

Fair Practices Commission

2018 Annual Report



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



*Également disponible
en français*

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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.

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From the Commissioner

It is my privilege to present the Fair Practices Commission's 2018 annual report.

As the organizational Ombudsman for the Workplace Safety and Insurance Board (WSIB) of Ontario, the Commission addresses fairness concerns raised by injured workers, employers, and service providers about the service or treatment they receive at the WSIB. The Commission also tracks complaint trends, identifies system-wide issues, and makes recommendations for improvements to the WSIB. The role of the Commission is in keeping with the WSIB's goal of providing high quality service in an open, fair, and transparent manner.

Whether it's an individual complaint or a system-wide concern, the impact of unfair practices can be immense. In one example, which you can read about on page 13 of this report, an injured worker was told by the WSIB for several years that he could return to work despite multiple psychological assessments that found the worker was psychologically unable to work. After the Commission's inquiries prompted a fresh review, the WSIB reversed its decision. In another case, found on page 14 of this report, a migrant worker received \$86,000 in retroactive loss of earnings benefits and an \$11,000 non-economic loss award following the Commission's inquiries and the WSIB's review of the worker's medical information.

You will also read about several systemic and process concerns the Commission identified, starting on page 8 of this report. The Commission's work on these broader

issues affects a greater number of people than would be the case if our work were confined to individual complaints. The Commission continues to work toward improved services, and increased fairness, accountability, and transparency at the WSIB.

In 2018, the Commission received 2,663 complaints — the highest in the history of our office. Of those complaints, all but 400 were within the Commission's mandate. Many complaints received (39%) were about delays. In particular, the Commission noted a significant increase in complaints about delays and customer service following operational changes at the WSIB in July 2018. We also received complaints about how the WSIB deals with injured workers who have psychological impairments. As well, there was an increase in the number of complaints related to migrant workers.

I want to take this opportunity to thank all those who brought their complaints to the Commission and wish to encourage others who may have fairness concerns about the WSIB to contact our office as well.

I extend my sincere thanks to my professional and dedicated staff for the amazing work they do in promoting fairness every day. In addition, I want to express my appreciation to those at the WSIB who addressed concerns raised by the Commission and helped us to reach fair resolutions. Lastly, a special thank you to the WSIB Board of Directors for their guiding principles and ongoing support in enabling me and my staff to continue to influence positive changes at the WSIB.

— Anna Martins, Commissioner



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) 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.

“

“Thanks to your help the issue was resolved. I’ve been trying for months, and it wasn’t going anywhere until you intervened.”

WORKER REPRESENTATIVE

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.



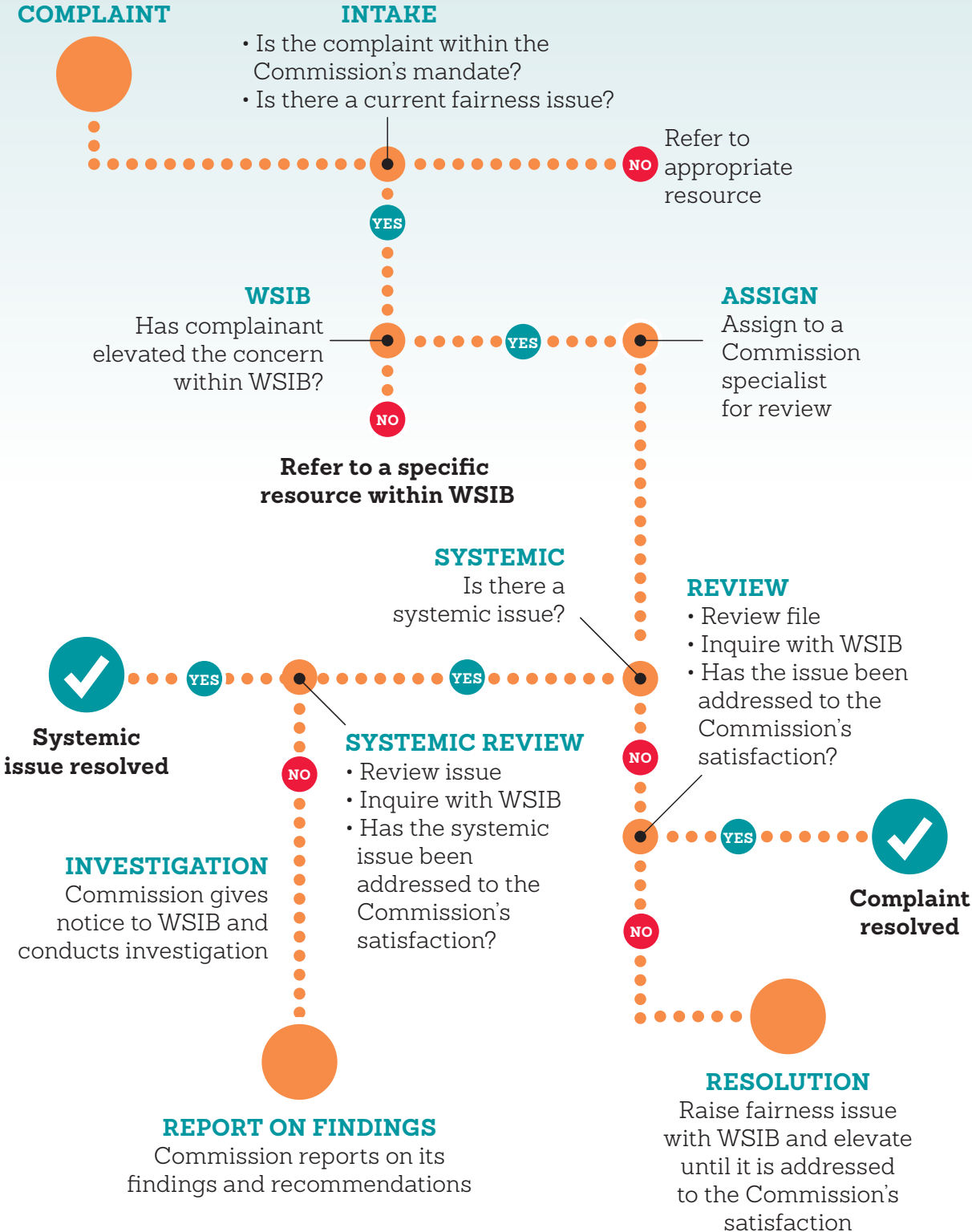
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**I appreciate your efforts
on my behalf.**

