

FAIR PRACTICES COMMISSION

2009 ANNUAL REPORT



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

Également disponible en français

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FAIR PRACTICES COMMISSION

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.



CONTENTS

From the Commissioner1

An Independent Office2

The Resolution Process3

Systemic Issues5

Individual Issues9

Education.....17

Outreach.....17

Budget18

The Acronyms

CanLII	Canadian Legal Information Institute
FPC	Fair Practices Commission
LOE	Loss of Earnings
NEL	Non-Economic Loss
ODSD	Occupational Disease Services Division
REC	Regional Evaluation Centre
SSM	Sault Ste. Marie
WSIAT	Workplace Safety and Insurance Appeals Tribunal
WSIB	Workplace Safety and Insurance Board

FROM THE COMMISSIONER

This past year marked the 200th anniversary of the Swedish Ombudsman, the first public sector Ombudsman in the western world. The Swedish model of administrative oversight of government organizations has set high standards: people can complain without fear of reprisal; they can expect timely, effective complaint resolution; and they know that recurring problems can be addressed.

When the Workplace Safety and Insurance Board (WSIB) established the Fair Practices Commission six years ago, they were following the Swedish Ombudsman model by declaring that fairness and better service were to be primary concerns.

Each year since then, the WSIB has worked with the Commission to overcome challenges and take significant steps toward improvement.

This year we have seen, once again, the commitment of WSIB front-line staff and managers to improving service to workers and employers. We must also give credit to the injured workers and the employers who come forward with concerns. They act as agents of change by helping to highlight areas that need improvement or have broader significance for all other workers and employers in the system.

At the Commission, we implemented our new case management system in June. It allows us to capture individual issues within complaints so that we can report more accurately on overall trends.

Finally, I want to thank our Commission staff for their professionalism and commitment. They are essential to our effective complaint resolution as Ombudsman for the WSIB. I appreciate their ongoing dedication.



Laura Bradbury
Commissioner

AN INDEPENDENT OFFICE

The Fair Practices Commission is an independent office working to promote and ensure fair practices in the workplace safety and insurance system in Ontario.

As Ombudsman for the Workplace Safety and Insurance Board (WSIB), we have three main goals:

- to listen to the concerns that injured workers, employers, and service providers bring to us
- to resolve fairness issues quickly
- to identify recurring trends and system-wide issues and report them to the WSIB with recommendations for improvements.

Three main principles guide our work:

Impartiality

The Commission does not take sides in complaints but we do advocate for fair processes.

Confidentiality

We treat all inquiries as confidential unless we receive specific consent to discuss or disclose information.

Independence

We have an arm's-length relationship with the WSIB so that we can help, and be seen to help, injured workers, employers and their representatives. It is a sign of the Commission's independence that the commissioner reports directly to the board of directors, the governing body of the WSIB.

THE RESOLUTION PROCESS

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

We encourage every caller first to discuss their issues with the WSIB staff person most directly responsible.

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

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

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

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

We call or write the caller with the results.

“ It’s a great service you offer. ”

—injured worker



SYSTEMIC ISSUES

Improving the System Helps Everyone

The Fair Practices Commission helps prevent recurring problems by identifying the broader issues and then working with the WSIB to make systemic changes.

Commission staff always look at each case to see if an individual matter has broader significance. As well, representatives of workers and employers may identify issues that have system-wide implications.

As a result of the Commission's work, the WSIB may make changes that affect hundreds of workers and employers.

Here are some of the systemic issues the Commission addressed in 2009.

Publishing Appeals Resolution Officer decisions

In response to a suggestion from the commissioner, the WSIB's Appeals Branch started to publish some of its decisions on the Canadian Legal Information Institute's (CanLII) website in September. This important step will promote the transparency and accessibility of the decision-making and appeal processes. Notice of the publication and information on how to access the decisions are posted on the WSIB's website.

The Appeals Branch plans to post about 200 anonymized decisions each year. The decisions selected will include a variety of appeal issues.

Explaining third party actions

If someone other than an employer or co-worker is responsible for a workplace injury, the injured worker must decide whether to claim benefits under the Workplace Safety and Insurance Act or to sue the non-workplace party (third party). This process, called an "election," is set out in section 30 of the Act.

