



10
YEARS

ANNUAL REPORT 2013

FAIR PRACTICES COMMISSION

FPC
CPÉ

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

Également disponible en français

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

www.fairpractices.on.ca

Phone

416-603-3010

866-258-4383

TTY

416-603-3022

866-680-2035

Fax

416-603-3021

866-545-5357

A graphic in the top right corner featuring the number '10' in a large, outlined font above the word 'YEARS' in a smaller, teal, sans-serif font. The entire graphic is enclosed in a white border with a slight drop shadow.

From the Commissioner

The Fair Practices Commission has served as the ombudsman for the Workplace Safety and Insurance Board of Ontario for 10 years. During this time we've received almost 20,000 complaints, made close to 3,000 inquiries and raised more than 2,000 issues that the WSIB needed to remedy.

More important than the numbers is what we've accomplished in collaboration with the WSIB. These achievements include changes to how occupational disease claims are administered, improvements to the loss-of-earnings review process, the publishing of appeal resolution officer decisions and the implementation of direct deposit for benefit payments.

The type of fairness issues coming to the Commission has changed over the decade, with complaints about delays decreasing but complaints about the decision-making process increasing. At first, delays accounted for 36 per cent of all issues. By 2013 that was down to 31 per cent. Decision-making process accounted for more than one fifth of issues received in 2013, about double what we received in 2004. Although the WSIB has made significant strides in reducing delays in returning phone calls, for example, how decisions are made and communicated remains a concern for many workers.

The Commission received fewer complaints this year than last, but at the same time almost three quarters of those were issues we could help with, the most since 2004. The Commission has been highly effective in communicating with the WSIB to resolve fairness issues. That success continued in 2013. Almost four of every five inquiries we made needed the WSIB to take some action to resolve it, a sign of the WSIB's continuing commitment to improving its service delivery.

In the past decade we've been able to facilitate significant changes in processes at the WSIB, thus contributing to the fairness of the system for workers, employers and service providers. This record of achievement is largely a result of the dedication and professionalism of the Commission staff. I want to thank them for their continued support, enthusiasm and commitment to working for fairness at the WSIB.

— Tom Irvine, Commissioner

Contents

From the Commissioner	3
Ten Years of Working for Fairness.....	5
An Independent Office	9
Value of the Commission's Work	10
Systemic Issues	11
The Resolution Process	14
Individual Resolutions	15
Outreach	25
Financials.....	25
Complaints by the Numbers.....	26



Ten Years of Working for Fairness

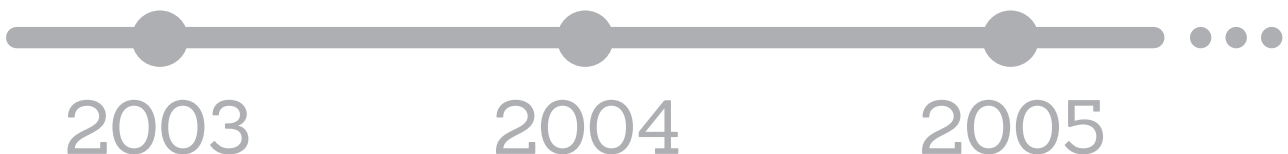
In October 2002, two members of the board of directors of the Workplace Safety and Insurance Board, after much consultation and research, recommended that “the WSIB institute a Fair Practices Commission as an independent body to ensure fairness and accountability between the WSIB and its clients.”

The main role of the Fair Practices Commission 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 work of the Commission began in September 2003 under its first commissioner, Laura Bradbury, a lawyer with a long history as an adjudicator in workers’ compensation matters in Ontario and British Columbia. She set up the office in the first year with six full-time staff. Several of this group remain on staff.

In 2012 Ms. Bradbury retired and the WSIB board appointed Tom Irvine as the new commissioner. Mr. Irvine has been with the Commission since the first year, serving in a variety of senior roles, including deputy commissioner. Prior to joining the Fair Practices Commission, Mr. Irvine was a manager of the ombudsman program at Ontario Power Generation and a team leader and investigator with Ombudsman Ontario.

During these 10 years, the Fair Practices Commission has helped thousands of people with their individual problems. The Commission has also recommended many changes to WSIB practices, some pinpointing an issue in a specific case and others involving a system-





wide process. All have resulted in improved services for injured workers, employers and service providers.

Faster occupational disease decisions

Too many workers were waiting more than six months for a decision. The Commission, in a 2006 formal investigation, found that the decision-making process was too often unnecessarily prolonged and that the potential human costs of delay were serious and needed to be given more weight. The Commission made 10 recommendations, which the WSIB accepted. By 2009 a new delivery model was in place and complaints were down significantly and continued to decline.

