collective Agreement.
- Investigate complaints about other organizations such as Workplace Safety and Insurance Appeals Tribunal (WSIAT), Office of the Worker Adviser (OWA) and Office of the Employer Adviser (OEA).

HOW THE COMMISSION MEETS ITS MANDATE:

The Commission:

- Facilitates early resolution of complaints.
- Exercises discretion about whether to investigate complaints based on considerations such as timeliness and merit.
- Has access to all relevant files, documents, and Board employees.
- Investigates systemic issues on its own initiative.
- Considers and comments on fairness of WSIB procedures, practices and policies.
- Manages its operating budget; recruits, hires and manages its staff.
- Safeguards all privacy matters under *Workplace Safety and Insurance Act* and *Freedom of Information and Protection of Privacy Act*. The Commission's processes must adhere to the 3 key principles of privacy protection re: limitations on collection, use, and disclosure of information.
- Provides quarterly reports to the WSIB Board of Directors summarizing activities and findings, including statistical information and trend analysis.
- Publishes a public annual report.

For further information check our Web site at: www.fairpractices.on.ca

Fair Practices Commission

1. Why was the Fair Practices Commission created?

Creation of the Fair Practices Commission supports the Workplace Safety & Insurance Board's (WSIB's) commitment to continuously improve service delivery.

2. Who can use the Commission?

Injured workers, employers, service providers, and WSIB staff who are injured workers can all use the Commission.

3. What CAN the Fair Practices Commission do?

The Fair Practices Commission can investigate current concerns about the fairness of services and practices at the WSIB. The Commission can:

- *facilitate resolution of individual complaints about unfair practices at the WSIB.*
- *identify system-wide issues and recommend improvements to WSIB services.*

4. What are the types of things the Commission CANNOT do?

The Fair Practices Commission cannot:

- *change WSIB decisions or help with your appeal.*
- *make, change, or set aside law or policy.*
- *investigate complaints about other organizations, such as the Workplace Safety and Insurance Appeals Tribunal (WSIAT), the Office of the Worker Adviser (OWA) or the Office of the Employer Adviser (OEA).*

5. How does the Fair Practices Commission resolve a concern?

- *we will help make sure your problem is understood by the WSIB, by clarifying your concerns and directing you to the right WSIB staff.*
- *we will assist you by providing information and making inquiries on your behalf.*
- *if we think there may be an unfair practice, we will investigate promptly and thoroughly.*

6. Is the information collected by the Commission confidential?

*The Commission protects private information it receives in accordance with the requirements of the **Freedom of Information and Protection of Privacy Act** and the **Workplace Safety and Insurance Act**. The Commission will maintain systems and records that are separate from those of the WSIB.*

7. What is the relationship between the WSIB and the Commission?

The Commission operates at arms length from the WSIB. The Commissioner and staff of the Commission are completely separate from the WSIB's day-to-day operations and the Fair Practices Commissioner reports directly to the WSIB Board of Directors.

8. Who is the Commissioner?

Laura Bradbury is the Fair Practices Commissioner.

9. Does the Commission take the place of Ombudsman Ontario?

No. Individuals who bring a concern to the Fair Practices Commission can still access the services of Ombudsman Ontario.

10. How can I contact the Fair Practices Commission?

We're easy to reach. You can contact us by telephone, fax or by mail:

Phone: (416) 603-3010
Toll-free: 1-866-258-4383
TTY: (416) 603-3022
TTY Toll-free: 1-866-680-7035
Fax: (416) 603-3021

Fair Practices Commission
123 Front Street West
Toronto, Ontario
M5J 2M2

For further information check our Web site at: www.fairpractices.on.ca

Complaint Guide

Before contacting us, we encourage you to try to resolve your complaint with the WSIB. If something has been overlooked or misunderstood, the problem might be quickly and easily resolved.

Step 1. Phone or write to the WSIB staff person you were dealing with when the problem arose

- Have your claim, firm or provider number handy.
- Explain what happened, what you think is unfair, and what you think should be done to fix the problem.
- Make notes of the conversation - who you spoke to, on which date and any agreed upon action.
- Call back if you have not heard from the person by the expected date.

