

# Fair Practices Commission

# 2019 Annual Report



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



## Également disponible en français

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

[www.fairpractices.on.ca](http://www.fairpractices.on.ca)  
Twitter: @FPC\_WSIB\_Ombuds

### **Phone**

416-603-3010  
866-258-4383

### **TTY**

416-603-3022  
866-680-2035

### **Fax**

416-603-3021  
866-545-5357

## **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 for the people it serves.

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### **Acronyms Used in This Report**

ARO	Appeals resolution officer	NIHL	Noise-induced hearing loss	TT	Temporary total (disability benefits)
CSR	Customer service representative	PTSD	Post-traumatic stress disorder	WSIAT	Workplace Safety and Insurance Appeals Tribunal
LOE	Loss of earnings	ROE	Record of Employment	WSIB	Workplace Safety and Insurance Board
NEL	Non-economic loss	RTW	Return to work		

# From the Commissioner



## **I am pleased to present the Fair Practices Commission's 2019 Annual Report.**

As the organizational ombudsman for the Workplace Safety and Insurance Board (WSIB) of Ontario, the Commission promotes and ensures fair practices for workers, employers and service providers.

Our focus is to remain neutral when issues are raised, to act independently and advocate for fair resolutions to complaints from injured workers, employers and service providers. We also work hard to identify recurring fairness concerns that go beyond the individual and affect many people. We report these system-wide concerns to the WSIB and provide recommendations for improvements.

Last year was the busiest in our Commission's 16-year history, with a total of 2,781 issues raised with our office. We feel that it's important to keep people apprised of the types of individual and systemic issues that are raised with the Commission. As such, you can read more about some of the human stories and individual complaints we received, together with the significant outcomes achieved, starting on page 14 of this report. You will also read about systemic issues raised by the Commission. For example, on page 8, we report on eligibility decision delays at the WSIB. And, on page 9, you'll read about WSIB delays in implementing decisions of the Workplace Safety and Insurance Appeals Tribunal (WSIAT).

The success of the Commission is largely due to the exceptional work of my staff in addressing the many issues raised by complainants, identifying fairness concerns, tracking complaint trends, and contributing to the WSIB's goal of improving service delivery.

For example, on page 13, we outline how, as a result of our follow-up, over \$650,000 in additional benefits were distributed to hundreds of workers after the misapplication of a WSIB policy.

I want to thank those at the WSIB who responded to the fairness concerns raised by the Commission and helped to reach fair resolutions for our complainants. I also want to express my gratitude to the WSIB Board of Directors for their guidance and support in our continued efforts to ensure fair processes and treatment for all WSIB stakeholders.

Lastly, thank you to the many complainants who shared their stories and allowed us to assist them. I encourage other injured workers, employers and service providers who may have concerns about the fairness of WSIB services to contact the Fair Practices Commission as well.

On a final and personal note, I'd like to say that it has been a privilege and an honour to serve as the Fair Practices Commissioner. I am extremely proud of the work and the many accomplishments of this office. While I will be retiring from my position in 2020, I look forward to the continued success of the Commission and the valuable services it provides. Thank you to everyone I've had the privilege to work with, or provide assistance to, over the years.

Let's continue our ongoing efforts to promote fairness for all!

**— Anna Martins, Commissioner**

# An Independent Office

**The Fair Practices Commission is an independent office that works 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:**

## 1 Impartiality

The Commission advocates for fair practices and does not take sides in complaints.

## 2 Confidentiality

All inquiries are confidential unless we receive specific consent to discuss or disclose information with outside parties

## 3 Independence

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



# The Value of the Commission's Work

## 1 Building relationships

The Commission listens to the people who contact us and provides options for resolving problems. We assist WSIB staff in understanding the concerns and frustrations of the people it serves. Experience shows that this type of informal facilitation helps to build better relationships and provides better tools for tackling future problems for all parties involved.

## 2 Resolving conflict

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

## 3 Preventing problems

The Commission can prevent problems through our capacity to track complaints and identify recurring themes and patterns. We are able to identify systemic issues and recommend changes to avoid similar problems from occurring in the future.

## 4 Acting as an agent of change

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



# The Complaint Process



## COMPLAINT



### INTAKE

- Is the complaint within the Commission's mandate?
- Is there a current fairness issue?

NO

Refer to appropriate resource

YES

### WSIB

Has the complainant elevated the concern within WSIB?

YES

### ASSIGN

Assign to a Commission specialist for review

NO

## REFER TO A SPECIFIC RESOURCE WITHIN WSIB

### SYSTEMIC

Is there a systemic issue?

YES

YES

### REVIEW

- Review file
- Inquire with WSIB
- Has the issue been addressed to the Commission's satisfaction?



**SYSTEMIC ISSUE RESOLVED**

NO

### SYSTEMIC REVIEW

- Review issue
- Inquire with WSIB
- Has the systemic issue been addressed to the Commission's satisfaction?

NO

NO

YES

### INVESTIGATION

Commission gives notice to WSIB and conducts investigation



**COMPLAINT RESOLVED**



## REPORT ON FINDINGS

Commission reports on its findings and recommendations



## RESOLUTION

Raise fairness issue with WSIB and elevate until it is addressed to the Commission's satisfaction

# 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.**

Typically, we encourage each individual to discuss their issue first with the WSIB staff member who is most directly responsible. If that doesn't resolve it, we recommend that they raise the issue with a manager.

If the concern is still unresolved, the Commission determines whether a current fairness issue is at play. 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 to the complainant.

Alternatively, if a fairness issue appears to be at play, we contact WSIB management to get their perspective and to discuss steps to resolve the issue. If the issue remains unaddressed, we will approach senior management to discuss options for resolution.

We then call the complainant with the results.

# Fairness Categories

As the organizational ombudsman for the WSIB, we analyze each issue against four 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 provided? 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 WSIB 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? (Note: 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.)

If we determine that a complaint does not fall within the Commission's mandate, we categorize it as "non-mandate."

