

# Fair Practice NEWS

## *A brief update of the Commission's activities this year*

### **Commission's new complaint tracking system up and working**

On June 1 the Commission launched its new case management and complaint tracking system. This system, developed by the British Columbia Ombudsman's office, is now in use in almost a dozen Ombudsman offices across North America.

Commission staff worked with the BC Ombudsman's office to customize the system for our use. The stand-alone system provides a more detailed information base that will enhance the Commission's ability to identify emerging trends and systemic issues. For example, the Commission can now track individual issues in complaints. The former system allowed us to capture only the dominant complaint.

In the four months from June 1 to September 30, the Commission opened 524 files for 727 issues, about 1.4 issues per file.

Delay concerns continue to be the most serious issue. The top three delay issues were return phone calls, release of entitlement decisions, and adjudication.

We continue to resolve complaints quickly, with specialists taking seven days on average to close files.

### *Commissioner's Message*

## **New WSIB service delivery model**

The new WSIB service delivery model, launched across the province in April, includes significant changes to claims-handling processes.

To help with the transition, Commission specialists have conducted fairness education sessions for all new eligibility adjudicators and nurse consultants. We recently expanded the sessions to include new field and desk auditors in the Finance Division, as well as account specialists. The sessions focus on best practices for addressing identified fairness issues in decision-making.

Commission staff also meet regularly with the vice-president and program manager of the Operations Planning and Implementation Division to identify and address any fairness issues that arise under the new service delivery model. This means that process problems are acted upon quickly and do not become entrenched.

This early warning system is working well and has already led to a number of adjustments in the process.

The Commission remains active in matters related to both workers' compensation and Ombudsmen. In April, I was elected to the nine-member board of the Forum of Canadian Ombudsman, an umbrella organization of public-sector, university and private Ombuds across Canada. See [www.ombudsmanforum.ca](http://www.ombudsmanforum.ca) for more information.



## SYSTEMIC ISSUES

### Publishing ARO decisions

In response to requests from workplace parties and the Commission, the WSIB Appeals Branch began publishing Appeals Resolution Officer (ARO) decisions in September on the Canadian Legal Information Institute (CanLII) website. Many federal and provincial courts, tribunals and boards post their decisions on this site, including the Workplace Safety and Insurance Appeals Tribunal.

There is no charge to access the CanLII web site. Go to [www.canlii.org](http://www.canlii.org) → Databases → Ontario → Boards and Tribunals → Ontario Workplace Safety & Insurance Board. Or, you can access the decisions through a link on the WSIB site.

Not all ARO decisions will be posted. Those selected will include a variety of appeal issues. They will not contain any references to the worker's name, claim number, employer's name, health professional's name or any other personal identifiers.

### Quality loop re-established

In response to issues raised by the Commission, the WSIB has committed to re-establishing the Legal Division's quality loop review. The review will identify trends and developing issues in WSIAT decisions. It will also help prevent recurring differences between WSIB and WSIAT interpretations of the law.

The quality loop will include a senior lawyer in the Legal Division, the

executive director of the Appeals Branch and the WSIAT general counsel.

### Third party actions

If someone other than an employer or co-worker is responsible for a workplace injury, a worker must decide whether to claim benefits or to bring a legal action against the non-workplace party (a third party). This "election" process is set out in Section 30 of the Workplace Safety and Insurance Act. In response to concerns raised by the Commission about how the WSIB tells workers about the election, the WSIB posted a Q&A on its website in September that explains a third party action, an election, who can sue, and how to make an election. See [www.wsib.on.ca](http://www.wsib.on.ca).

## CASE SUMMARY

### Decision-making process: New evidence

A worker contacted the Commission with concerns about the fairness of the reconsideration process in his claim. The worker had provided new information to the WSIB that was not addressed or considered in the case manager's 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 an-

alysis of the new evidence. The Commission was satisfied with the outcome of the inquiry in the individual claim and with the steps the manager took to improve the fairness of the decision-making process in the eligibility unit. The systemic improvements included:

- making changes to the case assignment process so that all reconsideration requests trigger a consultation between the team mentor and manager, who may refer files directly to an experienced case manager instead of to an eligibility adjudicator.
- reminding team members to review the WSIB's medical consultant referral guidelines and adjudicative advice document when considering disablement claims.

### Outreach by the Commission

The commissioner met with the provincial Workers' Compensation Network of the Legal Clinic Association on September 11 at the Rexdale Community Legal Clinic. It was an excellent opportunity for an informal exchange of information and ideas.

The Commission was invited to participate in this year's Schedule 2

Employers' Conference. A Commission specialist presented a workshop on the Commission's first five years, with a focus on issues brought by Schedule 2 employers.

If you have an event you would like us to attend please contact us at 416-603-3017.