**I truly appreciate your
office's assistance and
things being handled in
the right way.”**

WORKER

The Complaint Process



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 a 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 complainant with the results.

“

Thank you for taking your time and responding to [the complaint]. At least there is some channel to look at [the claim] without bias.”

WORKER

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.

“

“We would like to express our greatest appreciation for your professional assistance in this matter. Needless to say, it is not enough even with millions of thanks.”

EMPLOYER



Systemic and Process Concerns

Changes to the WSIB operating model described as “chaos” and “a nightmare”

IN July 2018, the WSIB made operational changes in an effort to deliver better service.

Under the new operating model, claims are triaged and moved to one of four streams of claims management depending on factors such as severity of injury, whether the worker has to miss time from work, and the prospect of returning to work with the accident employer.

If the worker does not miss work, is not anticipated to miss work, or is expected to return to work within four weeks, the worker’s claim is no longer assigned to specific WSIB staff and instead becomes a “system-owned” claim. All work and management of such claims go through a queue and are handled by case managers

on the WSIB’s newly-formed Case Management and Administration team.

The Commission heard from many complainants about long waits in telephone queues, only to be transferred to a WSIB representative who couldn’t help them. Employers, workers, and other stakeholders referred to the new system as “chaos” and “a nightmare”.

Immediately following the July changes, complaints to the Commission spiked. For August, September, and October, the Commission received 60 per cent more complaints than during the same period in 2017. Complaints raised about delays nearly doubled.

Many stakeholders raised concerns about receiving little or no communication about the operational changes. The Commission had regular meetings with the WSIB to provide feedback on the broader concerns and complaints it was hearing. The Commission also resolved individual fairness issues. See the following two examples.

The WSIB reallocated staff and assigned a number of “system-owned” claims back to dedicated case managers. By the end of 2018, the overall number of issues raised with the Commission, including delay issues, dropped closer to 2017 levels.

The Commission continues to monitor the impact of the operational changes, resolve individual complaints, and communicate with the WSIB about the concerns raised by stakeholders.

(i) Delayed NEL award caught in “system-owned” claims queues

A worker called the Commission to say that he had waited for more than a year for a non-economic loss (NEL) review, only to discover in July 2018 that a case manager was no longer assigned to his claim.

The original delay in completing the NEL assessment was due to lack of response from a doctor. In June 2018,

the case manager requested a response from the doctor again and the WSIB received the information on July 6, 2018.

When the worker called the WSIB at the end of July for an update, a customer service representative (CSR) told him that he no longer had a case manager and that his claim was in a queue for review. The CSR gave the worker no timeline and told the worker he could not speak with anyone else about his claim.

The worker called the Commission about the ongoing delays and said that he felt that no one cared about him.

The Commission spoke to the WSIB and the claim was assigned to a case manager to be dealt with on a priority basis. With no sign of progress a week later, the Commission called the WSIB again and the worker's claim was finally referred to the NEL team.

About 12 weeks later, the WSIB mailed notification of a 24 per cent NEL award with a cheque for approximately \$10,000 to the injured worker.

(ii) WSIB delays left worker in health care limbo, case finally expedited

In October 2018, an injured worker complained to the Commission that five weeks after a specialty clinic recommended shoulder surgery, the WSIB had still not determined whether the recommended surgery was related to the workplace injury. The worker was also waiting for an assessment of what he believed were work-related psychological problems.