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*Thank you for the quick and friendly service. You've been very helpful.*

*~ Employer Representative*

# Systemic Issues for 2019

## 1 Multiple employers complain of delayed WSIB eligibility decisions

**In one example, it took the WSIB over 10 weeks to make a decision on a lost-time claim. Only after the employer elevated her concerns about the delay twice to a manager did the WSIB make an eligibility decision.**

In late July, we spoke with an eligibility team manager who told us that eligibility adjudicators were carrying higher caseloads, which resulted in delayed decision-making. We were further told that it was taking the WSIB from six to eight weeks to make eligibility decisions.

Given this information, we elevated our inquiries on this issue: In mid-August, a senior manager told the Commission that the WSIB monitors the “inventory” of entitlement decisions that have been outstanding for longer than 10 days and there was no current concern. We were further informed that the WSIB has a process in place to assign a “SWAT team” of extra staff to make eligibility decisions when the “inventory” gets too high—a scenario they had experienced in May and June of 2019.

We made further inquiries with eligibility team managers to confirm there were no ongoing delay concerns. One manager told us that the delay was a matter of perspective, although she acknowledged that one of the WSIB’s performance targets for 2019 was to make 91% of eligibility decisions within ten days. Another manager told us that the WSIB had assigned the SWAT team to triage eligibility decisions and, as a result, caseloads were decreasing.

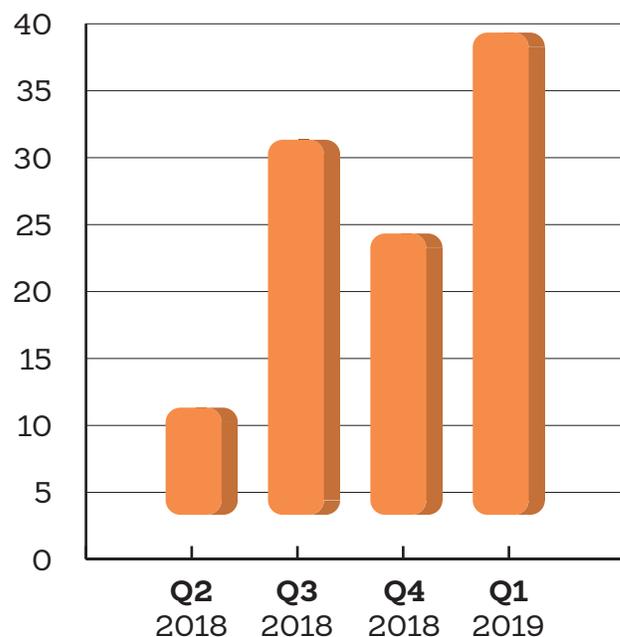
Further follow-up by the Commission with the senior manager confirmed that in late August, the oldest outstanding eligibility decisions were from June and that the WSIB’s SWAT team had been assigned

to reduce its “inventory” of outstanding eligibility decisions. We were also told that 80.1% of manually adjudicated eligibility decisions made in July were made within 10 days—slightly below the WSIB’s target of 85% for manually adjudicated eligibility decisions.

## 2 Increasing number of complaints about delays in implementing WSIAT decisions

**In early 2019, the Commission noticed an increasing trend in the number of complaints about delays by the WSIB to implement decisions of the Workplace Safety and Insurance Appeals Tribunal (WSIAT).**

Complaints about delays in implementing WSIAT decisions (Q2-18 to Q1-19)

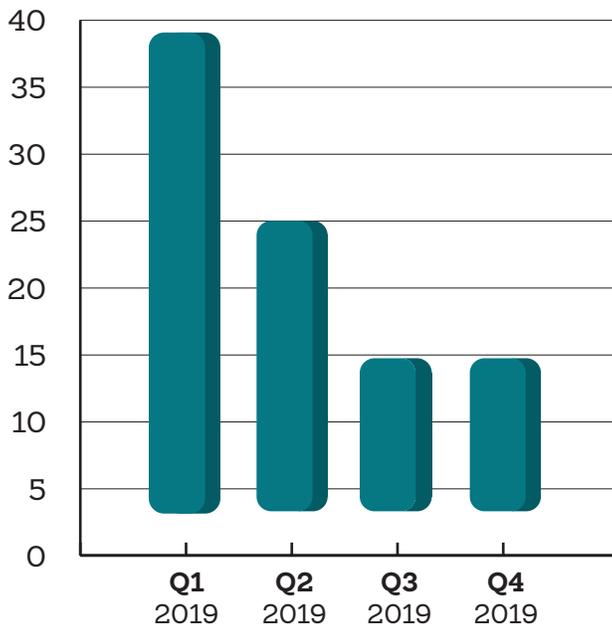


The director responsible for overseeing the WSIB’s WSIAT implementation team told the Commission

that, in 2018, the WSIB’s appeals implementation team began receiving an influx of new WSIAT decisions as they attempted to clear their backlog of appeals.

Meanwhile, at the same time as WSIAT worked on its backlog, the WSIB appeals implementation team was dealing with staffing shortages due to retirements, which resulted in increased caseloads for appeals implementation case managers.

**Complaints about delays in implementing WSIAT decisions (Q1-19 to Q4-19)**



The director further explained that, in an effort to address increasing caseloads and the backlog, the appeals implementation team had reorganized and implemented a queue system for handling these cases. This led to a backlog decrease of approximately 20% in the first three-and-a-half months after implementation. Moreover, we noticed a decrease in

the number of complaints the Commission received about this issue after the WSIB’s reorganization of its appeals implementation team.

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*I really appreciate all your help—thank you very much.*

~ Employer Representative

### 3 Increasing number of complaints about the WSIB’s warning and restriction process

**In 2019, the Commission received an increasing number of complaints from workers who felt unfairly treated by the WSIB’s warning and restriction process.**

The WSIB’s Code of Behaviour explains how the organization defines and responds to abusive or threatening behaviour, criminal behaviour and harassment. Generally, if someone is abusive to WSIB staff, the WSIB’s security area will send that person a warning letter to give them a chance to modify their behaviour. If the behaviour continues, the WSIB may restrict that person’s access to WSIB staff, including requiring the individual to communicate with WSIB in writing only or that he or she communicate with WSIB through a representative.