Step 2. Contact the Manager

- If you do not get satisfaction from the staff person you contacted, ask for the manager's name and write or phone that person with your complaint.

Step 3. Contact the Fair Practices Commission

The Commission can look into alleged unfair practices by the WSIB. However, we cannot advise you on an issue under appeal or involving a right of appeal. Before writing or calling, try to make an outline of your current concerns.

- What is it you would like the Commission to look into? A delay? A person's behaviour? Communication? An action or inaction? A practice? A policy?
- Tell us WHAT happened. WHO was involved. WHEN it happened. (Note: The Commission can only look into recent potentially unfair practices.)
- Explain how would you like your concern dealt with
- List what steps you took to try to resolve the problem – remember to tell us the name and title of WSIB staff you dealt with
- If you are represented, tell us the representative's name and telephone number and whether your representative can speak to us on your behalf.
- Let us know the best day and time to reach you

Submit complaint by mail or fax:

123 Front St. W
Toronto, ON M5J 2M2
Fax 416-603-3021



Office Use Only
Docket Reference #: _____

Are you an: <input type="checkbox"/> Injured Worker		Claim #
<input type="checkbox"/> Employer		Firm #
<input type="checkbox"/> Service Provider		Provider #
Name		Phone:
Address		
May we look at your WSIB file? <input type="checkbox"/> Yes <input type="checkbox"/> No		
May we speak to WSIB staff about your concern? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If you are represented, what is representative's name?		
Address		
Phone	Fax	
May we speak to your representative? <input type="checkbox"/> Yes <input type="checkbox"/> No		
1. What would you like us to look into? <input type="checkbox"/> Delay <input type="checkbox"/> Action/Inaction <input type="checkbox"/> Behaviour <input type="checkbox"/> Communication <input type="checkbox"/> Practice <input type="checkbox"/> Policy <input type="checkbox"/> Other		
2. Why do you believe you have been treated unfairly? How recent is the problem? (See attached Complaint Guide) You may use additional paper		
3. What outcome or result are you hoping for?		
4. What steps have you taken to try to resolve the issue?		
5. Is this issue under active appeal? <input type="checkbox"/> No <input type="checkbox"/> Yes If Yes, what is the decision date? Year: _____ Month: _____ Day: _____		
Signature		Date

Mail or fax this complaint form to the Fair Practices Commission:
 123 Front St. W
 Toronto, ON M5J 2M2
 Fax 416-603-3021
 Toll-free fax 1-866-545-5357

Administrative Fairness Checklist for Decision-Makers

1. Prior to Decision Being Made

Fairness Standard: The individual affected is aware of:	When Advised?	By Whom	How?
the fact that a decision will be made			
why a decision is necessary			
how the decision will affect him/her			
the information that will be considered and any specific criteria to be used in making the decision			
the current rules that will be used in arriving at a decision			
Has the individual who is affected by the decision been provided with:	How was the opportunity provided, e.g. meeting, written submission?	Who provided the opportunity?	When was the opportunity provided?
the opportunity to present his/her point of view on the matter			
the opportunity to respond to the information presented by others which will be considered by the decision-maker			

2. While the Decision is Being Made

Question	Yes	If "no" why?
Has an adequate & proper review of all relevant information been conducted, i.e., have all important facts been obtained, documented and considered before the decision is made?		
Has the decision been reached objectively, with due respect for relevant facts, and without bias?		
Has accommodation been made for new and/or changed circumstances during a period of delay or while the decision is being made?		
Has care been taken to require and use only that information which is relevant to the decision?		
Has the decision been made in a manner which is consistent with previous decisions on similar matters, by relying on existing policies, guidelines, procedures and rules?		
If discretion is exercised, can any inconsistency with previous decisions on similar matters be justified and explained?		

3. After the Decision Has been Made

Question	Yes	If "no", why?
Have adequate reasons been provided to explain how and why the decision was made?		
Has the decision been written in plain language?		
Has the decision been provided to anyone personally affected?		
Has a proper record of the process used been kept and will it be kept on file for a reasonable period of time?		