The Commission raised concerns about how the WSIB informs workers of the election process, identifies potential third party actions, and sends out election forms. In response, the WSIB Legal Division agreed to develop information for the WSIB website. A section under "Third Party Actions" was posted in September. It explains clearly and concisely who can sue, how to make an election, and what the process is.

Reducing NEL backlog

The Commission met with WSIB senior staff throughout 2009 about a backlog in non-economic loss (NEL) assessments that resulted from file reviews conducted under the new service delivery model.

The WSIB has taken a number of steps, including:

- re-educating service delivery teams to ensure claims sent to NEL are ready to be rated
- screening and streaming incoming cases to improve opportunities to rate cases based on information in the claim file
- giving priority to potential serious injury and financial hardship cases
- hiring three new NEL specialists
- training staff at new and expanded Regional Evaluation Centre (REC) facilities to improve the timeliness and quality of assessment reports.

By year end, the backlog was reduced by 25 per cent.

The Commission and the WSIB will continue to meet every three months to monitor the progress.

Re-establishing Quality Loop

In August, the WSIB chief operating officer and the director of the Legal Division agreed, at the Commissioner's request, to re-establish the division's Quality Loop review to identify trends and developing issues in Workplace Safety and Insurance Appeals Tribunal (WSIAT) decisions.

Members of the Quality Loop include a senior counsel in WSIB's Legal Division, the executive director of the Appeals Branch and the WSIAT's general counsel. They held their first meeting in December.

Changing WSIB practice

The representative of a large employer contacted the Commission with concerns that WSIB decision-makers were following a long-established WSIB practice rather than recent WSIAT decisions on the appropriate interpretation of section 43 of the Workplace Safety and Insurance Act.

The commissioner reviewed the employer's concerns with the WSIB chief operating officer. As a result, the WSIB adopted a new practice that accords with WSIAT's interpretation of section 43 in cases where retired workers are diagnosed with long-latency occupational diseases but do not have an

actual earnings loss. The change is set out in WSIB's Occupational Disease and Survivor Benefits Program Practice Guideline, issued in January 2010.

Addressing delays in psychological consultations

The Commission identified a backlog in the psychological consultation process that was caused by staff reductions.

The vice-president of Health Services reviewed the issue and recommended additional staff. In addition, the vice-president of service delivery developed referral processes for operations staff to ensure psychological consultation referrals were appropriate.

The Commission continues to monitor the effect of the changes on the backlog.

Giving notice of prescription expiry

When payment for some medications is approved, the WSIB sends a notice letter to the worker about the prescription review and renewal process. However, workers may receive the letter a year or two before the prescription expires. They may lose the letter or forget the deadline for the review process. The result is that the workers are upset and surprised when medications are terminated.

