


# 2017 ANNUAL REPORT

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

**FPC**  
**CPÉ**

# FAIR PRACTICES COMMISSION



Également disponible  
en français

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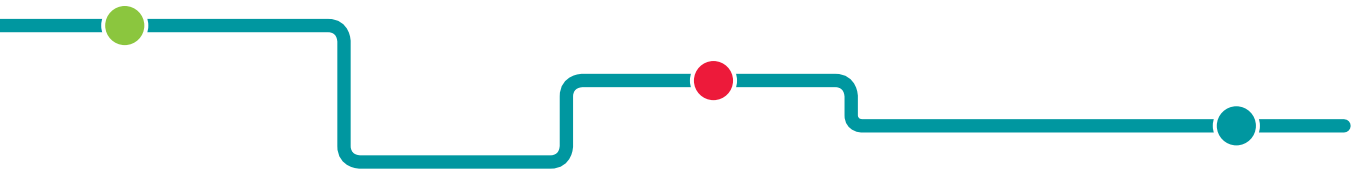
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**THE MISSION** of the Fair Practices Commission is to facilitate fair, equitable and timely resolutions to individual complaints brought by workers, employers and service providers and to identify and recommend system-wide improvements to Workplace 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.



## FROM THE COMMISSIONER

I am pleased to present the Fair Practices Commission's annual report for 2017.

It was a busy year at the Commission. The number of issues raised with our office increased over each of the previous four years. The number of inquiries the Commission made with the Workplace Safety and Insurance Board (WSIB) and the number of issues requiring WSIB action also increased in 2017.

Many people who could benefit from the Commission's services still don't know about us. In 2017, I was committed to increasing awareness of our office and the services we provide for workers, employers and service providers who interact with the WSIB. The Commission launched a successful outreach blitz and informed thousands of stakeholders about our services. We sent letters, made phone calls, attended meetings and conferences, provided information sessions and presentations, and distributed thousands of copies of our new Commission brochure.

Most of our caseload involves individual complaints. Commission staff listen to every complainant and look for ways to help them. Help is sometimes as simple as providing information or a referral. Sometimes

it means making inquiries with the WSIB to resolve the issues raised. In this report, you will read about many cases where significant outcomes were achieved following the Commission's involvement.

The Commission also works to resolve broader, system-wide issues — those which can affect many people, not just one individual. For example, in 2017 we began work on the WSIB's widespread use of "contact restrictions" which prevent thousands of people from speaking with WSIB staff by phone and/or in person. You can read more starting on page 19 of this report.

As an independent office, we at the Commission are proud of our work and are committed to ensuring fair practices at the WSIB. I want to take this opportunity to thank those who contacted the Commission for assistance. I encourage anyone who has concerns about WSIB services to do the same.

I thank the WSIB staff for quickly responding to the Commission's inquiries and for their commitment to improving service delivery. Lastly, I want to thank the Commission's talented and dedicated staff for their outstanding work.

— Anna Martins, Commissioner



# AN INDEPENDENT OFFICE

**T**he Fair Practices Commission is an independent office working to promote and ensure fair practices at the Workplace Safety and Insurance Board (WSIB) of 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

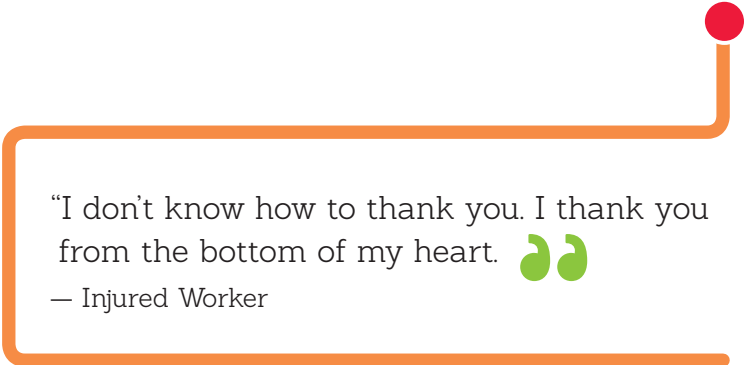
The Commission does not take sides in complaints. We advocate for fair processes.

### 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 and works independently in the interests of fairness. The Commission reports directly to the board of directors, the governing body of the WSIB.



“I don’t know how to thank you. I thank you from the bottom of my heart. ”

— Injured Worker



# 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

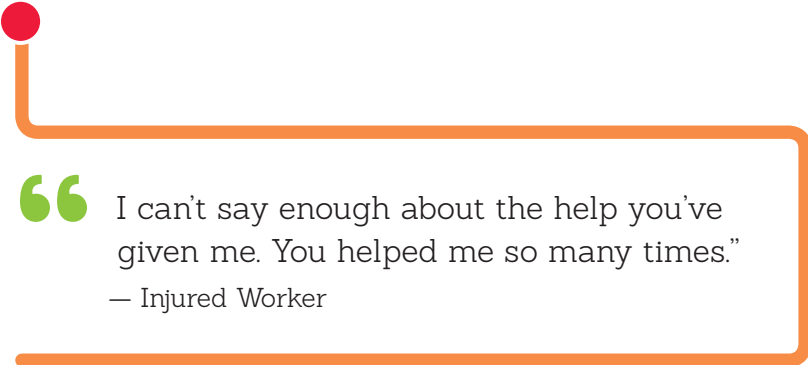
future unfairness and the expense and time of formal appeals.