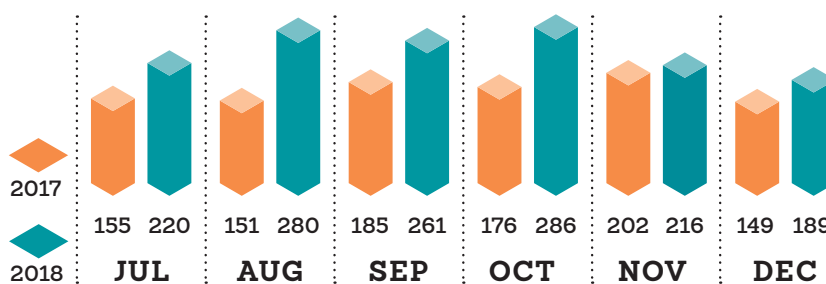
With no dedicated case manager, the worker's claim was "system-owned." He told the Commission that despite calling the WSIB every day for weeks and speaking with two managers, he was unable to get any information on the status of his claim.

After the Commission's inquiries, the

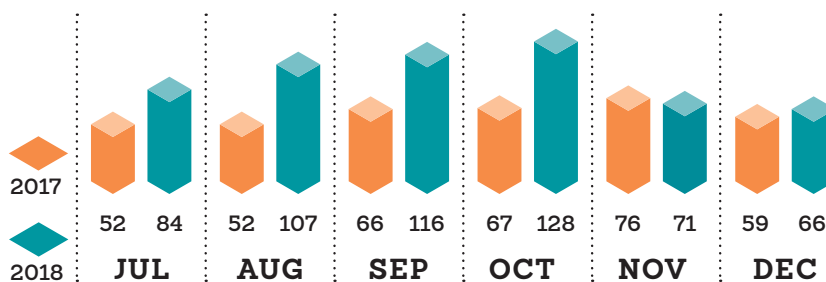
WSIB requested medical consultations on the surgery and on the worker's psychological condition. Two weeks later, the worker called the Commission again, frustrated by more delays.

The Commission went back to the WSIB. The WSIB's external medical consultation was complete, finding that the recommended surgery was related to the workplace injury. The WSIB had taken no further action, however. Because of the Commission's inquiries, the WSIB finalized the worker's entitlement to surgery and expedited a psychological consultation.

TOTAL ISSUES RAISED BY MONTH



ISSUES RAISED ABOUT DELAYS BY MONTH



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**“I’m very grateful for your help....
Just keep doing what you are doing.”**

WORKER



Workers to receive adjusted TT disability payments as a result of the Commission's follow-up

UPDATE

In 2017, an injured worker complained to the Commission about the WSIB's inconsistent responses on how temporary total (TT) disability benefits are calculated for the recurrence of an injury. The worker was not employed at the time of the recurrence and the WSIB used his pre-injury earnings to calculate TT benefits, rather than most recent earnings as required by policy 18-06-04.

Following inquiries by the Commission in 2017, the WSIB confirmed that according to policy, TT benefits are based on most recent or pre-injury earnings, whichever are higher. This is regardless of whether a worker is employed at the time of the recurrence. The WSIB advised that it would clarify this in a revised policy to be published in January 2018. The WSIB also agreed to consider whether it could identify other claims where the policy may have been misapplied.

Throughout 2018, the Commission continued to follow up on this issue. Ongoing inquiries by the Commission prompted the WSIB to identify approximately 400 claims for review. The WSIB estimated that up to 200 claims would require a TT benefit adjustment resulting in additional money owed to the worker.

For more on the 2017 complaint and resolution, see page 16 of the Commission's 2017 annual report.

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“I appreciate your diligence. You have done a lot for me and I appreciate it.”

WORKER

WSIB commits to addressing Commission's concerns with process for identifying psychological limitations

Many workers and their representatives complained to the Commission about how the WSIB decides whether workers suffering from psychological injuries are psychologically able to return to work and in what jobs. They complained that the psychological limitations determined by the WSIB are generic and do not take into account the medical evidence on file.

The Commission's inquiries revealed four major areas of concern:

- The WSIB determined the same or similar psychological limitations for many workers despite significant differences in levels of permanent psychological impairment;
- The WSIB has no policies or other documentation to guide the process;
- The WSIB is not gathering further information from workers, their representatives, or doctors when determining limitations; and
- Staff use the level of a non-economic loss (NEL) benefit to determine whether the worker is psychologically fit to return to work. This NEL benefit is compensation for a work-related permanent impairment, however, and is not related to a worker's ability to work.

In response to the Commission's concerns, the WSIB has stopped using NEL decisions as guidance. Moving forward, the WSIB will rely on a review of medical evidence when determining whether a worker is psychologically fit to return to work. The WSIB made a commitment to:

- Base decisions on medical evidence on file and to document and share rationale for decisions;
- Communicate better with workers, their representatives, and their treating health professionals;
- Arrange for internal or external medical consultations when required;
- Focus decisions on what accommodations may be needed for the worker to return to work; and
- Train staff in how they can help the return-to-work process and improve outcomes for workers with permanent psychological impairments.