Improvements to loss-of-earnings review

Workers were suddenly told, just prior to the 72-month point, of a review to lock in benefits to age 65. Many of these workers already had letters from the WSIB confirming payment of full benefits to age 65. The Commission told the WSIB that fairness required reasonable notice to workers of a change in benefits and an opportunity to provide new evidence before a decision is made. The WSIB set out a new benefit review process in a written guideline.

Public decisions

At a suggestion from the commissioner, the WSIB appeals branch started publishing some anonymized decisions on the Canadian Information Institute's (CanLII) website.

Direct deposit

Workers who have been receiving benefits for six months can now have their cheques deposited directly into their account. This prevents hardship caused by late cheques.



Fairness for third-party employers

When a third-party employer is responsible for an accident, the WSIB can transfer the costs to that employer. But, that transfer-of-cost employer did not have access to the worker's claim file, which was not fair. Responding to Commission inquiries, the WSIB changed its policy to allow transfer-of-cost employers access.

Follow-up for slow medical reports

Delays by physicians in sending in medical reports cause delays in adjudicating workers' claims. The law requires doctors to provide reports, but there are no consequences when they do not. The WSIB adopted the Commission's recommendation to create a protocol setting out timeframes for following up on obtaining medical information and a procedure for reporting serious delays to the College of Physicians and Surgeons.

Access to surveillance documents

The Commission worked with the WSIB to clarify the process for access to surveillance documents that are used to terminate benefits. Workers now automatically have access to the surveillance documents and a clear outline of how they can take part in the decision-making process.

Chiropractic maintenance guidelines

The Commission recommended the WSIB set guidelines for chiropractic maintenance treatment to reduce the number of appeals. In response, the WSIB created a best approaches guide.





Better service for temporary foreign agricultural workers

The Commission organized meetings with representatives of workers, legal clinics and senior WSIB staff to discuss issues that concerned temporary foreign agricultural workers. This resulted in a new policy for calculating earnings to include off-season earnings and other measures to inform health care professionals about WSIB coverage and help decision-makers manage claims.

Improved treatment of young workers

Over three years, the Commission suggested various steps to improve fairness for workers aged 15 to 24. The WSIB prepared information for staff on policies related to students, learners and apprentices and reviewed its policies on the long-term loss of earnings for all seriously injured youth. The WSIB also revised policy to allow for enhanced labour market re-entry programs for youth in low-paying jobs at the time of their injury and established one group of adjudicators to handle all young worker claims.

Clear payment explanations

At a Commission suggestion, the WSIB set out clearly what needs to be in an explanation of complicated benefits payments.

Reduction of NEL backlog

From 2007 to 2010, the Commission and the WSIB worked on reducing the backlog of non-economic loss decisions. This involved staff training, additional staff, a system of triage for incoming cases, and doing more paper reviews.



2011

2012

2013

An Independent Office

The Fair Practices Commission is an independent office working to promote and ensure fair practices at the Workplace Safety and Insurance Board (WSIB) in Ontario.

As the organizational Ombudsman for the WSIB, we

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

Three main principles guide our work:

Impartiality

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

Confidentiality

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

Independence

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



The Value of the Commission's Work

Building relationships

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

Resolving conflict

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

Preventing problems

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

Acting as an agent of change

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



Systemic Issues

Change in adjudication of non-organic claims

In 2013, the WSIB was telling workers who claimed entitlement for non-organic disabilities that it needed all the clinical notes for the five years prior to the date of the accident before adjudicating their claims. Workers and their representatives told the Commission this practice was invasive as clinical notes can contain extremely sensitive information not related to the workplace injury.

The commissioner and a specialist met with the director of the Secondary Entitlement sector and the executive assistant to the president to obtain more information about this change in adjudication process. They said that, as part of a series of organizational changes at the WSIB, a dedicated team now adjudicates all non-organic claims. As they worked to improve the process and ensure consistency in adjudication, the WSIB decided it was necessary to have a complete pre-accident history and started asking for five years of clinical notes. This is a significant change from past practice where the worker's regular case manager adjudicated non-organic claims based on reports from treating and consulting physicians. The director was concerned that this often resulted in allowing entitlement for non-organic conditions without a thorough review or a confirmed diagnosis.

The WSIB started the practice of requesting the clinical notes without any notice, explanation or discussion with stakeholders—a fairness issue. The Commission is also concerned about what happens to pre-accident medical information once it is placed on the claim file. Information in clinical notes could include highly sensitive medical histories. The Commission would be concerned if any pre-accident medical information not related to the workplace injury was included in decision letters or released to employers or other parties in an appeal. No current WSIB policies mention collecting clinical notes for five years. The current aggravation policy refers to gathering one to two years of pre-accident medical information.