## Preventing problems

The Commission can prevent problems through our capacity to track complaints and identify recurring themes and patterns. The Commission identifies systemic issues and recommends changes to prevent similar problems.

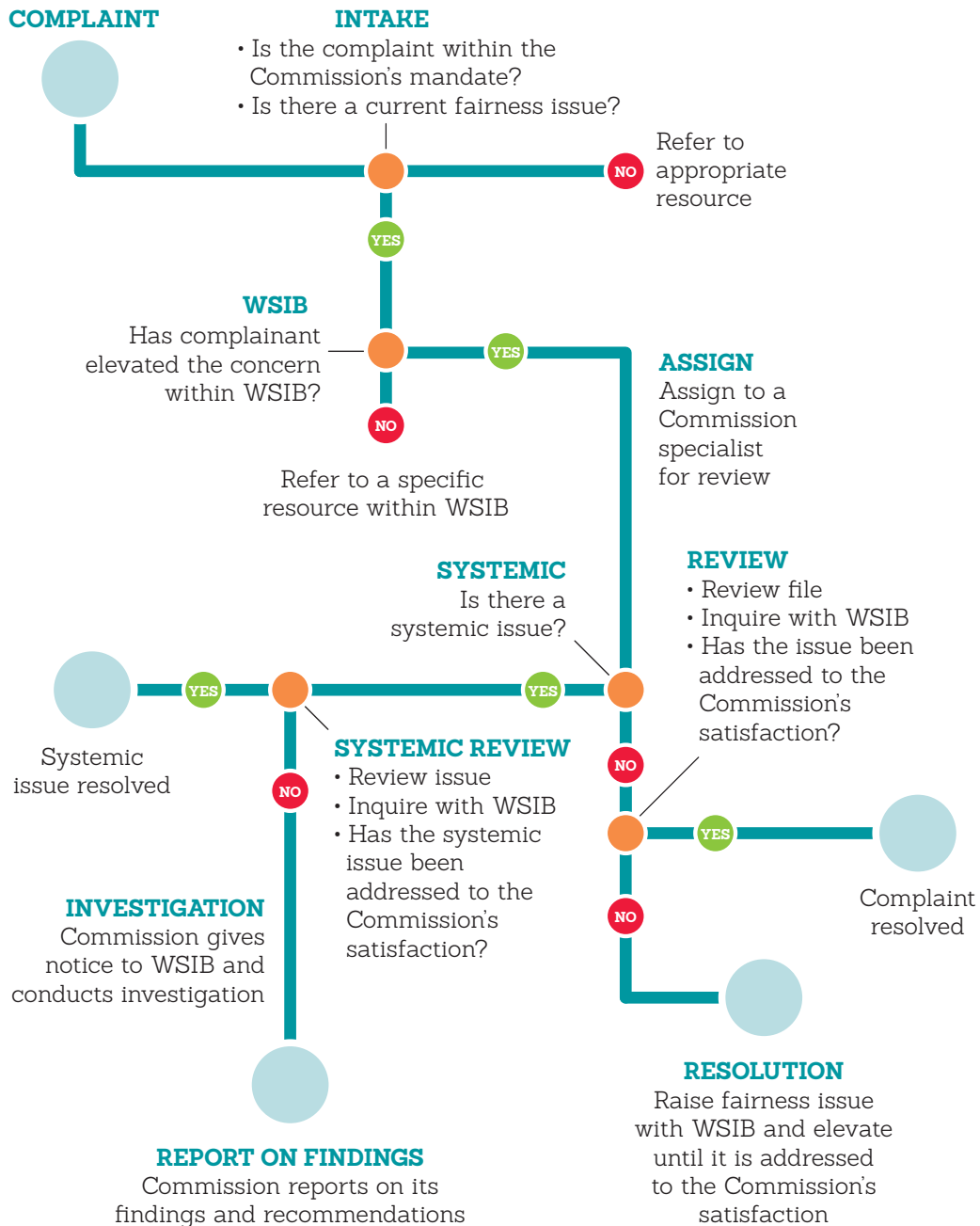
## Acting as an agent of change

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.



“ I can't say enough about the help you've given me. You helped me so many times.”  
— Injured Worker

# THE COMPLAINT PROCESS





# THE RESOLUTION PROCESS

**W**hen 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.





# FAIRNESS CATEGORIES

## 1. 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?

## 2. 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? Were letters answered or calls returned in a timely fashion?

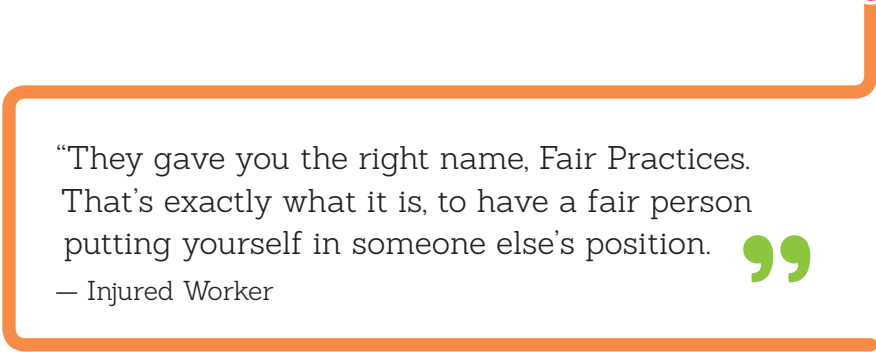

## 3. Communication

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?