The Commission will follow up with the WSIB on promised improvements and will monitor for new complaints related to this issue.

Claimants may ask WSIB to pay cannabis expenses faster

The Commission raised concerns about the wait time for reimbursement for medical cannabis after an injured worker complained to the Commission that the delay left her without her prescribed medication for days or weeks at a time, causing her pain and suffering.

The WSIB acknowledged that it needs to improve the reimbursement process which takes four to eight weeks. In the meantime, workers may request expedited payment.

For the worker who contacted the Commission, the WSIB suggested that she submit her receipt and call a nurse consultant a week later to request expedited payment. The worker has since been receiving a continuous supply of her prescribed medication.

The Commission continues to monitor the issue.

Backlog of NEL reviews not communicated to workers awaiting decisions

Workers waited up to 18 weeks for non-economic loss (NEL) decisions in 2018, up from the 8 to 10 weeks the WSIB told workers to expect. The Commission made several inquiries with the WSIB about the delays and incorrect timelines communicated to workers.

The delays resulted from a change in late 2017. That's when the WSIB announced that it would no longer reduce NEL benefits for workers who have an asymptomatic pre-existing condition that is not measurable. The WSIB also announced in late 2017 that it would reconsider 4,500 claims dating back to 2012, where there was a reduction.

This review caused a backlog of new NEL decisions. While workers waited 16 to 18 weeks for decisions, the WSIB continued to inform eligible injured workers in writing that they should expect a decision within 8 to 10 weeks.

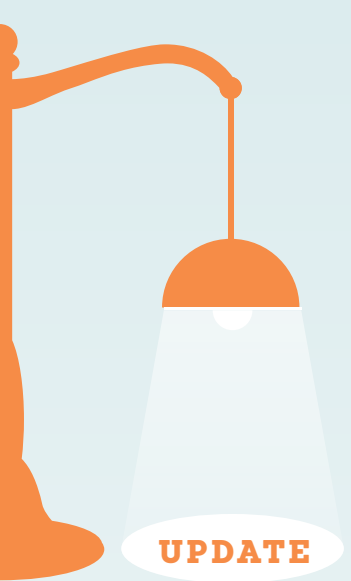
The WSIB has advised the Commission that it will hire staff to help clear the backlog and hopes to reach its target turnaround time of 8 to 10 weeks by mid to late 2019. In the meantime, it has removed the inaccurate timelines in letters to workers.

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“Thank you for your help. You guys provide a good service and I sincerely appreciate it.

After you got involved I found hope and I feel like I can hang on.”

WORKER



Commission’s concerns prompt WSIB to lift contact restrictions on many workers and to review process

UPDATE

IN 2017, the Commission reported problems with the WSIB’s process for imposing contact restrictions on injured workers whose behavior it deems inappropriate, unacceptable, or threatening.

The WSIB began to review its approach and took a number of steps, including updating the WSIB’s Threats Protocol and ensuring accommodation of injured workers with special needs. For further information on identified problems, see page 19 of the Commission’s 2017 annual report.

Throughout 2018, the Commission continued to follow up on this issue. The WSIB committed to first reviewing claim files with contact restrictions, then those with noted disruptive behavior but no contact restrictions, to determine whether there is still cause for concern.

By the end of 2018, the WSIB had removed or made changes to the disruptive codes on 2,400 claims and committed to completing its review of remaining claims with contact restrictions in early 2019. (The WSIB confirmed in February 2019 that it had completed its review of all claims with contact restrictions.)

The Commission will continue to monitor the progress of the WSIB’s review of the remaining files, namely those with noted disruptive behavior but no contact restrictions.

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“I’ve called a few different departments in the WSIB and no one has been able to help me until I called your office.

Thank you very much.”

EMPLOYER

“

“I felt so hopeless, but now, after speaking with you, I feel hope. I really appreciate your patience and kindness as you explained things to me.

And thank you for referring me to other agencies who can help me.”

WORKER



Individual Cases and Resolutions

Commission's inquiries prompt fresh review of worker's psychological impairment

The WSIB determined the worker able to work fulltime despite several psychological assessments that said he couldn't work at all.

The 56-year-old worker was injured in 2009 and received temporary entitlement for a major depressive disorder in 2010. An appeals resolution officer determined in 2014 that, from a psychological perspective, a return to work with the accident employer, in any capacity, was not suitable.

In 2014, the WSIB placed the worker in a work transition program. Two psychological assessments determined that the worker was unable to work or retrain. Yet, the WSIB locked his loss of earnings (LOE) benefits in as though he could work 40 hours a week at minimum wage.

In 2015, the worker's representative asked the WSIB to reconsider the LOE decision. He argued that the worker was unemployable because of his compensable psychological condition. The WSIB reviewed the worker's claim and determined that the worker remained partially psychologically impaired, but not in ways that would prevent him from working. The WSIB advised that it would consider psychological limitations in any return to work or work transition program.