*Note: Threats or other criminal behaviour usually result in immediate restrictions and police involvement.*



# Systemic Issues for 2019 (continued)

We determined that the WSIB's Code of Behaviour appears to characterize conduct as either respectful and courteous or abusive and threatening.

The WSIB told us that its process for dealing with abusive and threatening behaviour works very well. The Commission's concern, however, is that behaviour more accurately described as difficult or challenging is being lumped into the "abusive and threatening" category because the WSIB does not have an alternative process for responding to and managing challenging behaviour.

## Here are two examples of complaints the Commission received this year:

### i. Worker gets warning for the "tone" of her conversation

A worker contacted the Commission after receiving a warning letter from WSIB Security about her "unacceptable and disruptive behaviour." The letter also read: "A review of your file demonstrates a pattern of demeaning and belittling behaviour towards multiple WSIB staff."

The worker stated she did not use foul or abusive language, nor did she threaten anyone. Rather, she believed that the warning letter was retribution for a telephone conversation she'd had with a case manager.

The worker acknowledged that she may have raised her voice and interrupted the case manager but explained that she was only advocating for her rights. She also complained that the warning letter did not provide examples of her "unacceptable" behaviour.

Following inquiries with several staff in WSIB's Operations and Security areas, we learned that its Operations team specifically requested that security send the warning letter and that the Security team did not complete a thorough review of the worker's alleged behaviour before sending the warning letter. The WSIB also acknowledged there had not been a "pattern of behaviour toward multiple WSIB staff," as written in the warning letter.

WSIB Security sent the worker an amended warning letter that described her behaviour as "aggressive and intimidating."

The worker remained dissatisfied with the lack of details in the amended letter and pointed out that a person cannot change their offending behaviour if they are unaware of it.

After further inquiries by the Commission, the WSIB agreed to send a third letter that offered more details. The third letter referred to the worker's "tone" and demands of the case manager.

There was no indication in the WSIB's responses to our inquiries that WSIB found the worker's tone to be threatening nor that she posed a security threat. Yet, the letter cautioning the worker about her



behaviour came from WSIB's Security area because that is the WSIB's process. The worker felt the warning from security could have "a chilling effect" on how she advocated for herself in the future, as she could be restricted from speaking to WSIB staff without any further warning.

**ii. Injured worker complains that the WSIB unfairly extended his contact restriction**

A worker had been restricted to contacting the WSIB in writing only for using what the WSIB said was excessive profanity and for making derogatory comments toward staff members. The WSIB sent the worker a letter that explained the reasons for the restriction and advised that the restriction would be in place for a minimum of two years, at which time the worker could request a review of the restriction.

Two years later, the worker wrote to the WSIB requesting a review of the restriction, stating that he promised to act in a more professional manner "...even when the WSIB is not following their own policy." The WSIB found the worker's letter to be antagonistic and unprofessional, and extended his contact restriction for a further two years.

We spoke with the security manager for clarification of the reasons for this latest decision. The manager reviewed the claim file and noted that the worker had been compliant with the restriction over the initial

two years but said that the worker should submit an explanation of his recent letter.

When the worker sent in a new letter saying that he had not meant the letter to be antagonistic, the WSIB removed his contact restriction.

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*Thank you so much for your help. Before speaking with you I didn't know where to go or who I could speak with. I kept calling the WSIB and speaking to different people, but no one was taking ownership of my file.*

- Worker

**The Commission will monitor these emerging concerns and continue to review individual complaints about the WSIB's warning and restriction process.**



# Updates on Systemic Issues from 2018

## 1 New operating model

**In the Commission's 2018 Annual Report we noted that our office had received complaints from multiple stakeholders about the operational changes that the WSIB had implemented in July 2018.** (See page 8 of our 2018 Annual Report for further details.)

Specifically, under their new operating model, the WSIB assigned some claims to a team of case managers rather than an individual staff member. This change led to increased complaints in four main areas: delays in decision-making; delays in the review of correspondence; lack of accountability; and lack of decision-making quality. In 2019, the Commission continued to receive complaints related to the WSIB's new operating model.

Some common complainant experiences included:

### i. Lengthy wait times when calling WSIB's main telephone number

Many stakeholders complained of waiting 20 minutes or more before speaking with a customer service representative (CSR) when calling the WSIB's main telephone number. And, in some cases, the CSR was unable to address the issue or question, so the callers had to wait in another queue and start their story again with another WSIB staff member.

The WSIB told the Commission that it is aware of these concerns and is taking steps to improve service delivery, including monitoring call wait times and adjusting resources as required. The WSIB's target wait time is one minute, although the average wait times in late 2019 were closer to four-and-a-half minutes.

### ii. Lack of access to direct telephone numbers for WSIB staff

Stakeholders complained to the Commission about lack of access to direct telephone numbers for WSIB staff, which could allow them to bypass the WSIB's general line.

The WSIB informed the Commission that CSRs and other WSIB staff do in fact have the discretion to provide direct telephone numbers.

In order to provide better service and reduce call volumes, the WSIB instructed its CSRs to provide direct numbers when requested by callers.

### iii. Difficulties reaching WSIB case managers and adjudicators

Several representatives of injured workers raised concerns about the WSIB's process for verifying a caller on their general phone line. Specifically, the representatives who contacted the Commission complained that although they are authorized representatives on the claims and have the claim numbers and the workers' names, they do not always have access to the other identifiers that the CSRs request, especially if the representative is working remotely.

We determined that specific verification criteria were put in place by the WSIB to protect the privacy and personal information of injured workers and other WSIB stakeholders. This verification process requires CSRs to gather certain critical details before providing information on a claim file over the phone or transferring a call to a case manager or other WSIB staff. Further, WSIB CSRs were given leeway to transfer employer calls as "unverified," but this was not the same for worker calls.