## 4. Behaviour

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

When we receive a complaint about behaviour, we first advise the person to raise it with the manager. Then, if needed, we speak to the manager.



“They gave you the right name, Fair Practices. That’s exactly what it is, to have a fair person putting yourself in someone else’s position. ”

— Injured Worker



# RESOLVED CASES

## INDIVIDUAL CONCERNS

### Suitable occupation and lock-in decisions reconsidered

**A worker's representative** advised the Commission that work-related psychological conditions affected the worker much more than the WSIB recognized. Psychological reports showed the worker was completely disabled due to agoraphobia, major depression, and anxiety. The WSIB determined that she could work as a cashier.

The worker told the Commission that her condition worsened after her work transition program ended because the WSIB stopped paying for psychological treatment.

The Commission reviewed the worker's file. She had suffered a compensable back injury in 2008. In 2013, the WSIB determined that the worker also had a psychological disability caused by her workplace injury. Her psychological condition was permanent, so she received a 30 per cent non-economic loss (NEL) award. In 2014, the worker's loss of earnings (LOE) payments were locked in on the basis that she could work part-time as a cashier.

The worker's representative appealed the WSIB's decision, arguing that the WSIB had not considered the worker's psychological condition when it deter-

mined she could work part-time. While the appeal was pending, the WSIB received new medical information resulting in an increase in the worker's NEL award for psychotraumatic disability to 40 per cent. By accepting that the worker's permanent injury had worsened, the WSIB was required to review the suitable occupation (SO) and lock-in decisions, but didn't do so.

In 2015 and 2016, the WSIB's appeals staff directed the case management staff to review the SO and LOE in light of the worker's NEL increase. Still, the reviews didn't happen.

The Commission made inquiries with the WSIB and questioned whether the worker's psychological conditions had been fully considered when determining the worker's ability to work part-time as a cashier. As a result, the WSIB conducted further reviews and decided that the worker was unable to work as a cashier. Full LOE payments were reinstated retroactively. Based on a new assessment, the WSIB also allowed further psychological treatment.




## Migrant worker's payments reinstated retroactively

A legal clinic contacted the Commission on behalf of a temporary foreign agricultural worker whose loss of earnings (LOE) payments were terminated even though he was unable to work. The clinic escalated concerns to WSIB senior managers, but they maintained that the worker could work as a cashier and restore his pre-injury earnings.

The WSIB had allowed 12 weeks of LOE payments for a mild traumatic brain injury. The legal clinic argued that the WSIB should continue payments, as is WSIB policy and law for injured workers who cooperate with health treatment and are unable to work.

The Commission's file review showed that the WSIB determined the worker's suitable occupation before it received medical reports that showed significant issues in his neck and back: herniated discs and possible bilateral displacement of nerve roots. The worker was not eligible for health care in Ontario and received no WSIB coverage for pain medication.

The WSIB reviewed the file after the Commission's inquiries with the manager and the director. The WSIB determined that cashier work was not suitable for the worker and reinstated LOE payments retroactive to termination. The worker also received medical treatment.



“Getting you involved really moved things along. There was nothing for all these years and things moved as soon as my representative called you. ”

— Injured Worker



## Late filing penalty reversed for employer

**An employer contacted** the Commission about a \$1,000 penalty he said the WSIB should not have charged. He mailed two annual reconciliation forms, one for each of his companies, in WSIB-issued envelopes on March 28, 2017. The WSIB received only one form before the March 31 deadline.

The WSIB told the employer he must pay the Period Reconciliation Not Reported (PRNR) penalty and could later appeal the decision. Account specialists have the authority to cancel a penalty if the employer has a good compliance record and a reasonable explanation for not complying for the filing period in question.

The Commission's review revealed that the account specialist did not reverse the penalty because it was the third on the employer's record. In fact, the previous two penalties were WSIB errors that had been reversed.

The Commission confirmed with the manager that the account specialist had not considered WSIB guidelines for cancelling non-compliance penalties. The employer paid some \$800,000 a year in premiums and had an excellent compliance record for both companies.

The manager reversed the penalty and advised the president and controller of the companies.

## Tribunal decision wrongly implemented


**A 50-year-old worker** contacted the Commission because the WSIB stopped his partial loss of earnings (LOE) payments, contrary to a decision of the Workplace Safety and Insurance Appeals Tribunal (the Tribunal).

The Tribunal accepted the WSIB's 2013 decision to pay partial LOE payments based on the worker's ability to work 20 hours a week at minimum wage to age 65. It rejected the worker's argument that he was unemployable, and therefore entitled to full LOE payments.

Instead of continuing the partial LOE payments the worker had been receiving, the WSIB appeals implementation

team suddenly terminated all LOE payments as of August 3, 2017, the date the decision was implemented. The worker and his representative called the WSIB, but WSIB staff said the decision was final and if the worker or representative had issues with it, they should call the Tribunal.

After hearing from the worker, the Commission asked a manager to review the Tribunal decision and the WSIB's implementation. The Commission pointed out that the Tribunal decision intended the words "not entitled to further LOE benefits" to mean not entitled to the increased payments the worker was seeking in his appeal. It



was clear from reading the full decision that the Tribunal intended to leave existing payments in place.

The manager reviewed the decision with senior WSIB staff. The following

day, the WSIB reinstated the worker's LOE payments. The following week, the worker received a cheque for \$3,700 to cover LOE payments retroactive to the date they were stopped.