In July 2017, the worker's new representative sent an updated psychological assessment to the WSIB. The document noted that all mental health care professionals who assessed or treated the worker agreed that he is unable to work or retrain because of his prolonged and severe work-related mental illness. The assessment stated categorically that no mental health professional will set out psychological restrictions for work or retraining when the patient is deemed permanently psychologically disabled. Still, the WSIB upheld its previous decision.

The Commission made initial inquiries with a manager and then an assistant director regarding the WSIB's assessment of the medical evidence and its process for determining the worker's psychological limitations. The WSIB told the Commission that staff had thoroughly reviewed the medical evidence and that it supported the psychological limitations set out by the WSIB.

The Commission escalated its concerns about the decision-making process to an executive director who asked a new case manager to review the worker's impairment. The finding in 2018: the worker had been unemployable since 2014 based on psychological reports filed with the WSIB that same year.

As such, the WSIB paid the worker full LOE benefits retroactive to 2014 and will continue to pay full LOE benefits until the age of 65.

Prior contact restriction affects WSIB's assessment of new claim

AN injured worker complained to the Commission that the WSIB didn't respond to his written request to lift his "no telephone calls" restriction from a prior claim, and that it complicated matters with his new claim. The eligibility adjudicator's letter advised that the WSIB had denied his new claim and invited him to call with any questions. When he did, the WSIB sent another letter to remind him that he was not allowed to call.

The Commission contacted the security director who advised that the WSIB had not asked security to review the worker's request to lift the restriction. The director also acknowledged that prior to the worker's most recent call, he had not violated the terms of his contact restriction. He agreed that the WSIB's letters to the worker contained conflicting messages.

After discussion between the security director and the WSIB staff, the WSIB removed the worker's contact restriction.

The Commission then spoke to the manager about the decision-making process for the worker's new claim. With the contact restriction in place, the WSIB did not follow the usual procedure to call the worker for information about his new claim. The manager had an eligibility adjudicator contact the worker to take his statement and reconsider the decision.

“

Thank you so much for the assistance and excellent guidance that you always provide.”

WORKER

Migrant worker receives four years of LOE benefits and a NEL award

The representative for a migrant worker contacted the Commission to complain that the WSIB had not responded to requests for review of the worker's entitlement to further loss of earnings (LOE) benefits.

The worker suffered an injury in August 2014 and performed modified duties until he returned to his home country in October 2014. He received LOE benefits until his expected recovery date in November of that year. While LOE payments stopped, the worker continued to receive WSIB-funded health care treatment and specialist assessments well beyond WSIB's forecasted recovery date.

In early 2017, the WSIB determined that the worker had reached maximum medical recovery back in April 2016, and that he had no permanent impairment. However, the WSIB continued to pay for health care, including psychological treatment. The WSIB did not consider whether the worker was entitled to LOE benefits from November 2014 to April 2016, while he was considered impaired.

The Commission raised concerns about the decision-making process with a WSIB manager. As a result, the WSIB reviewed the medical information and determined that the worker did, in fact, have an ongoing impairment and was unable to perform his pre-injury work. With no suitable occupation to recommend, the WSIB:

- Reinstated LOE benefits;
- Paid the worker \$86,000 in retroactive LOE benefits; and,
- Recognized the worker's permanent impairment for which he received \$11,000 in non-economic loss (NEL) benefits.

Poor decision-making and multiple overturned decisions caused worker distress, threatened to delay retirement

A worker turned to the Commission after a string of WSIB decisions and reversals delayed her retirement date.

The claim originated from the worker's submission that her workstation was not ergonomic and had caused a gradual onset injury. In late May 2017, the WSIB allowed loss of earnings (LOE) and health care benefits. In mid June, the case manager reconsidered the entitlement decision and determined that the worker was not entitled to health care benefits. In September, the case manager clarified that the worker was entitled to LOE benefits between the date allowed by the initial entitlement decision and the date of the case manager's reconsidered decision in mid June. Six months later, the worker received yet another WSIB letter, which stated that the worker was not entitled to any LOE benefits. That prompted the employer to change the worker's leave from "compensation" to "vacation". The worker had to put her retirement plans on hold.

The Commission reviewed the file and contacted the manager to discuss the WSIB's decision-making process. The original decision, which allowed entitlement, considered the poor ergonomic design. The subsequent decisions did not. The manager advised that the WSIB had received updated information and would review it.

Following the review, the WSIB agreed with the original entitlement decision and reinstated the worker's entitlement to LOE benefits for the periods she was off work due to injury.

WSIB told worker to expect large payment, then reversed decision, worker finally paid

The worker injured his back in 2004 and suffered a recurrence in 2007.

In 2009, the WSIB recognized permanent physical impairment. The worker later developed psychological problems and, in 2017, an appeals resolution officer ruled that he was entitled to benefits for major depressive disorder.

