

# Fair Practices

ISSUE 2 • SPRING 2005

# Commission *Newsletter*

## WSIB SETS UP PROCESS TO ADDRESS SYSTEMIC ISSUES

In her capacity as Vice President of the newly established Program Development Division, Judy Geary is responsible for reviewing systemic issues identified by the Fair Practices Commission and ensuring the WSIB takes action on these issues. Ms Geary will follow-up on matters the Commission raises with the Board of Directors and other matters raised directly with the Program Development Division. Currently, Ms Geary is tracking 5 issues identified by the Commission.

## Intake Clinics: Commission visits Dryden and Kenora

Two Specialists from the Fair Practices Commission were in Dryden and Kenora the first week in May hosting Open Houses followed by Intake Clinics. The Commission set up the visits to give members of these northern communities an opportunity to raise issues about the fairness of the service or treatment they received from the WSIB.

In addition to hearing individual complaints during the visits, the Specialists were pleased to hear a number of positive comments about adjudicators and the services received from the WSIB.

The Commission is planning to return to the area next spring to conduct clinics in the communities of Ear Falls and Red Lake. The Commission will conduct an Intake Clinic in Sarnia this fall.

## Commissioner's Message

It is now one year since the Fair Practices Commission began to provide its service to workers, employers and service providers across Ontario. As will be seen from the statistics section of this newsletter, the Commission received 1404 complaints by the end of March 2005.

The Commission is designed to be an informal dispute resolution process. The WSIB has a formal appeal process for workers or employers who disagree with a decision. The Commission's role is to provide an independent, objective and confidential resource for addressing the fairness of the WSIB processes and procedures.

We accomplish our task by listening carefully to complainants, reviewing the file or other available documentation, and determining whether the complaint suggests a fairness problem. If it does, our Specialists speak with WSIB staff to understand their perspective and to consider whether the issue needs remedial action. Most problems are resolved at that stage. In addition to resolving the immediate concern, the Commission's inquiries often assist in developing more harmonious relationships between complainants and WSIB staff.

Perhaps most importantly, the Commission is uniquely positioned to identify and respond to systemic issues. The work of the Commission provides case examples to support the identification of systemic problems, to track the complaints, and to propose broad resolutions.

While our purpose is to receive and investigate complaints, the Commission regularly sees the hard work of dedicated and committed WSIB staff on behalf of workers and employers. As well, we have found the WSIB staff at all levels to be open to our findings and our suggestions and supportive of the need for change.

## Promoting WSIB "Fairness Awareness"

The Commission now delivers 'Fairness Awareness' sessions to all newly hired Adjudicators, Managers, Account Managers and Customer Service Representatives as part of the WSIB's training program. The Commission is also meeting with all current managers in the District Offices to promote "Fairness Awareness." The focus of these sessions is recognition, prevention and early resolution of potential unfairness. Participants learn about:

- The Commission's purpose & process
- The principles of administrative fairness
- Recognizing potential unfairness
- Examples of complaints and their resolution
- Best practices

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.



Fair Practices  
Commission

Commission des  
pratiques équitables

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

# Statistical Information and Trends to March 2005

## Administrative Fairness Categories

The following chart shows the number of incoming complaints within the Commission's mandate in each category between July 2004 and March 2005.\*

Administrative Fairness Category		Factors Considered
Delay	34.3%	Was there an unreasonable delay in taking an action or in 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	10.7%	Were reasons communicated clearly, using appropriate language and in a timely fashion; did staff explain what the decision or action was based upon; were reasons provided to all those affected; were next steps or options explained?
Behaviour	9.3%	Were staff unbiased and objective when reviewing information; were staff courteous and professional; were wrongs acknowledged and amends offered?
Actions around decision making process	11.0%	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 to similar matters?

\* Other matters include complaints outside the Commission's mandate or general inquiries.

## Complaints to Date

• Complaints received	1404
• Average turn around time	6 days
• Complaints within the Commission's mandate (the rest referred to the WSIB or to alternative agencies)	59%
• Matters referred to Commission's Specialists	364

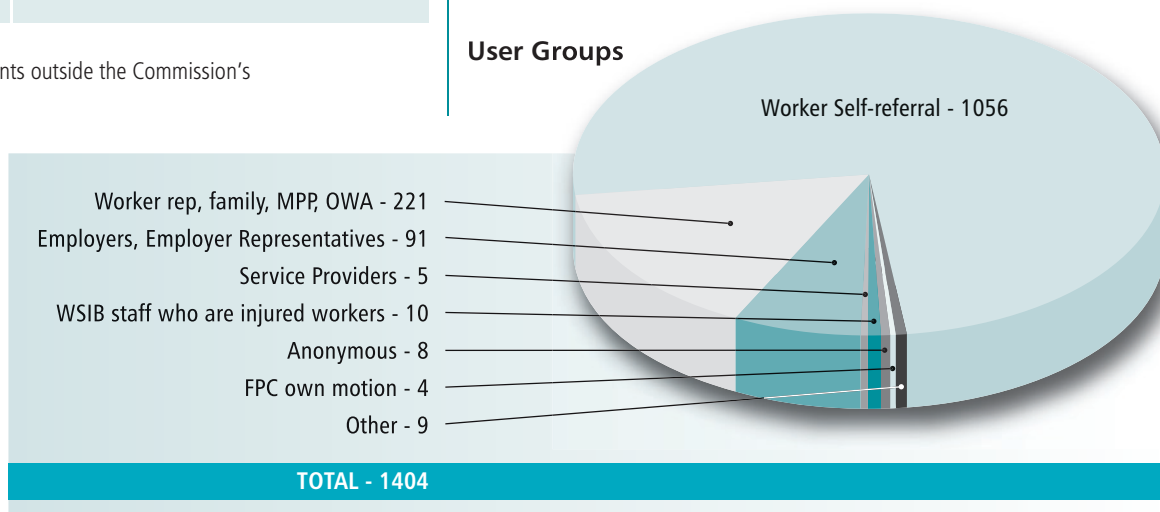
## Complaint Resolution Outcomes

84% of cases closed by March 2005 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/ file reviewed, no current fairness issue identified	20
• Right of appeal exits (non-mandate)	136
• Issue under WSIB appeal/review (non mandate)	63
• Complaint withdrawn	7