Upon follow-up by the Commission, a director in service excellence explained that, according to the WSIB's best practices documentation, CSRs are empowered to use their discretion to transfer worker representatives as well as employers as "unverified"—a point that would be communicated to the CSRs and added into the verification criteria. The WSIB also undertook a further review of its verification criteria and implemented some changes to its requirements.

The Commission heard from a worker representative that the WSIB's new process is less onerous.

## 2 Workers receive additional TT disability benefits

**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.**

We determined that some WSIB staff were misapplying a policy for payment of TT disability benefits; specifically, they were using a worker's pre-injury earnings to calculate benefits for a recurrence of an injury if the recurrence took place while the worker was unemployed, rather than using most recent earnings in the calculation, as required by policy. (For more on the 2017 complaint and resolution, see page 16 of our 2017 Annual Report.)

Upon follow-up by the Commission and after the WSIB clarified the policy, it agreed to identify claims where the policy may have been misapplied. In June 2019, the WSIB completed its review of 327 claims that may have been affected by the misapplication of the policy. This resulted in an additional \$650,000 in total benefits paid to the affected workers. For claims where the WSIB did not have more recent earnings information, the WSIB sent a letter to the worker that explained the issue and invited the worker to provide more recent earnings information, if available.

## 3 Backlog of NEL reviews cleared

**Workers waited up to 22 weeks for non-economic loss (NEL) decisions in 2019, up from the WSIB's 8-to-10-week target.** (For additional background information on this issue, see page 11 of the Commission's 2018 Annual Report.)

In the fall of 2019, the WSIB dedicated additional resources to clear the backlog of NEL decisions. This led to a decrease in wait time to just seven weeks by the end of 2019.

## 4 WSIB nears completion of claim files with notes about disruptive behaviour

**In 2017, the Commission reported problems with the WSIB's process for imposing contact restrictions on injured workers whose behaviour it deemed 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 reviewing accommodation issues for injured workers with special needs. (For further information on identified problems, see page 19 of the Commission's 2017 Annual Report.)

In February 2019, the WSIB completed its review of all claims with contact restrictions. And, throughout 2019, the WSIB continued to review claims with notes about disruptive behaviour but no contact restrictions.

By the end of 2019, the WSIB had reviewed almost 14,000 claims and removed or made changes to the disruptive codes on about 3,500 claims, but still had approximately 2,000 claims to review. The Commission will continue to monitor the WSIB's progress.

# Individual Cases and their Resolutions

## 1 Decision overturned after consideration of correct WSIB policy

**A worker contacted the Commission with concerns about the WSIB's decision to deny entitlement for a recurrence of her previously allowed chronic mental stress claim.**

She had been without income for almost three weeks due to ongoing harassment in her workplace and she noted that her psychological condition was worsening. The worker raised her concerns with a manager but did not hear back from the manager as promised.

We noted that the case manager's decision relied on the *Chronic Mental Stress* policy (15-03-04) to deny the recurrence. It did not appear that the policy for *Recurrences* (15-02-05), which outlines criteria used to consider entitlement for significant deteriorations, was considered.

As a result of an inquiry by the Commission, the manager agreed that the *Recurrences* policy should have been applied. She anticipated that a new decision from the case manager would be provided within a week.

Based on the claim information, the worker's recurrence was ultimately allowed, along with retroactive loss of earnings benefits.

## 2 Delayed mental stress case adjudicated and allowed following Commission inquiries

**A registered nurse complained to the Commission about a nine-month delay to adjudicate her mental stress claim. She had been assaulted by a psychiatric patient at the hospital where she worked and her doctor recommended that she take time off.**

Although the WSIB held the claim in abeyance while obtaining further information, we noted that a diagnosis of post-traumatic stress disorder (PTSD) had already been on file for three months. In addition, because the worker was employed as a nurse, the Commission questioned whether the *Posttraumatic Stress Disorder in First Responders and Other Designated Workers* policy (15-03-13) should have been considered.

We spoke with a WSIB manager, who agreed that the claim had been delayed. Two weeks later, the WSIB informed the worker that her claim was allowed and that loss of earnings benefits would be paid.

## 3 Entitlement allowed following Commission inquiries

**A worker contacted the Commission to complain that the WSIB had denied entitlement for a left shoulder injury, which he attributed to overcompensating for his compensable right shoulder injury.**

The worker raised his concerns with a manager. However, the decision to deny entitlement for the left shoulder injury was upheld. The WSIB determined that the worker's modified job duties did not contribute to his left shoulder disablement.

We noted multiple medical reports on file that captured a change in the worker's left shoulder function shortly after returning to modified duties (which were to accommodate his right shoulder injury). It was unclear from the WSIB's decision letter if this medical information was considered.



Following Commission inquiries with a manager, the WSIB sought clarification from the specialty clinic that had assessed the worker. The specialty clinic explained



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*You made a difference and I am grateful to you.*

*~ Worker's Mother*

that the worker's duties likely exacerbated pre-existing issues in his left shoulder. Following the specialty clinic's response, the WSIB allowed entitlement for an exacerbation of the worker's previously asymptomatic left shoulder condition. This included undergoing surgical repair of his left shoulder and receiving loss of earnings benefits while recovering from the surgery.

#### 4 Commission inquiries prompt further review of worker's condition

**A worker contacted the Commission after the WSIB stopped paying his loss of earnings (LOE) benefits after determining that the temporary worsening of his permanent, work-related injury had ended.**

The worker disagreed with the case manager's decision that his temporary worsening had ended and that he had returned to his former level of disability. The worker indicated that available medical information supported the fact that he could not return to his former line of work.

According to the claim file, the worker's benefits had been locked-in at the 72-month review in 2014. In September 2018, the WSIB accepted that the worker had suffered a significant worsening. Full LOE benefits were reinstated while the worker received treatment and began a work transition process.