■
“I’ll call you again if I run into any problems because you’re the only ones who have helped me.”
■



The Commission anticipates further discussions and recommendations on this issue in 2014.

Delays in decisions involving exposure to herbicides

A number of workers, some of them severely ill, contacted the Commission about how long it was taking the WSIB to make decisions about their claims. This group say they were exposed to the herbicide 2,4,5-T many years ago and have developed a disability as a result of that exposure.

The WSIB told them they could not make a decision until the work of an independent fact-finding panel was done. The Minister of Natural Resources set up the panel, chaired by Leonard Ritter, a professor at the University of Guelph and an internationally recognized expert in toxicology, to look into the past use of the herbicide in Ontario.

The vice-president of the Occupational Disease and Survivor Benefits Program told the commissioner that more than 340 people filed claims after the media reports about the herbicide and its possible health effects.

Since no one knew when the report was expected, and it had been a long time, the commissioner recommended the WSIB write the workers, giving them an option of having the WSIB make a decision based on the information currently on the claim file or waiting for the Ritter report. The WSIB agreed and began the process.

Fortunately, the Ritter report was released before the letters could go out. The WSIB posted information about the report on their website and started calling the workers to tell them the report was in and the review of their claims underway.

Improving handling of pre-1990 claims

The commissioner met with the vice-president of Service Delivery and director of the Secondary Entitlement sector four times during 2013 to discuss issues raised with pre-1990 claims.

Workers call the Commission to say they are not able to reach WSIB staff and the WSIB is slow in making entitlement decisions. They also say their decisions were inconsistent in recurrence claims.

In response, the WSIB began to train a select number of telephone inquiry representatives to deal with calls about pre-1990 claims. The WSIB set as a priority the claims of workers who were suffering a wage loss. Also, they centralized the review of recurrence claims by creating teams dedicated to dealing with them.

Faster return of calls

The amount of time it takes for WSIB staff to return phone calls has been the number-one fairness issue that people bring to the Commission.

In 2011 the WSIB set a target of reducing these complaints by 50 per cent. That year the Commission received 253 complaints about how long it was taking to have calls returned. In 2012 the WSIB developed a new telephone system and finished implementing it in 2013.

The number of complaints about calls fell throughout 2013. By the end of the year, the Commission had received 128 complaints, a 49 per cent reduction since 2011.

■
“I found your tone of voice compassionate and soothing, yet impartial as it should be in such cases.”
■

The Resolution Process

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

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

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

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

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

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

We call the person with the results.

Individual Resolutions

In identifying whether a complaint involves a potential fairness issue, the Commission relies on four administrative fairness benchmarks: decision-making process, delay, communication and behaviour.

Complaints about the Decision-Making Process

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

The Commission received 395 complaints in 2013 about the decision-making process. This category of complaints now is 21 per cent of all incoming issues, up from 18 per cent last year. Of these complaints, 206 concerned lack of reasons given for a decision or disregard for evidence.

Asymptomatic pre-existing condition does not limit entitlement

Mr. B phoned the Commission after his case manager terminated his benefits. Medical reports showed underlying degenerative disc disease, and the case manager decided that the worker's injury, a back sprain, had resolved so that ongoing symptoms were related to the disc disease. She said the decision was based on general medical knowledge.

Mr. B reviewed WSIB policies and noted the aggravation policy, which allows for benefits to be reduced in cases where a workplace injury aggravates a pre-existing impairment and the worker has recovered to the level of his pre-accident state. A pre-existing impairment is defined as a condition that has produced periods of impairment or illness requiring health care and has caused a disruption in employment. There is no reference to an asymptomatic pre-existing condition.



■
“Don’t know what I would do without you – all this uncertainty with the WSIB has been extremely stressful, which impacts on my condition.”
■

Mr. B had worked full time for two years prior to the accident with no back problems. He tried to return to work after his benefits were terminated but lasted for less than two hours.

A Commission specialist spoke with the manager, the assistant director and the vice-president of Long Term Service Delivery about the decision-making process, the meaning of a pre-existing condition and how it might affect benefits.

The vice-president confirmed that the WSIB aggravation policy requires the case manager to look into the worker’s pre-accident state. The vice-president agreed that investigation did not take place in Mr. B’s case.

Mr. B’s file went back to the case manager. She collected medical records dating back to two years before Mr. B’s accident and spoke to his employer. This evidence confirmed Mr. B had no history of back problems. The file then went for a medical consultant review.