## WSIB staff apologizes for handling of “return to work” meeting where worker was terminated

**A worker complained** to the Commission that the return to work specialist (RTWS) behaved inappropriately with respect to a meeting in which the worker was terminated. The RTWS had notified him about a return to work meeting at the worksite and with the accident employer.

Expecting to discuss his return to work, the worker asked his spouse to go with him because of ongoing symptoms from the work-related head injury. The RTWS, however, would not allow the spouse in the meeting. The RTWS remained throughout even though return to work was not discussed. Instead, the employer terminated the worker, who had no union representative with him.

The worker told the Commission that he felt that he had been asked to the meeting on false pretenses and that he felt coerced to sign documents. It was unfair that his wife was barred from the meeting, he said, and when he expressed his concerns to a WSIB manager, he didn't feel heard.

The Commission spoke to a manager, who acknowledged that information in the claim file suggested that the WSIB knew the employer intended to fire the worker at the “return to work” meeting. The manager also agreed that the RTWS did not remain neutral and impartial, as required, but behaved inappropriately.

The WSIB manager clarified that the RTWS could have:

1. Cancelled the “return to work” meeting;
2. Informed the accident employer that she would not participate in the termination meeting;
3. Explained to the worker why she was excusing herself; and,
4. Allowed the worker's spouse to attend.

Because of the Commission's inquiries, the RTWS apologized to the worker and discussed with him how she could have better handled the situation. The worker accepted the apology.



## Lock-in decision reviewed and loss of earnings (LOE) payments retroactively restored

**The worker had** received full loss of earnings (LOE) payments because of two failed back surgeries and compensable depression. In 2017, he contacted the Commission to complain that the WSIB reduced his payments at the 72-month lock-in date and deemed him able to work full-time. The worker told the Commission that the WSIB had not considered his psychological restrictions or his doctor's recommendations.

The Commission's review found that the WSIB had tried several times over the years to engage the worker in work transition (WT) services, but failed. Possible jobs identified by the WSIB — production clerk or self-serve gas station attendant — were unsuitable for the worker, who had medical restrictions. When the worker reached maxi-

imum medical recovery for his injuries in 2007, the WSIB allowed permanent impairment awards — 29 per cent for lower back and 14 per cent for depression.

The Commission contacted the WSIB manager about the decision-making process to determine whether the worker's psychological limitations had been considered. The manager told the Commission that the WSIB would review the WT plan and the worker's level of impairment.

As a result of the Commission's inquiries, the WSIB decided the worker could not work due to his physical and psychological limitations. The lock-in decision was reviewed and full LOE payments were restored retroactively.



I was using the last little money I had in the bank and I am very grateful and thankful for your help.”

— Injured Worker



## More psychological treatment allowed for worker with PTSD

**The worker's psychologist** recommended further treatment. The WSIB said the worker had received the maximum number of treatments and was at maximum medical recovery (MMR). The worker complained to the Commission that the WSIB was insensitive to his needs, given that he suffered from post-traumatic stress disorder (PTSD). The WSIB had neither reviewed the psychological report in a timely manner nor responded to it, said the worker.

The Commission reviewed the file and confirmed that the psychologist recommended maintenance treatment to deal with the worker's relapse. The

WSIB's guidance document for maintenance treatment allows maintenance treatment for injured workers to maintain their level of functioning after reaching MMR.

The Commission contacted the manager for clarification. The manager reviewed the claim and told the Commission that while he agreed that the worker was at MMR for work-related PTSD, he also agreed that the WSIB should approve more treatment to prevent relapse. Because of the Commission's inquiries, the WSIB allowed the worker further treatment.

## Appeal timeline extended


**A worker's representative** was trying to appeal a suitable occupation (SO) decision and the accompanying work transition (WT) plan. The WSIB case manager said the representative objected only in September 2014 and had missed the July 2014 deadline.

In June 2016, the representative asked for a reconsideration of the WSIB's determination that the representative's objection was too late to be considered. In October, he escalated his request to a manager. In January 2017, he had still not received a response, so he contacted the Commission.

The Commission's file review showed that the representative had in fact

objected to the SO and WT decision in May 2014, the month before the WSIB's written decision went out to the worker. The WSIB did not send a copy of the decision letter to the representative.

The Commission found notes on file from 2014 indicating that the WSIB reviewed the SO and WT plan with the worker and that the worker agreed to the recommended training. After that, the case manager called the representative to confirm whether he still wished to object. The following day, the representative wrote to confirm his objection. He also noted that workers may cooperate with the WSIB to guard



against losing benefits even though they object to the plan.

Soon after the Commission contacted a manager, the WSIB wrote to the worker representative. The letter acknowledged that because the WSIB didn't send a copy of the June 2014 let-

ter to the representative, it didn't notify him of the appeal deadline. Further, the letter stated that the WSIB had clearly documented the representative's objections in May 2014.

The WSIB apologized for the delay and allowed the appeal to proceed.

## WSIB should not have been involved in employer efforts to recover overpayment to worker

**A worker's representative** contacted the Commission about the WSIB seeming to favor a Schedule 2 employer's efforts to recover an overpayment to a worker, something the WSIB is not supposed to be involved in. Schedule 2 employers pay the total cost of payments and benefits for injured workers.