In 2018, the WSIB declared the psychological impairment permanent and told the worker to expect a large payment. The claim file showed that the WSIB was preparing to pay loss of earnings (LOE) benefits retroactive to 2011. However, the WSIB later reversed its decision and said the worker was able to work.

The Commission made inquiries with several WSIB staff about its decision-making process and its communication with the worker. The WSIB reviewed the claim and determined that the worker was, in fact, unemployable because of permanent physical and psychological impairments. As a result, he received LOE benefits retroactive to 2011.

Commission's inquiries enable worker to continue treatment with his current psychologist

A worker's representative complained to the Commission that the WSIB instructed a worker to change psychologists because he was seeing one who charged more than the WSIB allowed. The worker had been treated by the psychologist for an earlier claim and had already completed four sessions for the current claim for post-traumatic stress disorder (PTSD).

The worker's representative argued that a change in practitioners would delay and possibly reverse the worker's progress. She escalated her concerns to a manager, who confirmed that the worker needed to change psychologists. The manager said it was outside her scope to negotiate psychologist fees. She referred the representative to the WSIB Health Care Practitioner Access Line.

The Commission inquired with the Access Line and confirmed that although the WSIB fee schedule sets service provider fees, there is discretion for paying higher fees for this type of claim. The Commission took this information to the manager and asked for a review. The manager told the Commission that she didn't know it was possible to go beyond the fee schedule rates. She spoke with her director, who clarified the information and allowed payment for the worker to continue treatment with his current psychologist.

After complaint, WSIB pays service provider second half of fee

Having been paid only half of her fee for a comprehensive psychological assessment, a psychologist complained to the Commission. The WSIB requested the report after the psychologist had been treating the injured worker for about six months.

With the request, the psychologist received a billing code and rate, but no mention of a four-hour maximum. The Commission referred the psychologist to a WSIB manager to discuss her concerns. The manager asked a nurse consultant to reconsider the decision. As a result, the WSIB paid the full fee.

Worker without immigration status receives LOE benefits

While working for a demolition company, the worker was seriously injured. The employer paid him in cash because he was not legally allowed to work in Canada. The WSIB allowed health care but not loss of earnings (LOE) benefits, saying the worker was clearly an employee but couldn't prove earnings. The employer refused to report the injury or disclose the pay.

When contacted by the worker, the Commission suggested that he speak with a WSIB manager and to call back if he wasn't satisfied. Several weeks later, the worker and his representative reported to the Commission that the WSIB's answers were conflicting: first, that it would pay LOE benefits, then that it would not.

The Commission spoke with the manager who said that, according to the WSIB's legal department, the WSIB has "a statutory duty to pay LOE" to the worker in this case.

The manager told the Commission that the WSIB would use a temporary rate to calculate LOE benefits without delay and would investigate the employer to determine the actual rate of pay.

“

“I called to thank you for everything you've done. You went above and beyond for us. We did the right thing to reach out to you.”

EMPLOYER

LOE paid after Commission's inquiries

Six months after the worker won an appeal, the WSIB had still not implemented the decision. The representative had raised concerns with a manager and, although a new case manager was assigned, there was still no progress. The worker's representative contacted the Commission for help.

The Commission reviewed the claim file and spoke with a manager who said delays were caused by staffing changes and clarification that was required from the employer. Rather than wait for the outstanding information, the manager agreed to pay the worker based on the earnings information already on file.

The worker received more than \$5,000 in retroactive partial loss of earnings (LOE) benefits plus interest.

WSIB changes interviewing practice after privacy concerns raised by worker

A worker raised privacy concerns with the Commission about the WSIB's investigation of her claim for chronic mental stress.

The Commission reviewed the claim file and found that the investigator had conducted the interviews in the presence of a human resources representative, a union representative and other employer representatives. The Commission raised the worker's privacy concerns with a WSIB investigations manager. The manager said that the WSIB would review its practice. The manager later advised the Commission that the WSIB will conduct interviews in private and away from the workplace.

LOE benefits restored after worker found psychologically unfit for work

The WSIB suspended the worker's loss of earnings (LOE) benefits, saying that she didn't cooperate in the return-to-work process. The worker's representative told the Commission that the WSIB disregarded the worker's psychological issues and a recent psychiatric opinion that the worker was unable to work.

The worker lost fingers in a traumatic incident at work. The WSIB allowed entitlement for the worker's physical and psychological disabilities. During the return-to-work process, the worker told her case manager that she felt stressed and overwhelmed about returning to work. The worker's psychologist suggested a case conference with the case manager to help the worker feel more comfortable, but the case manager declined.

The WSIB sent an initial warning letter, then in April 2018, suspended the worker's benefits for non-participation in the return-to-work process. The worker subsequently attended a return-to-work meeting. During that meeting, however, the worker hyperventilated, fainted, and required emergency medical services.

After reviewing the claim, the Commission was concerned that the department that reviewed the worker's level of psychological impairment was not consulted after the WSIB received a new psychiatric assessment. That assessment documented multiple diagnoses in the severe range.