Then the case manager reconsidered the decision and reinstated Mr. B’s benefits finding that he had not recovered to his pre-accident state. The vice-president said he would use this case as a teaching example of the type of inquiries case managers need to undertake in cases where workers do not return to work in the time expected.

Reviewing surveillance evidence

Mr. M injured his right shoulder at work in July 2008. He had surgery on the shoulder in August 2010 and was granted entitlement for full loss-of-earnings benefits and psychological treatment.

The case manager spoke with Mr. M about his overall level of impairment in February 2012. The case manager then referred the file to Regulatory Services requesting surveillance because of concerns about inconsistencies between Mr. M’s report of his level of impairment and the medical reporting on file. After reviewing the surveillance evidence, the case manager concluded Mr. M had misrepresented his level of impairment and terminated his benefits.

Mr. M’s representative disagreed with this conclusion and sent in a detailed submission requesting reconsideration. The submission included a review by Mr. M’s psychiatrist of the surveillance evidence. The psychiatrist said the surveillance did not change his opinion that Mr. M suffered from chronic depression and chronic pain to the extent

that he was not able to carry on full-time employment in his previous job.

The case manager reviewed the submission and affirmed his original decision. The reconsideration decision stated that a comparison of Mr. M's representation of his level of impairment and the surveillance evidence "made a strong case against Mr. M's credibility."

Mr. M's representative called the Commission. He believed the level of Mr. M's impairment was a medical issue, not a credibility issue, and that a WSIB medical consultant should review the file.

The Commission spoke to the manager, asking for clarification about the process of assessing surveillance evidence, particularly in cases where the worker has a psychological impairment. The manager agreed that making a decision based on a finding of the worker's credibility was questionable. She also agreed that the case manager had not addressed the question of whether the actions on the surveillance video were consistent with medical reports. The manager arranged for the evidence, including the surveillance evidence, to go for a medical review.

Considering new information

Mr. Q is an injured cabinetmaker. He received a letter saying his claim was allowed for low back and bilateral upper leg strain injuries but no loss of earnings were in order since he had been offered suitable modified work. He had been off work for several weeks and felt unable to return because of ongoing pain. His doctor recommended he stay off work but the WSIB did not consider this recommendation. Mr. Q called the Commission.

Commission staff noted an October decision letter that said "as of December 2, 2013, you will be considered fully recovered from your workplace injury. This means you will be fit for your regular pre-accident job at your full pre-accident hours. No restrictions will apply. Your employer will have no further obligation to provide you with modified work as you will be considered fully recovered. This is the case even if you bring in notes from your doctor or Functional Abilities Form as they will no longer be required as of December 2, 2013." His claim would be closed in December.

■ “It’s unlikely the board would have addressed my questions if you didn’t get involved.”

The Commission contacted the manager, who agreed the letter was “horrible.” It told Mr. Q that regardless of any new information that might become available or any change in circumstances, the claim would be closed in six weeks.

The manager said WSIB would expedite an MRI and scheduled it for early 2014. She asked the case manager to have a return-to-work specialist (RTWS) contact the employer about the modified work. The manager said any new information obtained in a meeting with Mr. Q, from the RTWS and the employer, and from the results of the MRI would be used to reconsider the claim.

The Commission explained to Mr. Q the steps the WSIB would take to obtain new information before making further decisions.

■ **Making sure to follow policy**

Mr. R did not receive his loss-of-earnings (LOE) benefits during the six weeks his tax assessment information was outstanding. His benefits were reinstated when he provided the information, but the case manager refused to pay benefits for the six weeks. During that time, Mr. R had to move back into his mother’s home and his children had to stay with a relative.

Mr. R called the Commission, who reviewed the policy and called the WSIB manager. The manager confirmed that the case manager’s request for financial information was part of an annual review of Mr. R’s benefits. According to WSIB policy, once LOE benefits are reinstated, they are to be paid from the date of the suspension. The manager said the WSIB would issue a cheque that day.

Mr. R received the six weeks of benefits.

Following policy in debt recovery

Mr. S has been receiving loss-of-earnings benefits since 2010. In 2013, the WSIB case manager reversed the 2010 entitlement decision after reviewing WSIB’s surveillance evidence. This created an overpayment. The case manager directed the recovery of the overpayment plus interest.

Mr. S negotiated with the Collections Department for a repayment schedule. This agreement was contingent on Mr. S’s permission to have a lien put on his house.



Mr. S's union representative called the Commission, who reviewed the WSIB policy on the recovery of benefit-related debts. That policy says the WSIB does not recover a benefit-related debt in a number of instances, including when it is the result of a previous entitlement decision being overturned due to a reconsideration or appeal. The Commission brought this policy to the attention of the manager, who agreed that the debt recovery in this case did not seem fair or consistent with the policy. The manager arranged for the case manager to review the file and policy to determine what, if any, part of the overpayment was recoverable.