In a 2014 decision letter, the WSIB rescinded a worker's loss of earnings (LOE) payments and wrote that the "WSIB does not pursue debts resulting from reversed or amended decisions". In January 2017, after receiving a call from the employer, the WSIB sent the

worker the same decision letter but removed the reference to the non-pursuit of debts.

The Commission contacted a WSIB manager to ask why. The manager reviewed the file and confirmed that the 2014 letter was correct and that the WSIB should not have sent the 2017 letter.

The manager further clarified that recovery of overpayments is an issue between Schedule 2 employers and injured workers, and that the WSIB has no control or influence over the process and must remain neutral.

## WSIB willing to reconsider medical marijuana


**The WSIB denied** coverage for medical marijuana even though the worker's doctor had prescribed it and the worker claimed he was pain-free since using it. The WSIB stated in its decision letter that medical marijuana was not an appropriate treatment for the worker's injury.

The worker told the Commission he had little relief during seven years

of taking another pain medication. He complained that the WSIB didn't review or consider his medical information.

The Commission spoke with a manager to clarify the reasons for the decision and content of the letter. The manager reviewed the file and said the WSIB would write to the worker to fully explain the rationale for the decision.





Because of the Commission's inquiries, the worker received a detailed letter that explained the process for considering medications that are not on the WSIB Drug Benefit Program Formulary, the list of drugs the WSIB

covers. The letter also explained WSIB Health Services research and reasons for not covering medical marijuana. The WSIB, however, agreed to reconsider its decision if the worker provided further medical evidence.

## Delay in recalculating payments

**A worker contacted** the Commission to say he was in a desperate financial situation, and his loss of earnings (LOE) payments were delayed by nearly two months.

The Commission reviewed the file,

found that the WSIB was recalculating the payments, and spoke with a manager about the delay. As a result, the WSIB did the new calculation and issued a cheque to the worker three days after his first call to the Commission.

## Large NEL increase for homeless worker

**This former truck** driver was homeless and distressed. The WSIB reduced his payments from full loss of earnings (LOE) to partial because, according to the WSIB, the worker didn't cooperate in a work transition (WT) program which it said would equip him to work in computer technical support. The WSIB said he could also work in customer service but had not applied for jobs as the WT program requires.


The worker suffered a severe injury to his right hand while unloading a truck. He received LOE payments and a 17 per cent non-economic loss (NEL) award for his permanent impairment.

The worker said he had applied for work, but that the WSIB didn't believe him. He said he couldn't do customer service or computer support because he had trouble dealing with people.

Assessments on file confirmed this, indicated that he was likely autistic, and suggested that there were underlying mental health problems. The Commission's file review also found that the WSIB had not re-determined the NEL award as requested by the worker.

The Commission contacted a manager to discuss the worker's request for help and for more services. The manager offered that if the worker was willing to cooperate, the WSIB would reassess his psychological condition and its effect on suitable occupations and return to work. Later, however, the manager told the Commission that the worker had refused an earlier offer of psycho-vocational assessment.

The manager referred the claim for an expedited NEL redetermination to consider the worker's complex regional



pain syndrome. As a result, the WSIB increased his NEL award to 37 per cent.

A lump sum for retroactive NEL

payments was enough to cover the worker's temporary housing costs. The WSIB advised the Commission that it would review suitable occupations.

## Policy clarified, worker's benefits increased

A worker who was injured in the 1970s asked the WSIB to explain calculations for his temporary total (TT) disability benefits allowed for a recurrence. He questioned why his benefits were based on his 1974 pre-injury earnings instead of his most recent earnings. He cited WSIB Policy 18-06-04 which requires the WSIB to use most recent earnings, as had happened with an earlier recurrence.

WSIB Policy 18-06-04 applies to workers injured before January 1, 1998. It dictates how to calculate total or partial disability benefits for a recurrence of the work-related injury/disease.

When he couldn't get answers from the WSIB about how the WSIB interprets the policy, the worker contacted the Commission.

The Commission spoke to an assistant director (AD) who explained that when a worker is not working at the time of the recurrence, the pre-injury earnings are used to calculate TT benefits. He said that the team that handles pre-1990 injuries consistently approaches TT benefits this way, but that they made an exception in this case because of how the worker's prior recurrence was paid. The AD reported

that he referred the worker to discuss his policy concerns directly with the WSIB's Policy Branch.

The Commission spoke with Policy Branch staff who confirmed that policy 18-06-04 was being revised for clarity, but that TT benefits are based on most recent earnings or pre-injury earnings, whichever is higher, regardless of whether the worker is working at the time of reoccurrence. WSIB staff said it's unclear when the WSIB strayed from this interpretation and application. The revised policy was published on January 2, 2018.

In a discussion with the Commission, the AD acknowledged the confusion and confirmed that all management and staff received clarification. He agreed to screen active "pre-90" cases for any TT benefits decisions that require review.

The worker later received a letter to explain how his TT benefits would be calculated. The WSIB reviewed and increased his benefits, using his most recent earnings.

The Commission is following up with the WSIB to identify other claims where this policy may have been incorrectly applied.



## Occupation found unsuitable because of safety issues, payments reinstated

**The worker suffered** an eye injury while working as a horse groomer. When his 12-week job search program ended, the WSIB terminated payments and said he could return to his previous occupation as a horse groomer, or work as a horse trainer. The worker did find employment as a horse groomer; however, he reported to the WSIB that he was terminated on his first day because his new employer felt the job was unsafe for the worker.