The Commission's review of the claim file noted that the case manager had sought guidance from the Non-Economic Loss (NEL) Department, and it was concluded that the worker was not below his previously determined NEL level. However, the WSIB had approved the worker for additional surgeries and allowed other areas of entitlement in his low back, since his NEL was last rated in 2009. It was unclear if these factors were taken into consideration by the NEL Department. We spoke to a NEL manager, who acknowledged the need to clarify entitlement to an increased NEL award. She offered to reach out to the case manager to facilitate this review. She later updated the Commission, stating that once the case manager's review was complete, the claim file would be referred to the NEL Department for a priority review.



The NEL review ultimately supported that the worker had suffered a permanent worsening. The case manager accepted that the worker's former modified job would not be available in the general labour market. Full LOE benefits were reinstated and work transition services were reactivated.

#### 5 Commission inquiries prompt WSIB to review employer's re-employment obligations

**A worker contacted the Commission to complain that he was not receiving loss of earnings (LOE) benefits, even though he had not returned to work following a workplace injury.**

The worker's employer claimed that the worker had terminated his position. The WSIB allowed the claim for health care benefits and a few days of LOE benefits

# Individual Cases and their Resolutions (continued)

but denied ongoing LOE benefits because it found that the worker had left the worksite and did not stay in contact with his employer.

The claim file indicated that the employer had provided conflicting information regarding its allegation that the worker had terminated his position.

After several Commission inquiries, the WSIB referred the claim to a re-employment case manager for review. The director told the Commission that a re-employment decision would be expedited.

The re-employment case manager reviewed the claim and found that, indeed, the employment relationship had not ended. The claim was referred to a return-to-work specialist to assist the workplace parties in finding suitable work. However, the WSIB had still not addressed the issue of ongoing LOE benefits. The Commission asked a manager to review this issue and, as a result, entitlement to further LOE benefits was allowed. Entitlement to LOE was also extended after it was determined that the employer could not offer the worker suitable work.

## 6 WSIB renders decision on worker's entitlement for liver transplant after lengthy delay

**An injured worker complained that the WSIB refused to reimburse him for travel expenses incurred in 2017 and 2018 to prepare for a potential liver transplant, even though the WSIB allowed his claim for liver disease as a secondary condition.**

According to the claim file, the worker had been advised by letter in December 2018 that reimbursement for travel expenses to pre-liver transplant appointments was denied because

he did not have entitlement for liver transplant surgery under his claim. The WSIB wrote to the worker's doctor to request additional medical information and further advised the worker that a case manager would make an entitlement decision for liver transplant surgery once the additional information was received.

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*We're so grateful... You don't know how much you mean to people.*

~ Worker

Although the WSIB received the additional medical information in February 2019, no decision had been made by the time the worker contacted the Commission in April 2019. As the worker had not yet raised his concerns with a WSIB manager, the Commission referred the worker to the responsible manager.

The worker contacted the manager and was told that the additional medical information would be reviewed on a priority basis. The worker contacted the Commission again a week later, as he was concerned that he had still not heard from the WSIB or received a decision.

The Commission made an inquiry with a manager, who took immediate action. The worker was promptly contacted by the WSIB and advised that entitlement had been allowed for liver transplant surgery. Accordingly, the worker received reimbursement for travel expenses to his pre-liver transplant appointments.





## 7 NEL redetermination expedited after year-long delay to assess medical information

**A worker contacted the Commission in June 2019 to complain that her request for a redetermination of her non-economic loss (NEL) award was not moving forward.**

She made the request in early 2018 and a case manager responded with correspondence that outlined the medical information required to consider a redetermination of the worker's NEL award.



According to the claim file, the worker's doctor had submitted a report in June 2018 with the requested information. The worker asked the case manager for a status update in October 2018, only to be told that updated medical information was required again. She complained to a manager, who echoed that updated medical information was required. However, it was unclear to the Commission why the NEL redetermination hadn't proceeded based on the doctor's report submitted in June 2018.

The Commission spoke to a manager who said the updated information previously sent by the doctor was not useful because it did not include information on the worker's range of motion. The Commission pointed out that some range-of-motion information was in fact included in the report. In response, the manager agreed to have the case manager review the report and determine if the file could be referred to the NEL Department.

Soon thereafter, the claim was referred to the NEL Department. The Commission followed up with the

WSIB and asked if they had considered expediting the NEL review, given the year-long delay in taking action on the medical information. The manager agreed to reach out to the NEL Department to see if the file could be reviewed on a priority basis. Two weeks later, the NEL rating was completed, resulting in a 5% increase and a payment of just over \$2,500 to the worker.

## 8 Return to work process fails to consider medical information for paramedic with PTSD

**A paramedic suffering from post-traumatic stress disorder (PTSD) contacted the Commission with concerns about the WSIB's return to work (RTW) process.**

The worker told the Commission that she had left a RTW meeting early because she felt overwhelmed. (Eleven people attended the meeting, including representatives from the employer and the worker's union, as well as the WSIB's RTW specialist and her manager.) Afterward, the employer, union and WSIB staff agreed to a RTW plan in her absence. The worker

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*Thanks for taking the time to help me with my client's cases.*

*~ Worker Representative*

argued that the plan should not have been determined without her input. The worker was also concerned about the position offered by the employer, as it would negatively affect her wages and pension, and would place her in a different bargaining unit.

# Individual Cases and their Resolutions (continued)

Shortly after the meeting, the worker was hospitalized in a psychiatric unit on an involuntary basis due to a worsening of her work-related PTSD. With consent, the Commission provided this information to the WSIB.

The Commission raised the worker's concerns with the RTW manager, who stated that the medical information on file showed that the worker was ready to return to work and engage in the RTW process.

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*You provide excellent service.*

~ Worker

The manager added that the employer felt that the worker was finding obstacles to prevent her from returning to work. The manager also advised that further medical information would be obtained and a case conference would be held to discuss the claim. The WSIB subsequently decided that the worker's recent involuntary psychiatric admission was not related to work and that she was not cooperating in the RTW process.

