

**Fair
Practices
Commission**

2021

**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, service providers and their representatives, and to identify and recommend system-wide improvements to Workplace Safety and Insurance Board (WSIB) services.

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Acronyms Used in this Report

ACM	Anonymous Claim Management	MSIP	Mental Stress Injury Program	PTSD	Post-traumatic stress disorder
CSR	Customer service representative	NEL	Non-economic loss	RTW	Return to work
ESDC	Employment and Social Development Canada	NIHL	Noise-induced hearing loss	WSIB	Workplace Safety and Insurance Board
LOE	Loss of earnings				

From the Commissioner

As the organizational ombudsman for the Workplace Safety and Insurance Board (WSIB), the Commission's goal is to ensure that complainants feel heard and that their concerns have been understood and responded to by the WSIB. We also try to ensure that any fairness issues that we have identified are acknowledged and addressed by the WSIB.

It goes without saying that 2021 was another challenging year for the people of Ontario, especially for many of the stakeholders that the Commission serves. Frontline workers continued to deal with the stress and risk of going to work every day, while businesses struggled under provincial restrictions put in place to limit the spread of COVID-19.

Despite the challenges caused by the pandemic, both overall complaint volumes as well as the number of issues opened were at their lowest levels since 2017. What's more, among the 1,777 issues opened by the Commission in 2021, only 273 needed to be addressed by the WSIB. This represents a significant decrease from the 383 issues addressed in 2019, which was the last full year before the onset of the pandemic.

As a matter of course, we typically encourage complainants to approach the WSIB with their concerns first. In 2021, approximately 80% of the issues raised with our team were resolved without the need to make inquiries with the WSIB.

Yet, in cases where individuals are dissatisfied with the service they receive from the WSIB—and particularly when fairness issues are either not responded to or go unaddressed—our team is here to ensure that the WSIB is providing service in a transparent, inclusive and accountable manner.

For example, on page 18 of this report, you'll read about an injured worker who complained of a year-long wait for the WSIB to review his entitlement to further loss of earnings (LOE) benefits. Although the individual spoke with several WSIB staff members about the lengthy delay and attempted to elevate his complaint to a WSIB manager, the Commission had to make inquiries to ensure his issues were addressed.

In 2020, we reported on delays in adjudicating injured workers' entitlement for psychotraumatic or chronic pain disabilities. As you'll read on page 12 of this report, the WSIB developed an effective action plan to address these delays. By the end of 2021, these decisions were being made well within the WSIB's normal service levels.

I'd like to extend a big thank you to the staff at the WSIB for providing high-quality public service to the people of Ontario. In addition to taking the time to respond to our questions and inquiries, you also remain committed to addressing the fairness issues we bring to your attention. I'd also like to thank the WSIB's Board of Directors for its continued support of the Commission.

And thank you to the individuals, injured workers, employers, service providers and their representatives who contacted the Commission in 2021. I encourage anyone

who has a complaint about the service they are receiving to raise their concerns with the WSIB and further, to contact the Commission if they feel their concerns have not been adequately addressed. Responding to complaints provides an opportunity for public sector organizations, like the WSIB, to improve their services. We know that one complaint can shine a light for change.

Finally, I would like to acknowledge the hard work of the Commission's staff: Thank you for your empathy in dealing with the individuals who contact us and your dedication to improving services at the WSIB.

—Tom Barber, Commissioner

A handwritten signature in black ink, appearing to read 'Tom Barber', written in a cursive style.

Five-Year Summary

Top 5 Ranking of Complaints by Subject

Subject Area	2017	2018	2019	2020	2021
Benefits	957	1,406	1,620	906	835
Health Care	251	356	277	214	215
Return to Work	114	110	183	175	140
Appeals	95	89	131	93	71
Non-Economic Loss	55	115	109	54	57





Issues Opened

The Commission received **1,777** issues in 2021, compared to **1,832** in 2020. Most of the issues in 2021 were about **delays (612)** and the **decision-making process (440)**.

Year	Issues Opened
2017	1,954
2018	2,663
2019	2,781
2020	1,832
2021	1,777

Inquiries Made by Specialists

Specialists conduct inquiries when the Commission identifies a potential fairness concern that the complainant has been unsuccessful in resolving directly with the WSIB.

Year	Number of Specialist Inquiries
2017	426
2018	485
2019	517
2020	392
2021	351

Issues the WSIB Had to Address

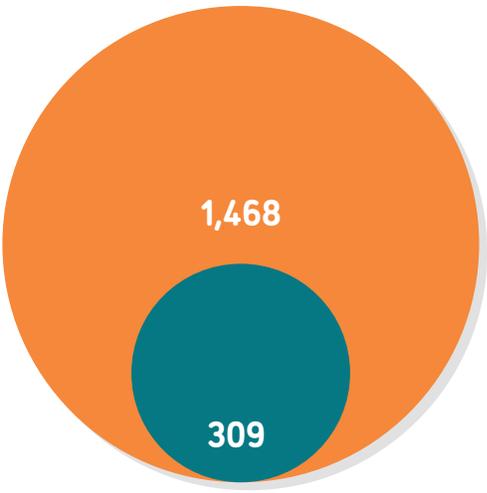
The number of fairness issues that required action by the WSIB continued to decrease in 2021. Most of the issues were about **delays (178)** and the **decision-making process (48)**.