The Commission's file review revealed a significant level of impairment. After three surgeries, he remained blind in one eye, and had trouble with focus, seeing details, and balance and perception. Work restrictions on file recognized the significant impairment and the worker was receiving a 22 per cent non-economic loss (NEL) award.

The Commission spoke first with a work transition (WT) manager to

inquire whether the WSIB had considered all medical information in the claim file when it determined a suitable occupation (SO). The WT manager maintained that horse groomer was still a SO. The Commission then asked an assistant director how the worker had been approved to return to his pre-injury occupation given his health and vision issues.

The assistant director reviewed the claim file and acknowledged there were "gaps in the process" for assessing the SO. He instructed the WT specialist to reconsider the SO and provide WT services for the worker.

Because of the Commission's inquiries and the WSIB's subsequent action, the worker's payments were reinstated, retroactive to the date his job search program ended.


## Exception made, prescription approved

**A worker complained** to the Commission that the WSIB denied him coverage for a topical cream prescribed by his doctor for chronic pain. A nurse consultant told him the cream was not on the WSIB's formulary, the list of covered medications.

The Commission's file review showed that the worker had suffered multiple fractures to the same ankle over sev-

eral years. Eventually, he was diagnosed with a non-healing fracture and complex regional pain syndrome. He tried many treatments, including nerve blocks, medications, and many surgical procedures. The WSIB allowed a 25 per cent permanent disability award.

The letter denying coverage for the topical cream suggested the worker try alternatives, such as Tylenol, opioids,



neuropathic oral pain analgesics, or nonsteroidal anti-inflammatory drug. The writer also suggested that the worker's doctor search for an alternative on the WSIB's formulary.

The Commission spoke with a manager, who said that a nurse would review the medical information on file. That review revealed that the worker had tried several medications listed

on the WSIB formulary and that there were no other options.

The nurse contacted the pharmacy for information about the cream and instructions for use.

Because of Commission inquiries and the WSIB's subsequent review, the WSIB allowed a three-month trial of the cream. WSIB policy allows for exceptions based on the merits and justice of a case.

## Worker was underpaid for months, cheque issued

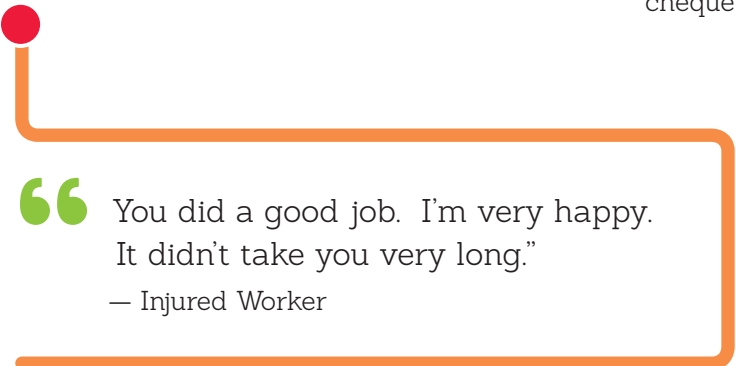
**A worker's representative** contacted the Commission to say he had been trying for more than six months to get the WSIB to rectify what he believed was a significant error in long-term loss of earnings (LOE). He said he believed the amount was incorrect because a pay increase during the calculation period was not factored in and LOE payments from another claim should have been factored out.

The representative followed up with the WSIB three times by phone and

twice in writing. The WSIB took no action.

The Commission contacted the manager about the delay and lack of communication. The manager said the team was short-staffed and the new case manager was inexperienced.

Because of the Commission's inquiries, the WSIB determined that the worker's representative was correct. The WSIB had been significantly underpaying the worker for months. In December 2017, the worker received a cheque for nearly \$31,000.



**“** You did a good job. I'm very happy. It didn't take you very long.”  
— Injured Worker



## BEYOND THE INDIVIDUAL

**M**ost of the Commission's cases involve an individual worker, employer, or service provider, but sometimes a flaw or unfairness is system-wide and can affect many. Fixing one systemic issue can prevent many other problems.

### Commission identified problems with WSIB's process for imposing contact restrictions on workers

**The Commission receives** many complaints from injured workers who are not permitted to speak with WSIB staff by phone and/or in person because of behavior that the WSIB declares inappropriate, unacceptable, or threatening. Such constraint can limit workers' ability to access WSIB benefits and services to which they may be entitled.

The Commission made inquiries about the WSIB's processes related to the so-called "contact restrictions" and learned that there are restrictions on some 13,000 claim files.

Fairness concerns raised by the Commission include:

- The WSIB has done little or no review of the 13,000 claim files with restrictions.
- No consistent and documented process is in place for reviewing or rescinding restrictions when no longer necessary.
- Many injured workers may be under restriction without evidence or documentation of the behavior that raised concerns, particularly

those restricted before 2009, when the WSIB developed a threats protocol that takes effect when injured workers act or speak in ways the WSIB staff deem to be inappropriate, unacceptable, or threatening.

- Workers are not notified in writing when their contact restrictions are removed.
- All contact restrictions remain for at least two years, regardless of the reasons for imposing them.
- Restrictions are imposed with no thought to accommodation of workers with special needs. The WSIB does not provide accommodation as required by the Ontario Human Rights Code.

In response to the Commission, the WSIB created an action plan to review its process and address the concerns raised.