We remained concerned with the WSIB's decision-making process—particularly the WSIB's consideration of medical information on file. Further inquiries with the RTW manager failed to address our concerns, so the concerns were raised with a director.

After review and discussion with staff, the director asked a Professional Practice Leader in psychology (i.e., a psychologist) to review the claim. This additional review, in tandem with further consideration by the WSIB, resulted in the reinstatement of the worker's loss of earnings benefits based on a



temporary exacerbation of her PTSD symptoms. The WSIB also made a referral to a WSIB specialty program for further assessment of the worker.

## 9 WSIB reconsiders decision after conflicting information is identified

**An injured worker contacted the Commission to complain that his loss of earnings (LOE) benefits—which the WSIB had allowed only a few weeks earlier—were now denied.**

He went on to state that this had resulted in his eviction and that he had to vacate his apartment within days, with nowhere to go. He raised his concerns with a manager, who told him that the decision to deny LOE benefits was correct.

According to a reconsideration letter, the WSIB had overturned the worker's entitlement to LOE benefits because the accident employer had terminated the worker and had no re-employment obligation. The Commission's review of the file noted the Record of Employment (ROE) submitted by the accident employer stated that the worker had "quit." Furthermore, memos on file captured that a prior case manager had spoken with both the accident employer and the worker and clarified that the employer hadn't terminated the worker, nor had the worker formally quit his job. Although there was a short lapse in communication between the worker and accident employer following the injury, this case manager believed that the worker hadn't intended to abandon his job.

We discussed the inaccurate and conflicting information with a manager, who agreed that the conclusion was "not strong enough." The manager asked a new decision-maker to reconsider the decision, and ultimately, the



WSIB reinstated the worker’s LOE benefits following a new determination that the worker hadn’t quit his job and that he was unable to return to work.

### 10 Reconsideration decision made after delay

**A worker representative contacted the Commission in late September complaining of a delayed reconsideration decision.**

He had requested the reconsideration in early July, after identifying that an updated MRI on file had not been taken into account.

He contacted a manager and in response, the case manager left him a voicemail message that committed to reviewing the claim and calling him by the end of the week. Yet, the representative did not receive a follow-up call as promised.

The claim file showed little activity other than the case manager’s voicemail message in August. There was no evidence that a response or decision was in progress. In early September, the representative wrote to a manager to escalate the matter. There was also no action taken in response to this correspondence.

The Commission raised concerns with a manager, who agreed that there had been delays, attributable to work volumes. He asked the case manager to review the decision on a priority basis. Three days later, the representative was notified of the decision verbally and in writing. The reconsideration, which was allowed, restored the worker’s ongoing entitlement for a shoulder injury.



### 11 WSIB issues clearance certificate for self-employed person

**A self-employed person called the Commission in early July because she wanted to speak with management in the WSIB’s Collections Department.**

She explained that she worked in a physically demanding industry and recently suffered a personal injury that prevented her from taking on contracts. As a result, she fell behind on her WSIB premiums and owed over \$300. She was able to find a contract that would allow her to self-accommodate, which was to begin the following week. However, she needed a clearance certificate but was unable to get one because her account was in arrears. She told the Commission that she hoped that the WSIB would issue a clearance certificate so she could make enough money to pay off her account and pay her own bills.

We facilitated a call between the self-employed woman and an assistant director in Collections. The assistant director subsequently advised the Commission that

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*I am so grateful for your phone call.  
Now I feel hope.  
~ Worker*

since the balance was relatively small, the WSIB would write it off on a one-time basis and issue a clearance certificate for the upcoming contract.

The self-employed woman was grateful for the outcome.

# Individual Cases and their Resolutions (continued)

## 12 WSIB takes immediate action after lengthy delay on her claim

**A worker representative complained to the Commission about the WSIB's delay in taking action on her client's claim.**

In December 2018, an appeals resolution officer returned the claim to the claims management area to clarify several issues and to make further determinations about the worker's entitlements. The representative did not hear anything further from the WSIB, so in November 2019 she wrote to a manager to complain about the delay. The representative contacted the Commission in December 2019 when she did not hear back from the manager. We contacted the manager, who told the Commission that the WSIB had no excuse for the delay. The manager took immediate action. She met with the case manager to develop an action plan for gathering further information. The manager also contacted the representative to apologize for the delay and explain how the WSIB planned to move the claim forward.

“

*You have taken all my calls and always listened compassionately, without judging. I cannot express how much I appreciate you and your office for providing services to injured workers.*

~ Worker Representative

## 13 Final review of worker's benefits deferred while worker underwent treatment

**A worker representative complained to the Commission that the WSIB had completed a final review of her client's loss of earnings (LOE) benefits without considering the injured worker's psychological condition.**

The representative told the Commission that, at 72 months post-injury, the WSIB had locked-in the worker's LOE benefits on the basis that she could work 40 hours per week at minimum wage, even though the worker was suffering from a psychological impairment and required urgent treatment.

According to the claim file, the WSIB allowed the worker's claim for a repetitive strain injury in 2013. The worker received a non-economic loss award in 2017 for permanent impairment. Then, in 2018, an appeals resolution officer (ARO) allowed entitlement for a major depressive disorder, a pain disorder and the worsening of a pre-existing post-traumatic stress disorder. However, the ARO decision had not been implemented by the time that the 72-month lock-in decision was made.

The Commission contacted a WSIB manager, who confirmed that the WSIB would defer the lock-in decision while the worker participates in WSIB-funded treatment.

## 14 Migrant worker's medical recommendations considered after Commission inquiries

**A community legal clinic representative contacted the Commission on behalf of a migrant worker who was injured in 2016.**

The injured worker—now back home in Jamaica—received loss of earnings benefits until June 2017 and



a non-economic loss award for his permanent injury.