The Commission contacted a manager. As a result, the WSIB sent the psychiatric assessment to the correct staff, who determined that the worker was psychologically unfit to return to work in any capacity.

The WSIB reinstated the worker's benefits retroactive to the suspension date.

Claim reconsidered and allowed after lengthy delay

Unfair denial. That's how a worker's representative described the WSIB's decision on a claim for noise-induced hearing loss (NIHL).

The Commission reviewed the claim file and found no current activity and insufficient data to determine the worker's noise exposure. The worker had been doing the same job for nearly 30 years, yet the WSIB's initial denial of the claim was based on noise data from the employer for only one year and one of the worker's work areas. In the decision letter, calculations of the worker's daily noise exposure didn't add up.

The Commission discussed these issues with a manager, who promised a thorough review and new decision by the following week. As a result, the worker received health benefits and entitlement for a permanent hearing loss.

Denial overturned, clear medical evidence on file

The family doctor and surgeon said a worker's shoulder injury was work-related. The WSIB said it wasn't.

The worker was off work and paying for physiotherapy on her own. She contacted the Commission and said that when she raised her concerns with a WSIB manager, she was told she would have to appeal the decision.

The Commission reviewed the claim file and noted that the WSIB initially denied the claim because there was no proof of accident. After the worker submitted more information, the WSIB agreed that there had been an accident, but said it couldn't have caused her injury. The decision did not reference any of the medical

information on file, and it appeared that the adjudicator had not reviewed it.

The Commission raised these concerns with a manager who agreed to have the decision reviewed. As a result, entitlement for the shoulder injury was allowed and the worker received health care and loss of earnings benefits.

WSIB will reconsider claim denied without proper investigation

A worker complained to the Commission that the WSIB denied her claim for chronic mental stress without proper follow-up or investigation.

The worker met with a case manager in March 2018. Having heard nothing by December, she followed up. The WSIB then sent a letter denying her claim. The worker said that she tried to raise her concerns with a manager, but didn't receive a return phone call.

The Commission reviewed the claim file and confirmed that during the March meeting, the worker gave names of people to corroborate her description of events. The WSIB didn't follow up with the identified witnesses.

The Commission spoke with a manager who said he would apologize to the worker. He determined that the WSIB needed further information to adjudicate the claim and referred the claim to the investigations team.

Commission's inquiries lead to benefits for six more months for migrant worker

Even though the migrant worker had not recovered from a workplace injury, the WSIB ended his loss of earnings (LOE) benefits. A community legal clinic complained to the Commission.

The WSIB had allowed a claim after the worker fell and injured his back. After the worker's assessment at a specialty clinic, the WSIB completed a work transition consultation. A few weeks after the injury occurred however, the worker's seasonal contract ended. He went home and while there, received a WSIB decision letter dated December 2017. The letter informed the worker that his LOE benefits would be terminated on January 25, 2018 because the WSIB expected him to recover within 12 weeks. However, medical information on file dated March 2018 indicated that the worker had not recovered.

The Commission contacted a WSIB manager about the decision-making process. The WSIB agreed to review the worker's claim and, as a result, determined that the worker was entitled to further benefits because medical information confirmed that he was not ready to work in the occupation the WSIB identified as suitable for him. The WSIB extended LOE benefits from January 25, 2018 to June 11, 2018.

Dedicated phone number created for worker barred from speaking to WSIB staff

An injured worker called the Commission to say that he had trouble getting prescribed medications and travelling to medical appointments, but he wasn't allowed to speak directly with WSIB staff.

The Commission's file review revealed that the worker's complicated medical issues required frequent review and regular medical intervention. The worker needed to be able to communicate with the WSIB.

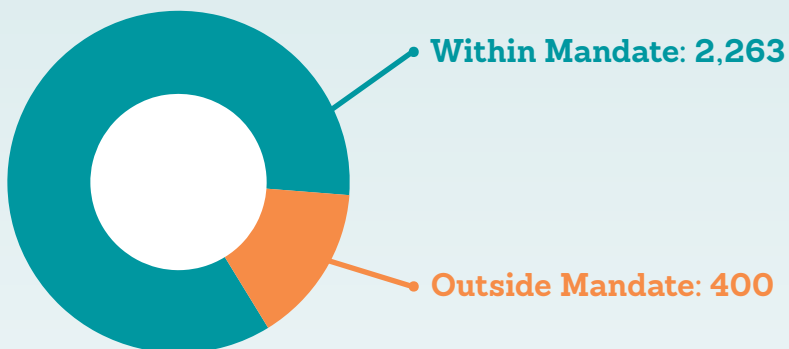
The Commission inquired with the WSIB as to whether staff had considered the worker's various medical issues when they imposed the contact restriction for what they said was abusive and threatening behavior. The WSIB acknowledged the need for frequent communication and set up a phone line through the security desk. The worker may call the number 24/7 and leave messages. The WSIB committed to clearing the phone messages each day. The WSIB wrote to the worker to explain the arrangement and advised that while he is still restricted from contacting WSIB staff directly, staff may still contact him to resolve urgent matters.