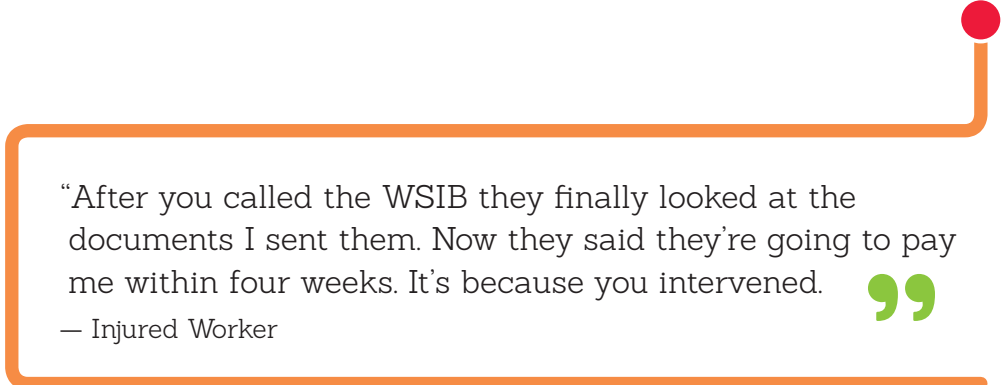
The Commission has asked the WSIB to provide regular updates as it follows its action plan.



By the end of 2017, the WSIB informed the Commission that:

- It was reviewing its approach to restrictions;
- The WSIB's Threats Protocol had been updated; and

- The Personal Threats Checklist was being modified to ensure that potential worker accommodation issues are addressed.  
The Commission continues to carefully monitor this systemic matter.



“After you called the WSIB they finally looked at the documents I sent them. Now they said they’re going to pay me within four weeks. It’s because you intervened. ”  
— Injured Worker

## FINANCIALS

The Fair Practices Commission budget, approved by the WSIB board of directors, was \$1.08 million for the fiscal year ending December 31, 2017.

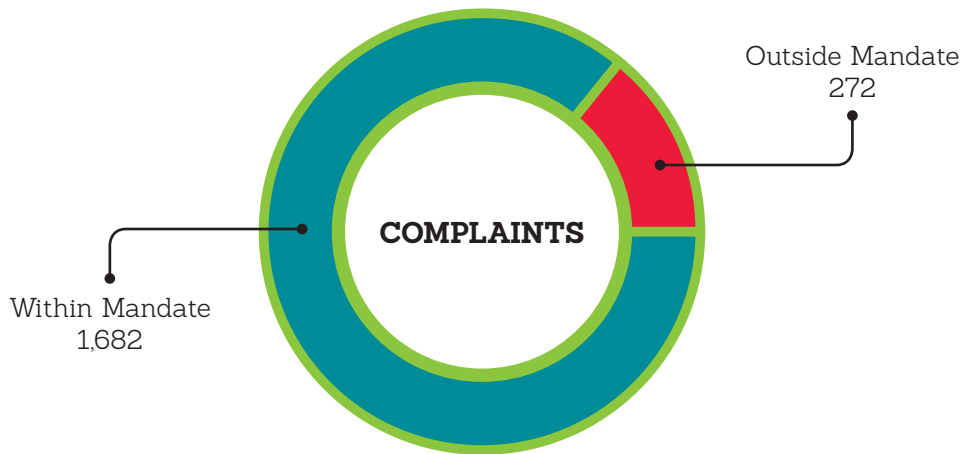


## OUTREACH AND EDUCATION

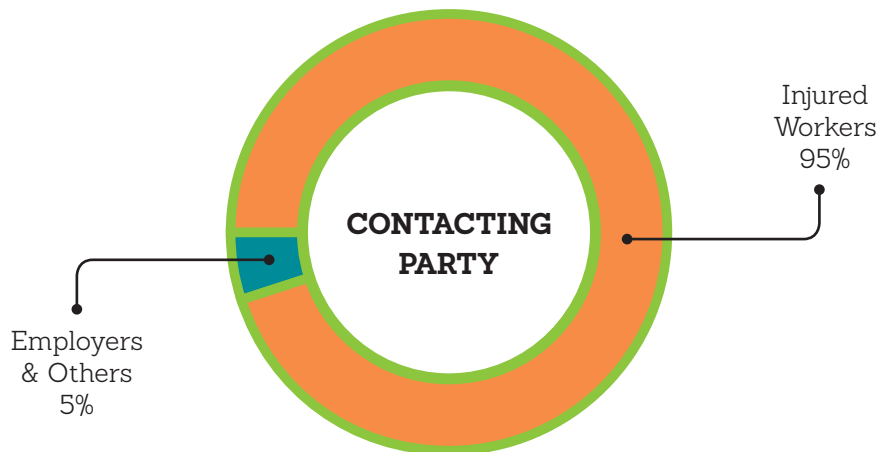
- Contacted legal clinics and occupational health clinics across Ontario to increase awareness of Commission services
- Contacted all provincial parliament constituency offices with information and literature about the Commission
- Contacted Injured Worker Outreach Services (IWOS) groups across the province and presented to IWOS semi-annual meeting
- Contacted local labour councils across Ontario
- Met with President and CEO of Toronto Construction Association to discuss outreach strategies in the construction sector
- Provided Commission literature to several construction associations for display in their offices and distribution to members
- Shared information about Commission services for publication in Council of Ontario Construction Associations (COCA) newsletter
- Provided literature for distribution at Industrial Accident Victims' Group of Ontario (IAVGO) Community Legal Clinic's annual general meeting
- Presented Commission's role and mandate at Unifor's Ontario Workers' Compensation Conference
- Provided Commission literature for distribution at Workplace Safety North's Mining Health and Safety Conference
- Attended and provided information at Canadian Union of Public Employees' (CUPE) Injured Workers Advocacy/Health & Safety Committees Conference
- Attended Schedule 2 Employers Group conference
- Delivered fairness awareness training to new WSIB auditors
- Attended the 2017 Forum of Canadian Ombudsman/Association of Canadian College and University Ombudspersons biennial conference
- Attended annual conference of the Society of Ontario Adjudicators and Regulators (SOAR)
- Teleconferences with the Fairness Working Group which represents fair practices offices of workers' compensation boards across Canada
- Discussed role of the Fair Practices Commission (FPC) with the Alberta Workers' Compensation Board, to support establishment of an Alberta FPC