Calculating a dependent contractor's average earnings

The representative of Mr. A, a dependent contractor, called the Commission with concerns about the calculation of the contractor's average earnings. A new WSIB policy sets out guidelines for determining average earnings in exceptional cases, including dependent contractors. Under this policy, decision-makers use the contractor's net business income and then add items listed in the policy, including expenses arising out of the individual's use of their home or personal vehicle for business purposes.

In Mr. A's case, the case manager added an amount for depreciation and business use of home expenses, as outlined in Mr. A's tax return, but did not add any amount for use of his personal vehicle or cell phone. The representative wrote to the manager to find out why these amounts were not added. The case manager said the amounts were not allowable based on the WSIB policy. Since these items are listed in the policy, the representative was confused.

The Commission spoke with the manager who agreed that the policy listed these add-backs. She reviewed the claim with a payment specialist who said that expenses for a vehicle or cell phone bought solely for business purposes are not added back. However, if they are personal items used for business purposes they can be considered for add-backs. This information is determined by reviewing business expense forms filed with Revenue Canada.

The manager called the representative who agreed to file the additional Revenue Canada forms so that the case manager could reconsider the decision. After reviewing the forms, the case manager revised the contractor's average earnings to include the business use

■
“Your
telephone
manners
were much
appreciated
and put me
at ease.”
■



of his personal vehicle. The cell phone expense was not added back as it was reported to Revenue Canada as a 100-per-cent business expense.

Paying for a mistake

Mr. P called the Commission to say the WSIB made an error when calculating his benefits. He had a number of bill payments registered with his bank and when the LOE benefits deposited were too low, these payments bounced. His non-sufficient-funds penalties came to \$275. He did speak with a WSIB manager who told him the WSIB would not pay the NSF fees, even though the manager agreed that the amount of benefits paid was incorrect.

The Commission spoke with the manager who said she was unable to address the concern although she did agree they had mistakenly reduced Mr. P's benefits. She suggested the Commission speak with the assistant director. The assistant director said the WSIB would send Mr. P a general expense form so that he could apply for reimbursement. When Mr. P sent in the form, along with copies of his bank statements and the supporting documents, he received the \$275.

Complaints about 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?

Issues about delays always constitute the highest number of complaints. In 2013, the Commission received 601 delay complaints. This is a decrease in the total number of delay complaints to 31 per cent of all incoming issues, down from 33 per cent in 2012.

Waiting for an explanation

Mr. E received benefits during five periods in 2012 and 2013. He received the cheques but no explanation of the amounts paid.

Mr. E's representative wrote to the Commission that the WSIB did not respond to four letters he sent from February to May in 2013.

The representative also said Mr. E had talked with his Member of Provincial Parliament's office and that their inquiries also did not receive a reply.

The Commission confirmed that the representative had written four times, without response. The Commission asked the manager to review the situation. She confirmed there was no response and said this was an oversight. The case manager was preparing a letter explaining the payments that day, which would include an apology for the delay.

Fixing a slow update

Mr. K used to be on the WSIB's no-contact restriction list. As such, he could not contact his case manager by phone. He complained to the Commission, who had the WSIB review the restriction. The WSIB lifted the restriction and sent Mr. K a letter in May telling him he could now phone his case manager. When he did phone a few months later, however, a telephone inquiry clerk told him he was on the no-contact list.

Frustrated about not being able to speak to his case manager, he phoned the Commission again. The Commission contacted the director of WSIB Security. The director found that, although the WSIB had lifted the restriction and written Mr. K, their electronic case management system still showed the no-contact restriction. The director updated the electronic record.

Mr. K phoned his case manager.

Call speeds up appeal process

In March the WSIB denied Ms. N benefits for bilateral carpal tunnel syndrome. Her representative requested access to the claim file in May. By August, the representative still had not received a copy of the file. He complained to a manager who apologized for the delay and put a priority on it. The manager then assured the representative they would expedite the appeal. However, as of September, Ms. N had not received any information about her appeal.

Ms. N then called the Commission.

The Commission looked at the file and confirmed that the representative did send in an appeals readiness form at the beginning

of September. The objection intake team (OIT) received the form but did not assign it to an OIT case manager.

The Commission called an OIT administrator, who said the claim and the form had been assigned to an OIT case manager but had not been reviewed. The administrator offered to reassign the file and have a new case manager contact the Commission with an update. Later the same day, the OIT case manager called to say he had reviewed the file and referred it to the Appeals Services Division.