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

## User Groups



# Systemic Issues

## Psychological Consultation:

As noted in the last newsletter, the Commissioner met with WSIB senior management about complaints concerning delays in obtaining internal psychological consultation reports. The WSIB took a number of steps to reduce the case backlog including: the referral of 448 cases to external specialists, hiring of additional staff, weekly monitoring, and communication of criteria for psychological referrals to the WSIB staff. The Commissioner is satisfied that these steps resolved the case backlog. The Director of Clinical Services advised that the goal of a two-week turn around for all referrals is realizable and sustainable this year. The Commission has not received new complaints about delays in this area.

## Appeal issues:

The WSIB took the following actions in response to issues raised by the Commission:

- The Appeals Branch Practice & Procedures (ABPP) was amended to include an explicit provision requiring Appeals Resolution Officers (ARO) to obtain consent from parties to preside over a hearing if no settlement is reached after conducting settlement or mediation discussions with the parties. (See Appendix D, Guidelines for Conducting In-Person Hearings, Section C, Para. xi)
- All changes to the ABPP will be highlighted in blue in the on-line version and italicized in the print version.
- The Chief Corporate Services Officer has undertaken to establish a protocol

to have any changes to the ABPP occur at the same time every year to ensure predictability and transparency of the process. The protocol will also include a communication plan to ensure that the broader community is notified effectively of any revisions.

## Systemic Issues currently in process:

### Delays

- Delays in the reconsideration process\*
- Delays in obtaining information from the accident employer.
- Delays in obtaining medical reports from workers' treating doctors.

### Chiropractic maintenance treatment\*

### Complex cases/workload issues

\* The Best Practices Working Group is also addressing these issues.

# Case Summaries

These cases demonstrate the value of the Commission's interventions in providing fast, informal resolutions whenever possible. The Commission is effective in reducing delays, helping to avoid unnecessary appeals, and facilitating the relationship between complainants and the WSIB.

## Delay In Decision Making

A worker complained that 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.

Following the Commission's contact, the manager arranged a conference call with the worker to acknowledge and apologize for the inadequate service delivery, and to clarify what further issues needed to be resolved. He confirmed with the worker the next steps and an action plan to address any outstanding issues and advised that he would be monitoring the progress of this claim to ensure that agreed upon actions are completed in

a timely fashion. The manager also followed up the telephone call with a letter to ensure there was no confusion about what was agreed upon in the call.

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

## Delay in NEL Reassessment

A worker called the Commission with a concern about delays in the re-assessment of a Non-Economic Loss (NEL) benefit. The worker told the Commission that his request had been with the WSIB for over a year, but he had not received a decision. 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 inquiring about the status of the review.

The Commission reviewed the worker's claim file and decided to discuss his concerns with the sector Director. The Director wrote to the worker and apologized for the manner in which his request was handled by the WSIB. The Director also gave the worker an update on the status of the review and

gave him a specific date by which a decision would be made. The worker subsequently confirmed that he received a decision by the promised date.

## Delay In Referral To Appeals

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

Once the outstanding faxes and delays were brought to the manager's attention, the manager immediately contacted the representative, apologized for the oversights 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.

## Workload Delays

A worker complained that he was unable to get a response from his adjudicator after many tele-

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phone calls, faxes and letters. He also complained that he did not get a response to a fax he sent to the manager.

The Commission contacted the manager who reported that he had the nurse case manager contact the worker to provide him with a claim update. The manager also agreed to contact the worker to apologize for the poor customer service he received. The manager advised that the underlying reason for the persistent and prolonged delays was workload. From the manager's perspective, this adjudicator was conscientious, but she worked part-time and had a full-time caseload. According to the manager, a process was underway to transfer some of this adjudicator's files to another team member, which should allow the adjudicator to provide the desired level of customer service.

### Notice of Adverse Decision

While reviewing a worker's complaint, the Commission found there had been some unfairness in the decision-making process regarding termination of 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 opportunities for preventing a similar occurrence in the future.

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

#### 1. The importance of providing adequate notice and rationale for decisions:

The party affected by an adverse decision should first be contacted by telephone so that the written decision is not a surprise. The party also must be given an opportunity to provide new information for reconsideration.

#### 2. The importance of case conferences:

When a claims adjudicator is new to the file, or disagrees with an LMR provider's recommendation, the claims adjudicator is expected to consult with the previous claims 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 the workload issues were part of the problem and the Commissioner agreed to track that issue in her next quarterly report to the Board of Directors.

to add a new (and 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. From interviews with the Directors of the Industry Sector and Employer Audit Services, it appeared to the Commission that there were unique and exceptional reasons for not adding the new CU to that one member of the rate group during the policy review period. Thus, while there was inconsistent application of a Revenue Policy, no unfairness was found, given the specific circumstances.

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 that is under review.

### Policy Issue

The complainant, an Employer, was a member of rate group affected by a Revenue Policy decision

### Contact Information

The Commission can be contacted by phone, fax or mail, but not by e-mail for confidentiality reasons.

This Newsletter is available on our website at [www.fairpractices.on.ca](http://www.fairpractices.on.ca)

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