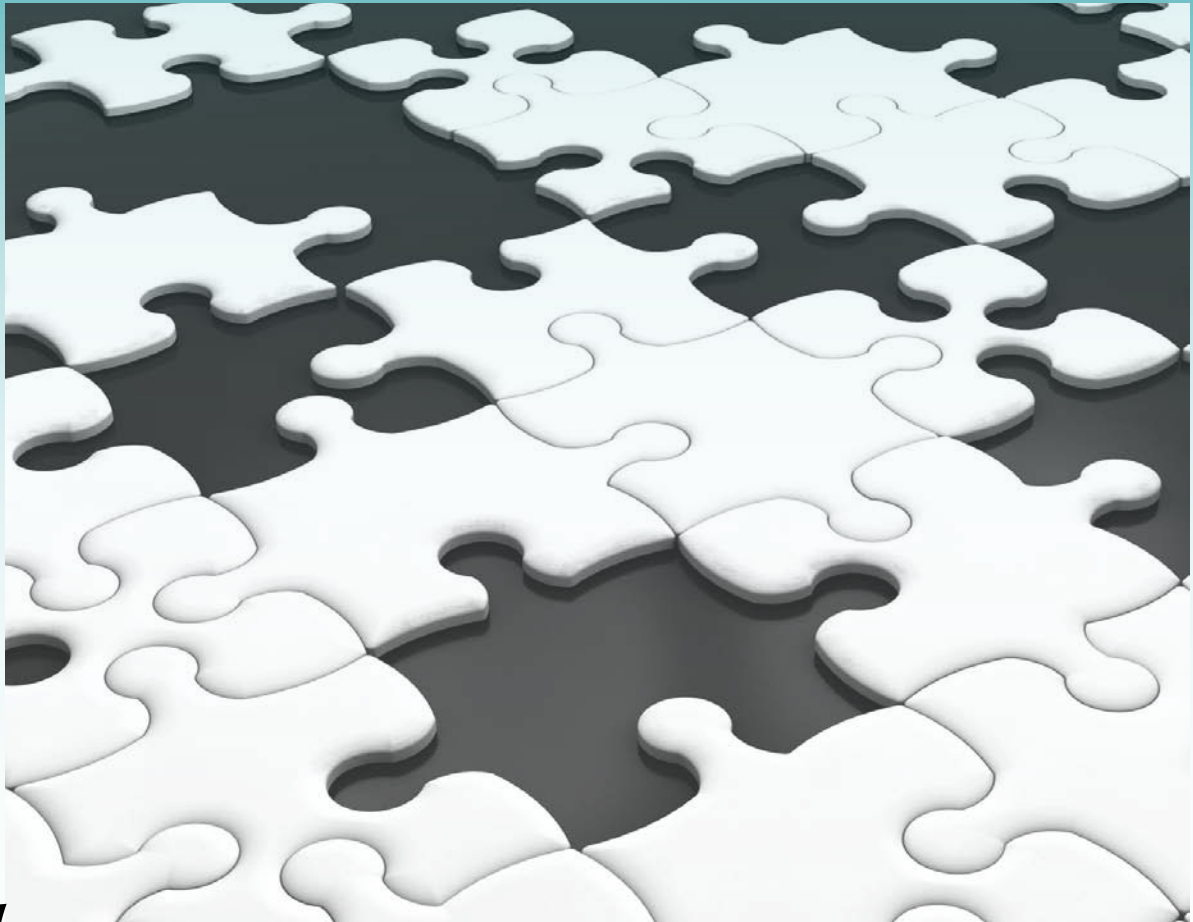
The Commission raised the issue with the Operations Planning and Implementation Division. As a result, the WSIB is now sending a second letter to workers two months prior to a prescription's expiration.

Continuing to improve occupational disease process

In 2006 the commissioner began to investigate the decision-making processes in occupational disease cases, as some claims were taking longer than six months to adjudicate. The WSIB accepted the commissioner's 10 recommendations and made major changes to its decision-making processes, resulting in a dramatic decline in complaints. The Commission received 75 per cent fewer complaints in 2009 than in 2008.

In 2009, the Occupational Disease Services Division (ODSD) implemented a new customized service delivery model. The vice-president and director have instituted a number of steps to reduce the overall decision-making timeline, with a focus on early intervention in complex cases.

The commissioner continues to meet every three months with the vice-president and director of the ODSD to review the status of changes and any recent complaints.



“ This accomplishment would not have happened without the Commission’s involvement. ”

— employer’s representative

“ I want to let you know that had it not been for your help, I would still be very discouraged and upset about this whole situation. So the point of this letter is that employees such as A are a benefit to any office. Her professionalism, her compassion and her understanding of the situation helped in my receiving benefits. ”

—letter from injured worker

INDIVIDUAL ISSUES

Effective complaint resolution remains the core of the Commission's work, and it provides real value to the workers, employers, and providers the Commission serves. The Commission's experience is that WSIB staff act quickly and effectively to resolve individual complaints.

Keeping Track

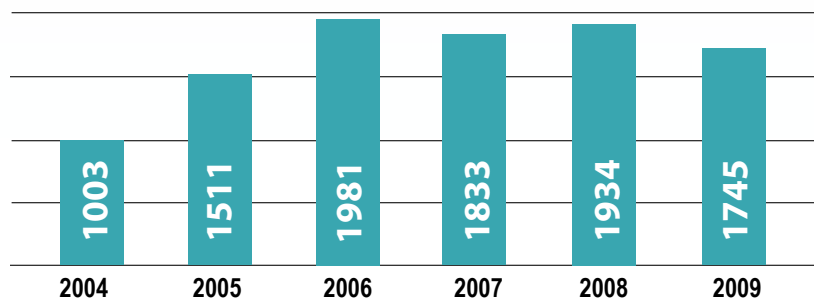
Injured workers, employers, and service providers contact the Commission with a wide variety of concerns and issues. For the first time, we can track this information in more detail.