Financials

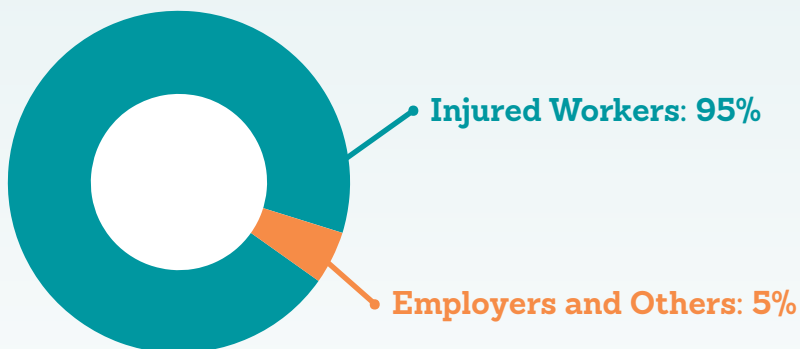
The Fair Practices Commission's budget, approved by the WSIB board of directors, was \$1.11 million for the fiscal year ending December 31, 2018.

Complaints by the Numbers

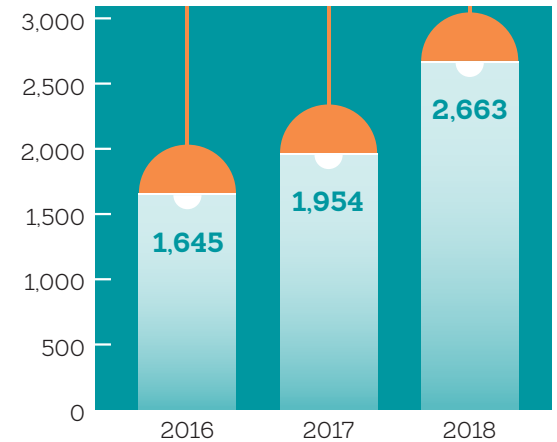
Complaints to the Commission in 2018



Who contacted the Commission in 2018



Three-Year Summary

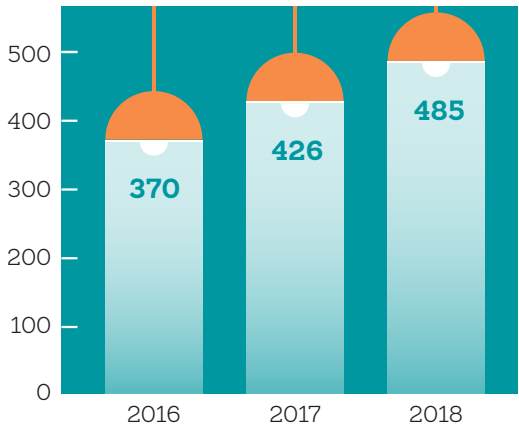


Issues Opened

The Commission received 2,663 issues in 2018, compared with 1,954 in 2017.

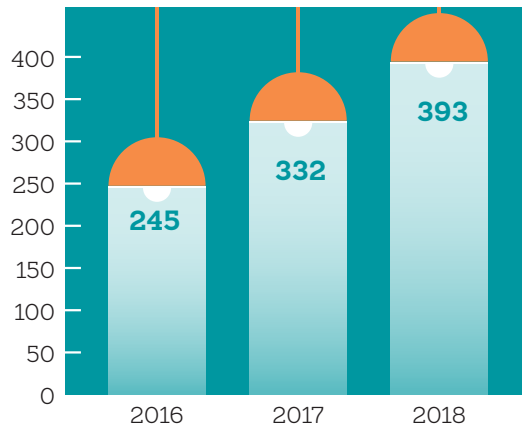
Issues by Fairness Category

FAIRNESS CATEGORY	2018	2017	2016
Delay	39%	35%	29%
Decision-Making Process	21%	28%	34%
Communication	18%	18%	19%
Behaviour	7%	5%	4%
Non-Mandate	15%	14%	14%



Inquiries Made by Specialists

Specialists conduct an inquiry where we identify a potential fairness concern and the complainant has been unsuccessful in resolving the concern directly with the WSIB. Most of those issues were about delays (284) and communication (96).



Issues the WSIB Had to Address

The number of fairness issues that required action by the WSIB increased in 2018. Most of those issues were about delays (247) and communication (72). 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

2018	SUBJECT	2017
1	Benefits	1
2	Health Care	2
3	Non-economic loss	5
4	Return to Work	3
5	Appeals Process	4
6	Expenses	8
7	Work Transition	6
8	Psychiatric/Stress	12
9	Psychotraumatic Disability	10
10	Permanent Disability	7

“

“If it weren’t for you guys, [the claim] wouldn’t be moving forward. As soon as I involved [the Commission] we started getting return calls and things started moving forward.”

WORKER



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

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Phone 416.603.3010 or 1.866.258.4383

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