Year	Number of Fairness Issues
2017	332
2018	393
2019	383
2020	315
2021	273

An Independent Office

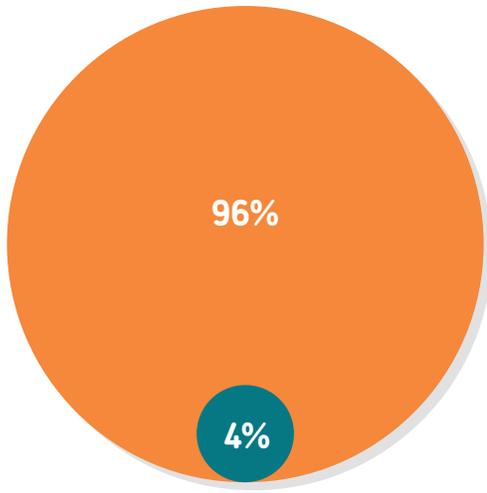
The Fair Practices Commission is an independent office that works to promote and ensure fair practices at the WSIB of Ontario. Our operating budget for 2021 was \$1.065 million.

Complaints to the Commission in 2021



- Within mandate
- Outside mandate

Who Contacted the Commission in 2021



- Injured workers
- Employers and service providers



As the organizational ombudsman for the WSIB, we:

- listen to the concerns raised by injured workers, employers, service providers and their representatives.
- resolve fairness issues as quickly as possible.
- identify recurring fair practice issues and report them to the WSIB with recommendations for improvements.



Three main principles guide our work:

1

Impartiality

We advocate for fair practices and do 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

We serve injured workers, employers, service providers and their representatives, and work 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

We listen to the people who contact us and provide 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 stronger relationships and provides better tools for tackling future problems for all parties involved.

2 Resolving conflict

Our independence from the WSIB provides an opportunity for the Commission to take a fresh look at concerns and find solutions. Our intervention at an early stage may help to prevent future unfairness as well as the expense and time invested in formal appeals.