The Commission called Ms. N with the update.

Complaints about Communication

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

The Commission received 336 complaints about communication issues, primarily about unavailable or unclear communication. Communication complaints now make up 18 per cent of incoming issues, up from 15 per cent in 2012.

Clearing up an appeals decision

Mr. H, a police officer in a northern community, suffered post traumatic stress after being threatened while arresting a suspect in July 2009. His police car and home were later vandalized, and he and his family left the community for their own safety.

The WSIB accepted a claim for traumatic mental stress and paid loss-of-earnings (LOE) benefits from August 2009 to July 2010. Mr. H was cleared to return to work after participating in a psycho-trauma program assessment that found he had no psychological restrictions. The assessment report noted that a successful return to work would be best by placement outside the region where the incident occurred and recommended monitoring for the six months following his return to work.

Mr. H suffered two recurrences after he returned to work. The WSIB denied benefits for the recurrences and he appealed. The Appeals Resolution Officer (ARO) allowed the appeal, finding Mr. H not fit for work from December 2011 to at least April 2012 and entitled to full

■
“Thank
you. What
you did
helped me
immensely.”
■

LOE for that time. The ARO thought he did not have enough evidence to decide on further entitlements to LOE and directed the WSIB to obtain more information to decide Mr. H's capacity for employment and the employer's willingness and ability to provide suitable work.

Mr. H spoke with the case manager about the ARO decision. He thought he was entitled to benefits for the period between the termination of LOE in July 2010 up to the date the ARO reinstated benefits in December 2011. The case manager said the ARO decision did not direct her to pay benefits retroactively. She suggested Mr. H write to the ARO for clarification. He wrote but did not receive a response.

Mr. H contacted the Commission, saying he had been dealing with the WSIB since 2010 and he still did not have benefits he believed he was entitled to. He wrote that it "feels like I'm stuck in a hamster wheel just going around in circles."

The Commission spoke with the assistant director, the ARO manager and the ARO to get clarification of the decision. The ARO agreed to write Mr. H. The letter said, "In error, I did not provide specific direction as to the operations division authority to consider benefits for this period... It would be appropriate for the operations division to clarify the specific details as to work performed and wage loss, if any from July 24, 2010 to December 2, 2011 and provide the parties a determination as to benefit entitlement, if any, for this period." The ARO documented the clarification on the claim file and then wrote to Mr. H, giving him an explanation of the direction given to the operations division. The ARO also said he would continue to be involved in the file if there were any further related issues.

Working around problems caused by no-contact restriction

Mr. C received a letter from the WSIB saying his benefits would be terminated in two weeks as he had not provided requested information.

Mr. C phoned the Commission and said he had given the WSIB the information three times. However, he could not phone the WSIB because he was on the no-contact list as a result of making threatening comments and other inappropriate behaviour.

■
"Really
really truly
appreciate
all your
help."
■



■
“I got a lot
of good
answers.
You helped
right away.”
■

The Commission contacted the director of WSIB Security who confirmed that Mr. C had sent in the information. The WSIB confirmed his benefits would not be suspended.

The director told the Commission that Mr. C’s claim was in the process of being sent to another location and therefore the correspondence had likely not been reviewed. He said that in the future the WSIB would acknowledge in writing the receipt of correspondence from Mr. C.

The Commission called Mr. C to tell him his benefits would not be suspended, his future correspondence would be acknowledged in writing and he should send things directly to the WSIB Security office. Mr. C was relieved to learn his benefits were not in jeopardy.

Complaints about Behaviour

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

In 2013 the Commission received 85 complaints about the behaviour of WSIB staff, almost all of which concerned unprofessional behaviour or critical comments. This category is now four per cent of all incoming issues, down from five per cent in 2012.

When the Commission receives a complaint about an individual’s behaviour, the Commission’s practice is to bring the concerns to the manager’s attention.