# COMPLAINTS BY THE NUMBERS

## Complaints to the Commission in 2017



## Who contacted the Commission in 2017

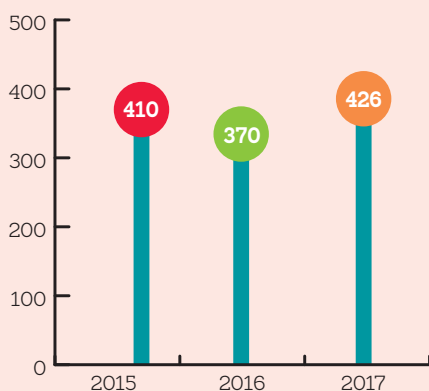
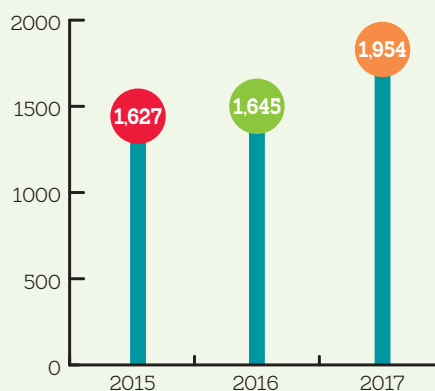




## Three-Year Summary

### ISSUES OPENED

The Commission received 1,954 issues in 2017, compared with 1,645 in 2016.

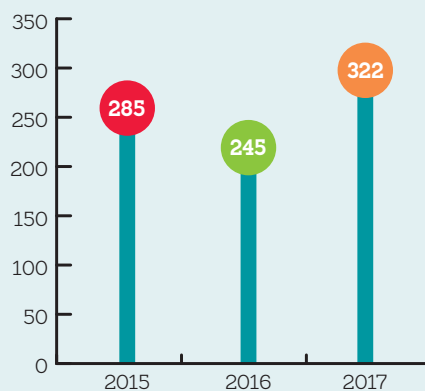


### INQUIRIES MADE BY SPECIALISTS

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. Most of those issues were about delay (213) and decision-making process (107).

### ISSUES THE WSIB HAD TO ADDRESS

The number of fairness issues that required action by the WSIB increased in 2017. Most of those issues were about delay (179) and decision-making process (75). The WSIB took quick action once the Commission became involved. The Commission resolved most complaints within three days.



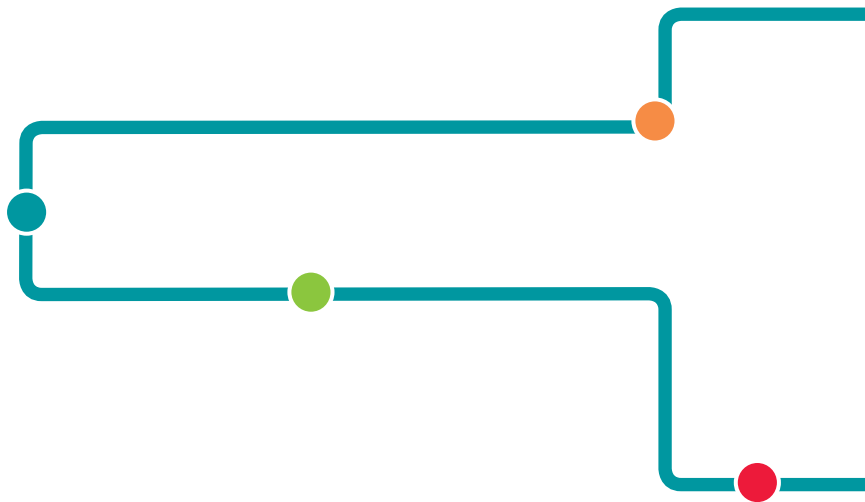
### Top 10 ranking of complaints by subject

2017	Subject	2016
1	Benefits	1
2	Health Care	2
3	Early and Safe Return to Work	7
4	Appeals Process	3
5	Non-economic Loss	6
6	Work Transition	4
7	Permanent Disability	9
8	Expenses	10
9	Employer Assessment Issues	5
10	Psychotraumatic Disability	8

### Issues by fairness category

Fairness Category	2017	2016	2015
Delay	35%	29%	32%
Decision-Making Process	28%	34%	27%
Communication	18%	19%	19%
Behaviour	5%	4%	5%
Non-Mandate	14%	14%	17%





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



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**Web** [fairpractices.on.ca](http://fairpractices.on.ca)

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