**THE BOARD OF DIRECTORS OF THE WORKPLACE SAFETY AND INSURANCE BOARD (THE “BOD”)
AND THE FAIR PRACTICES COMMISSION (THE “FPC”)**

Charter Document

Background

The Board of Directors, by resolution dated December 5, 2002 (Minute # 5, Page 6474), created the Fair Practices Commission to function as an organizational Ombudsman’s office to address issues of service delivery raised by workers, employers and external service providers.

In accordance with Minute # 5 the BOD now wishes to establish the key features of the FPC and to set out the authority required for the FPC to meet its mandate and perform its responsibilities.

Therefore, the BOD resolves as follows:

A. Fair Practices Commission

1. Establishment and Status of FPC

- a) The BOD confirms the establishment of the FPC to function as an organizational Ombudsman’s office addressing issues of service delivery raised by workers, employers and external service providers.
- b) The FPC is to operate impartially and at arm’s-length from the management and line operations of the WSIB.
- c) The FPC shall be headed by the Fair Practices Commissioner. The Commissioner shall report directly to the BOD through the Chair.
- d) The conduct of the FPC shall reflect the WSIB’s principles of high quality services to the public, fairness, equity, openness and transparency.

2. Appointment and Qualifications of the Fair Practices Commissioner

- a) The Commissioner is required to be a person of recognized knowledge, judgment, objectivity and integrity with demonstrated skills in problem solving and dispute resolution.
- b) The appointment and termination of the Commissioner is the joint responsibility of the WSIB Chair and BOD. The Commissioner may only be removed from office for “just cause” or on mutual consent of the Commissioner and the BOD.
Just cause does not arise in the case of disagreement over a recommendation or report made by the Commissioner with respect to a complaint or other type of investigation falling within his or her mandate.
- c) The Commissioner is an employee of the WSIB and his or her terms and conditions of employment are consistent in the WSIB’s usual human resources practices.

B. Features of the Fair Practices Commission

1. Role and Mandate

- a) The FPC has the mandate to:
 - Receive, investigate and resolve complaints about alleged acts, omissions and unfair practices by the WSIB.
 - Identify complaint trends, policy matters and systemic issues and make recommendations for improvements to the BOD.
- b) The Fair Practices Commissioner can act on his or her own initiative to identify and make recommendations about systemic service delivery issues within the WSIB.
- c) The Commissioner has the discretion not to accept a complaint based on considerations such as the merits or the timeliness of a complaint, and on a determination of whether a complaint falls within the mandate of the FPC. Generally, the FPC will accept current complaints; that is, complaints with current implications in terms of fair practices.
- d) The Commissioner will issue quarterly reports to the BOD on the FPC's activities, findings, statistics and systemic issues. The Commissioner will provide the information to the President and Chiefs as required.
- e) The Commissioner will issue a public annual report.

2. Authority

- a) Complaints:

Complaints may be made to the FPC verbally or in writing by:

- a worker
- a deceased worker's dependant
- an employer
- an external service provider
- the representative of a worker, employer or service provider, with consent of the complainant.
- employees of WSIB who are injured workers.

In seeking to resolve complaints, the FPC has the authority to:

- Gather relevant information from WSIB staff and obtain access to all relevant WSIB documents.
- Conduct an investigation to determine whether or not a claim of unfairness is supported.
- Develop, evaluate and discuss options available to affected individuals.
- Facilitate, negotiate and mediate solutions.
- Report the findings of investigations to all parties concerned.
- Make recommendations for the resolution of a complaint or systemic problem to the person or body who has the authority to act.
- Identify complaint patterns and trends.