Outreach

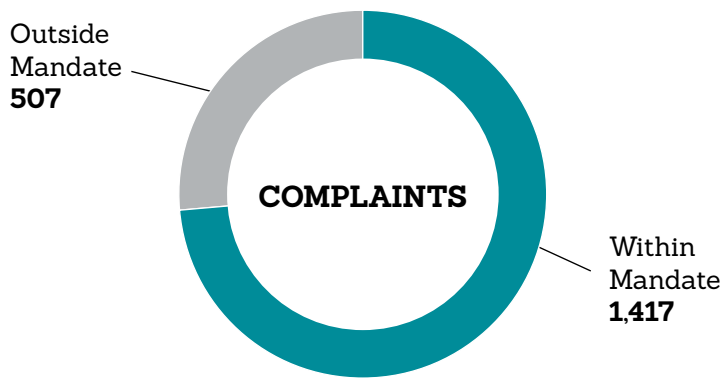
- Meeting with the Minister of Labour at his invitation to discuss the work of the Commission
- Fairness education sessions for account specialists and analysts, new telephone inquiry representatives, new nurse consultants and three groups of new eligibility adjudicators
- Biennial conference of the Forum of Canadian Ombudsman
- Annual conference of the Council of Canadian Administrators Tribunals, including a roundtable discussion on workers' compensation issues
- Three teleconference meetings with the Fairness Working Group, which is composed of fair practices officers at workers' compensation boards across Canada
- Presentation to the annual meeting of constituency assistants for the Ontario Liberal and New Democratic parties
- Presentation at the conference of the Canadian Association of Worker Advisors and Advocates
- Annual conference of Society of Ontario Adjudicators and Regulators
- Schedule 2 Employers Group conference
- "No Half Measures—Workers' Compensation 100 years after Sir William Meredith" conference

Financials

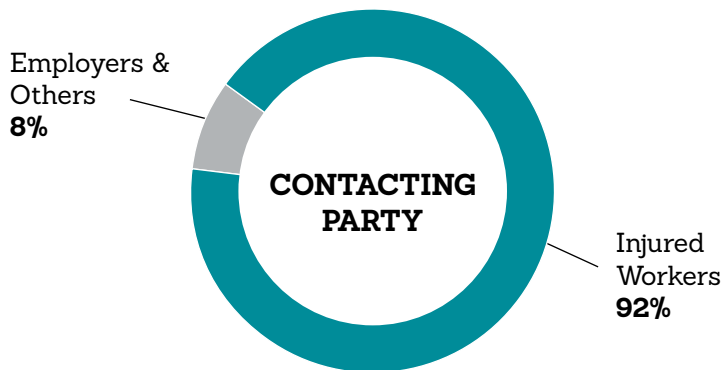
The Fair Practices Commission budget, approved by the WSIB board of directors, was \$1.15 million for the fiscal year ending December 31, 2013.

Complaints by the Numbers

Complaints to the Commission

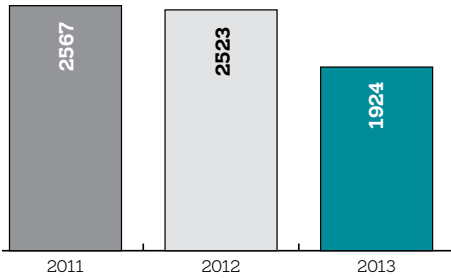


Who contacted the Commission



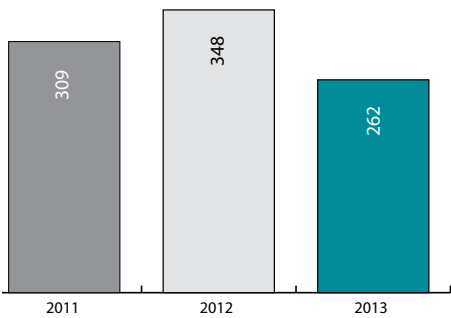
Three-year summary

ISSUES OPENED



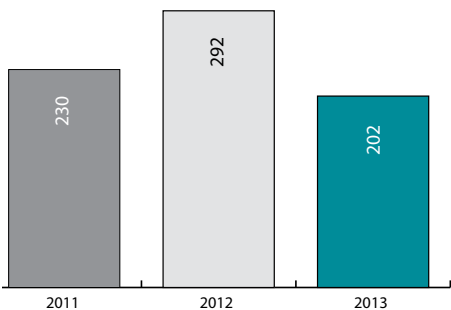
The Commission received 1,924 issues in 2013, compared with 2,523 in 2012.

INQUIRES MADE BY SPECIALISTS



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

ISSUES WSIB HAD TO ADDRESS



The number of fairness issues that required action by the WSIB decreased in 2013. The WSIB took quick action once the Commission became involved. The Commission resolved most complaints within three days.