In June 2009, the Commission instituted its new case management system, which captures information about individual issues within complaints. For example, a caller may complain about one issue of a delay in returning phone calls and a second issue of delay in mailing a decision. In the previous system, we could only track one issue per complaint. Since June, we have been tracking all the issues in each complaint.

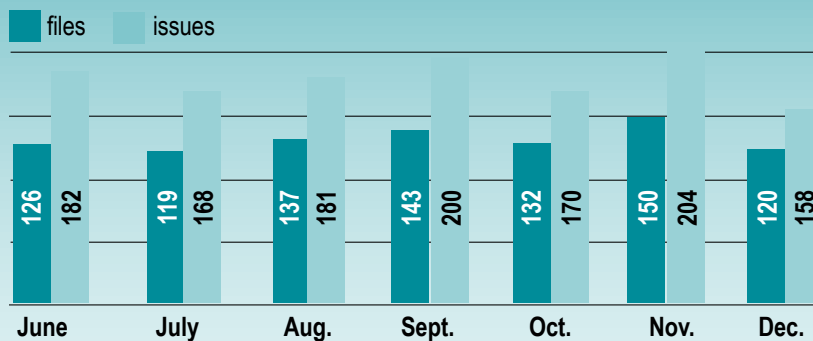
The Commission opened 1,745 files in 2009. Since June we have noted that there are an average of 1.3 issues per file.

This change in how we count means we are not able to make many comparisons between 2009 and 2008. However, we do know that in 2009 there was a slight decrease in the number of files we opened.

Six-year summary of files opened



Files and issues from June to December 2009



Common concerns

Complaints about benefits and health care constituted the greatest number of calls.

Top 10 ranking of complaints by subject in 2009

1. benefits
2. health care
3. return-to-work
4. labour market re-entry
5. appeals process
6. non-economic loss
7. employer assessment issues
8. expenses
9. permanent disability
10. loss-of-earning (LOE) 72-month review

One of the most common concerns the Commission hears from injured workers and employers is that the WSIB has taken too long to make a decision, send a written decision, or respond to calls or letters. Complaints about delays accounted for 39 per cent of all incoming calls.

The three top areas for delay in 2009 were:

- return phone calls
- adjudication
- written entitlement decisions.

Complaint resolution outcomes

Of the cases (files and issues) opened and closed by the Commission in 2009, 93 per cent were resolved as follows:

Outcome	2009
Advice provided to complainant	316
Referral to WSIB	
mandate	769
non-mandate	140
Inquiries made by FPC (including systemic issues)	
WSIB action required—complaint resolved	232
no WSIB action required	83
File reviewed—no WSIB action required	55
No current fairness issue identified	15
Right of appeal exists (non-mandate)	273
Issue under WSIB review	33
Issue under WSIB appeal (non-mandate)	7
Total	1,923

The remaining seven per cent include:

Outcome	2009
Abandoned by complainant	18
Complaints against WSIAT (non-mandate)	13
Complaints against another organization (non-mandate)	318
Other non-mandate complaints	24