- Track statistical information relating to the number and nature of complaints received, the nature of resolutions reached and the time taken to resolve the complaints.
- Raise systemic issues with the BOD for their review.

b) Practices and Procedures:

The Commission is authorized to:

- i) establish its own written practices and procedures for investigating and resolving complaints that:
 - ensure a fair, effective and timely process to respond to complaints;
 - are in keeping with the principles of natural justice and procedural fairness, and
 - are consistent with the provisions of the Workplace Safety and Insurance Act and other applicable legislation including the Freedom of Information and Protection of Privacy Act (FIPPA).
- ii) employ procedures designed to resolve a complaint or problem at the most appropriate level of the WSIB. Generally, the Commission will first seek a remedy from the appropriate line staff or manager, then the Director, then the Vice President or Chief Operations Officer. If no resolution is provided at these levels, the Commission has the authority to raise the issue with the President if necessary to obtain a resolution.
- iii) communicate the practices and procedures broadly to the external communities and to WSIB staff, so they have a clear understanding of the services they can expect to receive from the FPC.

3. Limits on Authority

The FPC does not have the authority to:

- make or change decisions or determine rights under the *Workplace Safety and Insurance Act*;
- make, change or set aside a law or policy;

investigate any matter involving a right of appeal under the *Workplace Safety and Insurance Act*;

- address any issues having to do with human resources, including issues arising under a Collective Agreement (this does not limit the FPC's authority to investigate complaints by WSIB employees made in their capacity as injured workers);
- investigate complaints dealing with the actions of any organization other than WSIB, including the Workplace Safety and Insurance Appeals Tribunal (WSIAT), Office of the Worker Adviser (OWA) and Office of the Employer Adviser (OEA).

C. Independence, Impartiality and Confidentiality

1. Independence

The FPC is free from interference in the legitimate performance of its duties as identified under the “Role and Mandate” above.

The Commissioner and staff of the FPC are not part of the line management or operations of the WSIB. The Commissioner reports directly to the BOD through the Chair.

2. Impartiality

The FPC will conduct investigations and make recommendations in an impartial manner, free from bias and real or apparent conflicts of interest. The FPC will treat all parties to a complaint with respect and open-mindedness.

3. Confidentiality

The FPC will ensure that all privacy matters applicable under the *Workplace Safety and Insurance Act* and *Freedom of Information and Protection of Privacy Act* (FIPPA) are fully safeguarded. The FPC will operate consistently with any guidelines established by the WSIB Privacy Office and will consult on privacy issues with that office, and with WSIB General Counsel, as necessary.

The FPC will maintain systems and records separate from the WSIB.

D. Operational Issues

1. Budget

The BOD approves the budget of the FPC, with input from the WSIB Chair and the Fair Practices Commissioner.

The Commissioner will manage the FPC’s operating budget and will hire and manage the staff of the FPC. To facilitate the office’s management and its arm’s-length relation to operating areas and management of the WSIB, the Commissioner is authorized to execute agreements with third parties on behalf of the WSIB/FPC and pay expenses in connection with the ongoing operations of the FPC, provided that the expenditures are within the approved budget of the FPC and generally follow the principles of WSIB administrative policies.

2. Office

The FPC offices will be located separate from the WSIB head office to ensure the arm’s-length relationship between WSIB operations and the FPC.

The start-up staff of the FPC will include:

- Commissioner
- 3 Fair Practices Specialists
- 2 Intake staff, 1 of whom is bilingual
- 1 Administrative Assistant

In addition, the FPC may maintain a roster of part-time Specialists, available on an as-needed basis, to assist with fluctuating workloads and vacations of full-time staff.

One specialist will be located in Thunder Bay to ensure accessibility to FPC's services in the northern part of the province.

3. Communications

The Commissioner is responsible for promoting the services of the FPC and educating WSIB staff and the external communities about the FPC. To this end, the Commissioner will:

- Develop and maintain FPC's own web site, with links to the WSIB web site.
- Develop and distribute pamphlets, posters and other appropriate materials.
- Conduct information sessions throughout the province for WSIB staff and potential users of the FPC.
- Work with the WSIB Communications Division in developing appropriate information about the FPC for WSIB staff.

4. Code of Fairness

The FPC will assist WSIB in developing a Code of Administrative Fairness.

E. Review of FPC

The BOD will retain an independent qualified professional to conduct an independent review of the operation of the FPC by year-end 2005. The review will address whether the FPC is effectively and efficiently carrying out its role and meeting its mandate as set out in this Charter.