Top 10 ranking of complaints by subject

2013		2012
1	Benefits	1
2	Health care	3
3	Appeals process	4
4	Work transition	2
5	Permanent disability	9
6	Employer assessment issues	8
7	Non-economic loss	7
8	Expenses	5
9	Return to work	6
10	Loss of earnings — 72 month review	10

Issues by fairness category

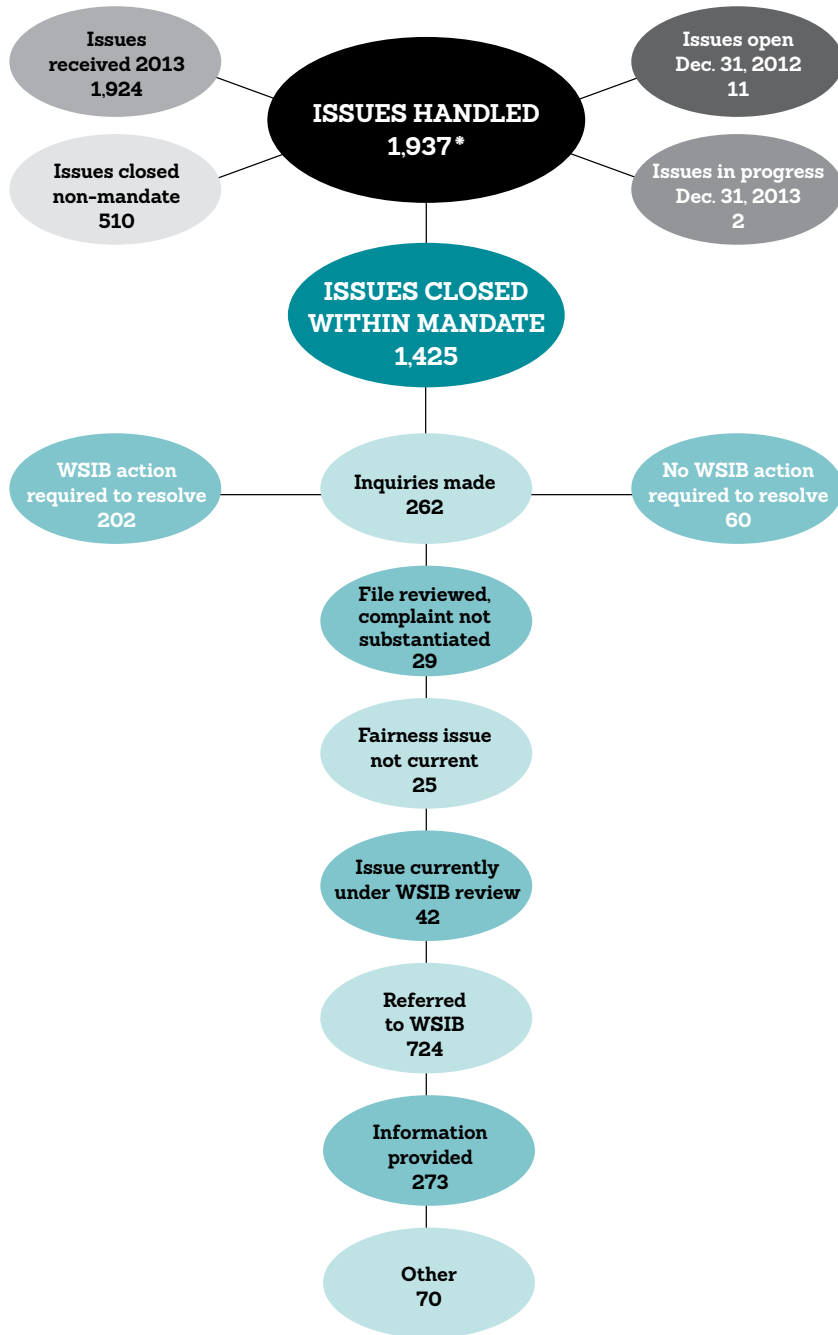
Fairness Category	2013	2012	2011
Delay	31%	33%	35%
Decision-making process	21%	18%	11%
Communication	18%	15%	12%
Behaviour	4%	5%	6%
Non-mandate	26%	29%	36%

Issues received by sector

WSIB Sector	Issues Received	Issues closed			Total
		Mandate	Specialists' Inquires	Non-Mandate	
Secondary Entitlement	390	343	87	48	391
Services/Health Care	135	114	21	21	135
Ottawa/Kingston	131	108	17	23	131
Construction/Transportation	131	102	17	31	133
Hamilton/St. Catharines/Primary Metals	113	89	13	28	117
Industrial	111	86	15	25	111
Government Services	97	79	8	17	96
Serious Injury Services	91	77	14	15	92
Kitchener/Guelph/Agriculture	89	71	6	18	89
Sudbury/North Bay/Timmins/Mining	63	48	11	16	64
Initial Entitlement	61	42	6	19	61
London	55	45	9	10	55
Occupational Disease and Survivor Benefits	47	35	6	12	47
Employer Service Centre	47	20	0	28	48
Appeals Services Branch	45	36	8	9	45

We have listed the number of issues only for the top 15 of the 32 WSIB sectors for which we received complaints.

Resolution outcomes



* includes issues re-opened





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

Mission

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