Issues received by sector, June 1 to December 31, 2009

WSIB sector	Issues rec'd	Issues Closed *Specialists' inquiries			
		Mandate	*	Non-mandate	Total
Specialized Claims/Pre-1990	131	96	(30)	35	131
Industrial (Toronto)	128	101	(29)	27	128
Hamilton/St. Catharines/Primary Metals	127	87	(19)	37	124
Toronto/Services/Health Care	115	78	(31)	35	113
Kitchener/Guelph/Agriculture	103	61	(10)	42	103
Construction/Transportation (Toronto)	78	64	(10)	14	78
Government Services (Toronto)	67	46	(10)	21	67
Sudbury/North Bay/Timmins/Mining	59	39	(8)	20	59
Ottawa/Kingston	58	35	(8)	23	58
Specialized Claims/Eligibility Unit	47	28	(5)	19	47
Windsor	43	27	(6)	16	43
London	38	25	(3)	13	38
Occupational Disease Survivors Benefits	32	22	(1)	10	32
Appeals	27	19	(4)	6	25
Spec. Claims/Non-economic loss	22	16	(5)	6	22
Spec Claims/Serious Injury Program	17	11	(4)	5	16
Thunder Bay/SSM/Forestry/Pulp/Paper	16	11	(3)	4	15
Revenue/Employer Services Centre	11	9	(1)	2	11
Finance/Employer Audit	7	3	(1)	2	5
Spec Claims/Business Services	6	6	(1)	–	6
Finance/Collections	4	2	–	2	4
Prevention/Prevention Stds	4	3	(1)	1	4
Corporate Executive/Legal Services	3	1	(1)	2	3
Spec Claims/Central Claims Processing	3	3	–	–	3
Spec. Claims/Pre-1990 (Serious Injury Program)	3	2	–	1	3
Health Services/ Health Services Mgmt	2	2	–	–	2
Regulatory Services/Compliance	2	1	–	1	2
Corporate Executive/Office of the President	1	1	(1)	–	1
Health Services/Clinical Services	1	1	(1)	–	1
Finance/Treasury	1	1	(1)	–	1
Policy & Research/Revenue Policy	1	1	(1)	–	1
Not applicable to WSIB	19	–	–	19	19
Not determined	74	12	(1)	62	74
WSIAT	7	–	–	7	7
Total	1263	814	(196)	438	1252

Some Individual Solutions in 2009

Addressing delayed decisions

Resolving an issue for one individual often causes WSIB staff, on their own initiative, to make changes to how they, or their team, handle similar cases.

A worker complained about a lack of communication and a four-month delay in initial adjudication of his claim.

When the Commission inquired into the reason for the delay, the WSIB manager said that case managers have the option of changing the pending status of a claim to “resolved” once they have given the decision verbally to the worker. The effect is that managers may be unaware of delays by their staff in releasing written decisions and thus cannot provide effective oversight.

The manager invited the worker in this case to call her to discuss the acknowledged service gaps. In view of the imminent implementation of the new service delivery model in the office, she also initiated a review of every claim that was six months old or older so that she would know the status of all pending decisions and could resolve any identified gaps.

Director resolves information gap

The Commission may be able to help untangle interwoven issues so that a worker’s main concern is addressed.

A worker contacted the Commission with concerns that the WSIB was ignoring the advice of his treatment provider and that his calls to the WSIB were not being returned. The worker advised the Commission that his medical condition was not resolving and he now had psychological problems.

The Commission contacted the sector director. After reviewing the claim, the director agreed there appeared to be a gap in the information needed to determine the best management of the claim. He arranged for the medical consultant to speak with the worker’s family physician. As a result of that discussion, the proposed return-to-work program was cancelled and the worker’s physiotherapy was reinstated for six to 12 weeks with a follow-up review by the family physician. Further psychological treatment for the worker was authorized and a report was requested from the worker’s treating psychologist to determine whether his condition was related to the work injury. The director also decided to transfer the claim to another adjudication team. The director himself called the worker to outline these changes.

Reducing red tape

Sometimes callers tell the Commission they feel “bounced around” in the system or face bureaucratic gridlock. The Commission can help ensure process matters are addressed quickly.

At an appeal hearing a worker’s representative submitted new information so that the WSIB could adjudicate an incident. The Appeals Branch referred the information to the case manager.

When the case manager received the information, he told the representative he could not make a decision on the case and that the representative would have to appeal the matter to WSIAT. The representative thought this was inappropriate as he did not have a final WSIB decision on the incident.

Commission staff discussed the matter with the assistant director, who agreed that the incident required separate adjudication and a decision.

The representative was pleased with the result and left the following message for the Commission: “Thanks very much for your efforts on this file. It’s much appreciated as there was certainly some sort of bureaucratic gridlock. The outcome validates the important role of the Commission.”

Considering new information in the decision-making process

Some callers tell the Commission that they cannot move forward in the decision-making or appeal process because new evidence they provide is not reviewed or they have not received a reconsideration decision.

A worker contacted the Commission with concerns about the fairness of the reconsideration process in his claim. The worker had provided new information that his case manager did not take into account in the reconsideration decision. In particular, the decision failed to include an analysis of his specialist’s opinion on causation, an ergonomic opinion, and medical literature references.