We learned that a psychologist had recently diagnosed the worker with post-traumatic stress and a depressive disorder, as well as other psychological issues. And, while the WSIB did not accept these disorders as being related to the worker's compensable injury, it was unclear whether other recommendations that were included in the assessment report of the worker's permanent injury were considered by the WSIB.

We contacted a manager to discuss the recommendations in the last assessment. The manager reviewed those recommendations and asked that a nurse consultant review entitlement to pain medication. In addition, the WSIB approved physiotherapy treatment and an MRI to explore the worker's ongoing physical issues. The WSIB also agreed to pay for the worker's travel expenses up-front and offered to pay by wire transfer.

### 15 Worker's secondary condition considered following Commission inquiries

**A community legal clinic representative complained to the Commission about the lack of response to correspondence and medical documents sent to the WSIB months earlier.**

The legal clinic attempted to escalate the issue to a WSIB manager, without success.

Upon review of the claim, we determined that an appeals resolution officer decision had allowed entitlement for the worker's left thumb and wrist injury. Subsequently, the legal clinic had requested entitlement for a secondary

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*The service you provide is invaluable.*

~ Worker

condition and submitted medical documentation to support the request, but no response had been received from the WSIB.

We contacted a WSIB manager to discuss the lack of response. The manager apologized to the legal clinic for the delay and asked the case manager to review the claim. Following the WSIB's review, the case manager determined that the secondary condition was compatible with the original accident history and allowed entitlement for the worker's secondary condition.

### 16 Worker receives full LOE benefits following a reconsideration prompted by Commission inquiries

**An injured worker complained that the WSIB had denied him entitlement to loss of earnings (LOE) benefits for a left ankle injury. The WSIB had allowed the claim for health care benefits only.**

We noted that the WSIB told the worker that it had denied LOE benefits because the employer offered suitable modified work. However, an X-ray and ultrasound conducted two weeks after the worker's accident indicated that the worker's injury was worse than initially diagnosed and that he may not be able to perform the modified duties.

The injured worker complained to the Commission that the WSIB decision-maker had refused to listen to him or consider the new medical information.

# Individual Cases and their Resolutions (continued)

We referred the worker to a WSIB manager to discuss his concerns. When that manager failed to contact the worker, we contacted the manager directly to discuss the claim. Following the Commission's inquiries, the WSIB reconsidered its decision and allowed full LOE benefits.

## 17 Entitlement to benefits reconsidered and allowed following delay

**An injured worker complained to the Commission about a WSIB delay in responding to his request for reconsideration of a 2017 decision that denied him entitlement to benefits.**

The worker and his representative submitted new evidence to the WSIB for consideration but received no response. A month after the request, the worker said that he had attempted to follow up with the WSIB by phone, but without success. He told the Commission that he was dealing with significant debt and overdue bills and was in a state of financial distress. He further explained how his anxiety had progressively worsened while trying to cope with this situation.

We contacted the manager, who advised that the reconsideration activity—initially assigned to an eligibility adjudicator who was just back from leave—had been reassigned and the newly assigned eligibility adjudicator would contact the worker that day.

Within a week, the WSIB informed the worker that it would be seeking an external medical opinion. After the WSIB received the medical opinion, it allowed the reconsideration request and granted the worker entitlement to benefits. To assist the worker, the WSIB agreed to pay loss of earnings benefits based on a temporary rate while they confirmed his earnings information with the accident employer.

## 18 WSIB to review alleged violation of the Workplace Safety and Insurance Act by an employer

**A worker informed the Commission that his employer had been deducting WSIB premiums from his pay for many years.**

Although they stopped this practice after the worker complained that it was a contravention of the Workplace Safety and Insurance Act (i.e., the Act), the employer did not reimburse him.

The worker said he still had the paystubs to show that money was deducted, specifically for WSIB premiums. He estimated that he was owed almost \$20,000. The complainant further stated that he had first called the Ontario Labour Relations Board for help and they referred him to the WSIB. Initially, the WSIB told the worker they could not help and referred him to the Fair Practices Commission.

Following an inquiry by the Commission, the assistant director at the WSIB's Employer Services Centre advised that his area could review the matter, though they might refer it internally to a prosecutor to investigate a violation of the Act. He further advised that one of his managers would call the complainant directly to gather more information.

The complainant was informed of the assistant director's plan and was very appreciative of the Commission's involvement.

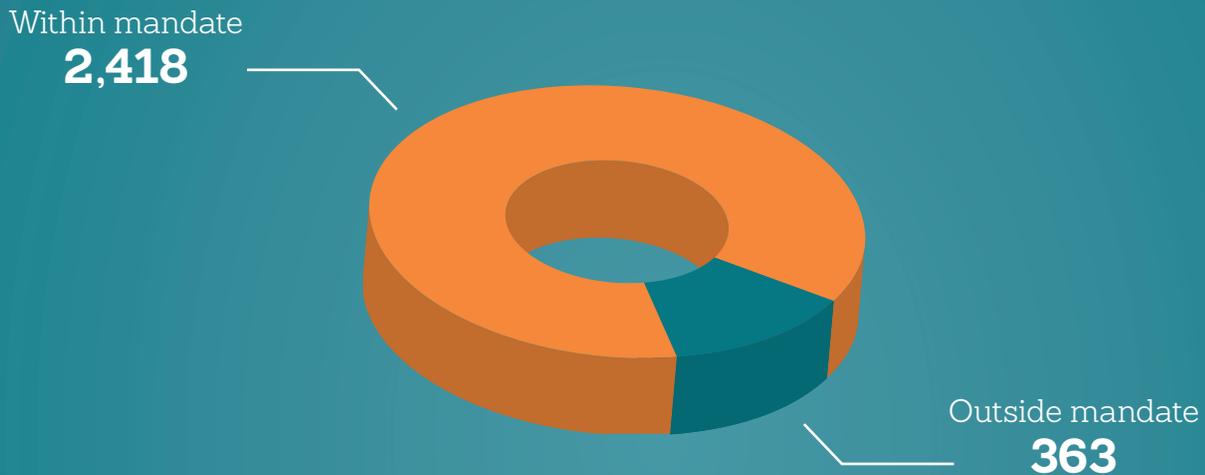
“

*FPC gets things sorted out.”*  
~ Worker's Representative

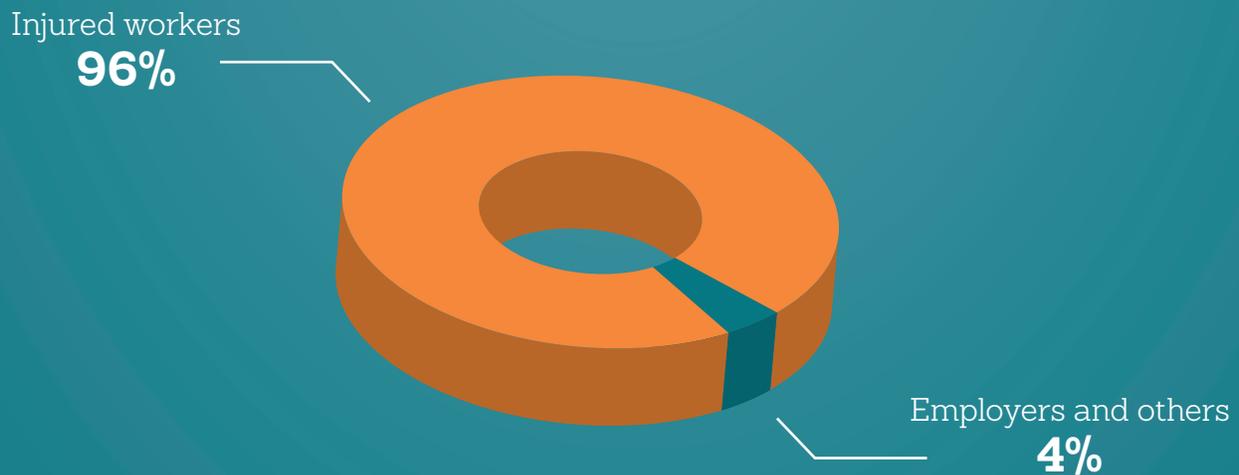
# By the Numbers

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## Complaints to the Commission in 2019



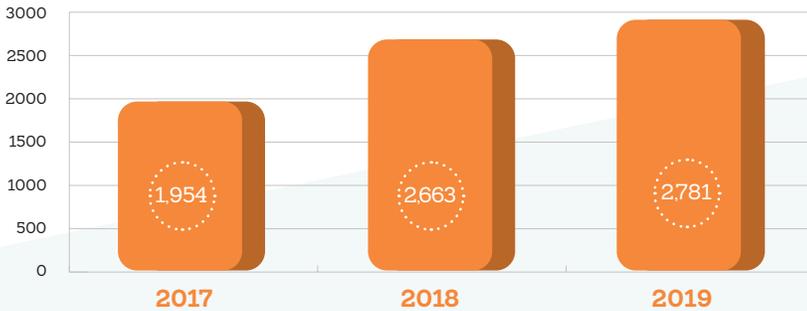
## Who Contacted the Commission in 2019



# By the Numbers

## Three-Year Summary

### Issues Opened



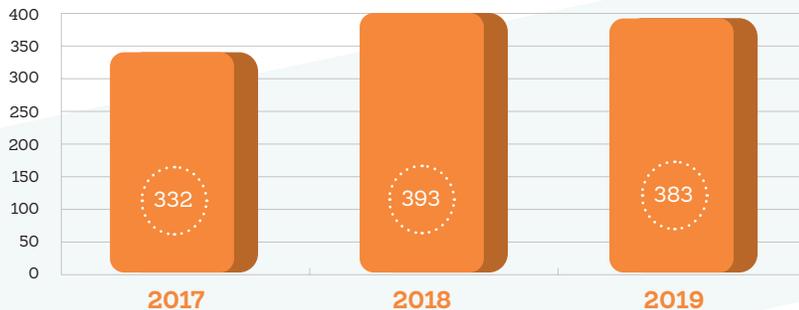
The Commission received **2,781** issues in 2019, compared with **2,663** in 2018.

### Inquiries Made by Specialists

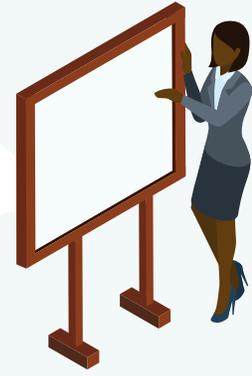


Specialists conduct an inquiry where we identify a potential fairness concern and the complainant has been unsuccessful in resolving the concern directly with the WSIB. Most of those issue were about **delays (238)** and **decision-making process (148)**.

### Issues the WSIB Had to Address



The number of fairness issues that required action by the WSIB decreased slightly in 2019. Most of those issues were about delays (190) and decision-making process (100). **The Commission resolved most complaints within four days.**



## Issues by Fairness Category

Fairness Category	2017	2018	2019
Delay	35%	39%	35%
Decision-Making Process	28%	21%	25%
Communication	18%	18%	21%
Behaviour	5%	7%	6%
Non-Mandate	14%	15%	13%

## Top 10 Ranking of Complaints by Subject

2019	Subject	2018
1	Benefits	1
2	Health Care	2
3	Return to Work	4
4	Appeals Process	5
5	Non-Economic Loss	3
6	Work Transition	7
7	Psychotraumatic Disability	9
8	Earnings Basis	12
9	Employer Assessment Issues	11
10	Permanent Disability	10



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

123 Front St. W.  
Toronto, ON,  
M5J 2M2

**Phone** 416.603.3010 or 1.866.258.4383  
**Web** [fairpractices.on.ca](http://fairpractices.on.ca)  
 [@FPC\\_WSIB\\_Ombuds](https://twitter.com/FPC_WSIB_Ombuds)