The Commission contacted the manager, who reviewed the WSIB’s adjudicative advice document on disablement claims and decided to refer the file to a WSIB medical consultant. The worker then received a fully reasoned decision that included an analysis of the new evidence.

Unintended effect of change in the process

When the WSIB changes its processes, there may be unintended consequences that affect injured workers.

A worker who had been prescribed opioid medications for some time felt unfairly treated when the WSIB put into place a new practice requiring that one physician prescribe all opioids. In the worker's community, the only medical care was through the local hospital's family practice clinic. The clinic had all the records, but care was provided by whichever physician was on duty. The WSIB said the worker's medication could not be paid without one consistent prescribing physician, and the clinic said the worker could not have a dedicated physician.

The worker raised his concerns to the Commission and the WSIB undertook to fix the problem. However, a month later the worker called the Commission when he received a letter from the WSIB nurse consultant telling him his opioid medication had to be prescribed by one physician only. The Commission contacted the WSIB manager who referred the file to a medical consultant to confirm the medications were a reasonable treatment for the injured worker's condition. They then made an exception to their new practice for this worker.

Protecting privacy

A general WSIB practice may have consequences for workers in smaller communities. In this case, privacy issues arose from the WSIB's transportation practices.

A worker's representative from a small rural community contacted the Commission. The representative was concerned that a WSIB taxi authorization form sent to a local taxi company identified her client as an injured worker. The representative thought the taxi company did not need to know the client was an injured worker and that the WSIB may have breached the worker's privacy by providing that information.

The Commission referred the representative to the WSIB Privacy Office and suggested she put her concerns in writing and include a copy of her letter to the Commission.

The representative contacted the Commission a few weeks later to say that following a telephone call from a WSIB Privacy Officer, she received a letter from a manager in the Business Services Division. The manager told the representative that, as a result of reviewing this issue, the system-generated taxi authorization forms will be revised to remove the references to "injured worker" and "Claim #". The representative was pleased that

the matter was addressed quickly and that other injured workers will benefit from the change.

“Thank you for your patience and for guiding me in the right direction.”

—injured worker

“I really did appreciate the efforts of your office in coordination and conjunction with the assistant director. It is a very positive outcome.”

—worker’s representative

“You’re the only one who seems to care or call me back. I can’t thank you enough.”

—injured worker

EDUCATION

Education and training continues to be an important part of the Commission's work. In 2009 the Commission provided six fairness sessions for new decision-makers across the province and two sessions for new telephone inquiry staff in Toronto.

For the first time, the Commission provided sessions for Revenue Division staff including two sessions for new desk and field auditors and account specialists. The Commission also met with the director of the Collections Branch.

OUTREACH

The Commission maintained an active outreach program in 2009, meeting with a variety of groups:

- Office of the Employer Adviser managers and staff
- Legal Clinics' Workers' Compensation Network training program: new legal workers
- Injured Worker Outreach Services group in Kitchener
- Office of the Worker Adviser staff and managers
- WSIAT front-line legal workers
- Provincial Workers' Compensation Network of the Legal Clinic Association
- Ontario Bar Association's Administrative Law Section on Ombudsman Models of Fairness.

Newsletter

Our fall newsletter was mailed in November to 1,800 stakeholders. Another 1,700 copies were sent to the Ontario Federation of Labour for distribution to their workers' compensation representatives.

BUDGET

	2010 Budget	2009 Actual	2009 Budget
Salaries, permanent	649,368	636,122	644,046
Salaries, temporary	130,559	93,902	139,780
Total salaries	779,927	730,024	783,826
Benefits	89,046	84,262	87,079
Total salaries & benefits	868,973	814,266	870,905
Equipment & maintenance	38,000	22,301	44,384
Voice & data communications	36,000	26,184	36,000
Publication & mailing	30,000	8,916	30,200
Occupancy cost	3,600	-	6,600
Travel	75,400	30,438	75,400
Supplies & services	48,000	26,766	47,600
Staff training	27,000	6,920	26,000
Specialized services	-	-	-
Other operating expenses	30,600	1,245	30,100
Depreciation & amortization		37,197	
Total non-salary expenses	288,600	159,967	296,284
Total operating expenses	1,157,573	974,253	1,167,189
Total capital expenditure	-	20,000	20,000