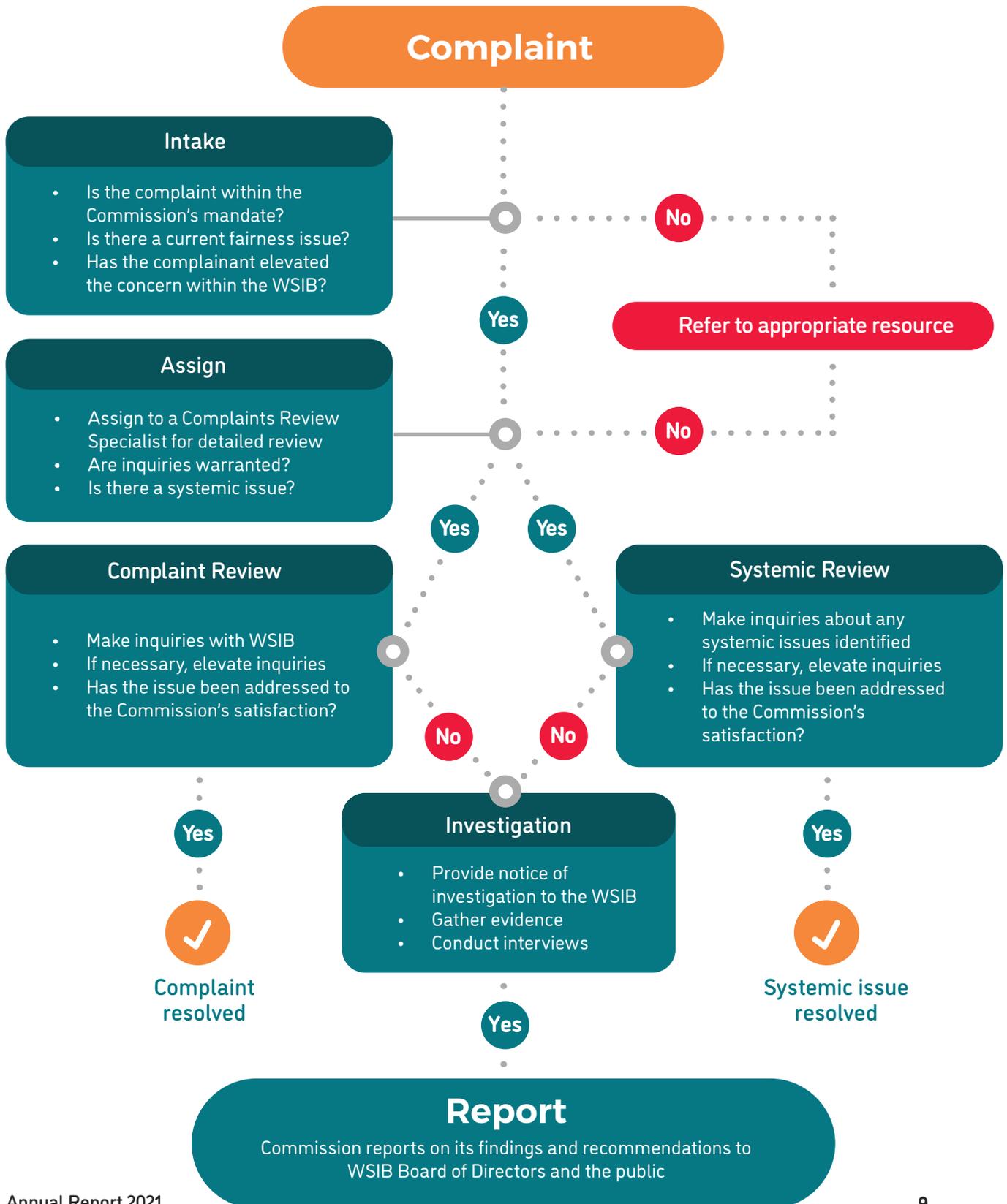
3 Preventing problems

We 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 in an effort 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 is better able to adapt and respond to the needs of the people it serves.

The Complaint Process



Fairness Categories

When the Commission receives a complaint or inquiry, we respond according to what's appropriate to the circumstances of each individual.

Typically, we encourage each complainant to discuss their issue(s) first with the WSIB staff member who is directly responsible. If that doesn't resolve their issue(s), we recommend that they raise it with a WSIB manager. Should the complainant remain dissatisfied, we work to determine whether a current fairness issue is at play.

We analyze each issue against four fairness categories:

Delay

Was there an unreasonable delay in taking action or making a decision? If so, was the affected party informed of the delay and the reasons for it?

Decision-Making Process

Did the person affected by the decision know it would happen? Did the person have an opportunity to provide input or to correct or respond to the information provided? Did the WSIB consider all relevant information? Is there a policy or guideline that relates to the matter? If so, was it applied in a manner consistent with its application in similar circumstances?

Communication

Did the WSIB provide reasons for its decision? Were next steps or options explained? Do the parties involved need more information in order to understand WSIB processes and policies?

Behaviour

Was the staff unbiased and objective when reviewing information? Was the staff courteous and professional? Did the WSIB respond fairly and respectfully if someone felt poorly treated? If the WSIB made a mistake, did they acknowledge and correct it?



If we determine that there is no current fairness issue and the complaint falls outside of the Commission's mandate, we explain this to the complainant and refer them to appropriate resources for further assistance.

Alternatively, if we determine that there may be a fairness issue to be addressed, we'll conduct a detailed review of the claim file, including relevant documents, and then contact WSIB management to get their perspective and discuss steps to resolve the issue. If the issue remains unaddressed, we'll approach senior management to discuss options for resolution. And in the rare case where issues remain unresolved after this step, we may report the concern to the WSIB's Board of Directors.

In all cases, we keep the complainant updated on our progress throughout the process and inform them of the outcome of our review, once complete.

Issues Opened by Fairness Category

Year	2017	2018	2019	2020	2021
Delay	684	1,040	969	680	612
Decision-Making Process	542	548	694	450	440
Communication	364	485	579	322	340
Behaviour	92	190	176	78	76
Non-mandate	272	400	363	302	309

Systemic Issues

1 Delay in adjudication of claims for entitlement to secondary disabilities

In 2020, the Commission reported on delays on the part of the WSIB's Secondary Entitlement team in adjudicating workers' entitlement for psychotraumatic or chronic pain disabilities (see [2020 Annual Report](#), p. 8).

According to two WSIB policies—*Psychotraumatic Disability* (15-04-02) and *Chronic Pain Disability* (15-04-03)—a worker may be entitled to benefits for a psychotraumatic disability or a chronic pain disability when the disability occurs as a result of a work-related injury.

The WSIB aims to review such claims within 28 business days. However, at the time, WSIB staff informed the Commission that the team was overwhelmed and thus unable to meet the 28-day target. At the height of the backlog, in late 2020, the inventory reached approximately 1,400 claims and it was taking 12–14 weeks to review these claims.

The WSIB developed an action plan to address the backlog: Firstly, the Secondary Entitlement team prioritized claims involving financial hardship, where a worker may have been entitled to LOE benefits. Additionally, training was provided to non-Secondary Entitlement team case managers to allow them to make decisions on matters normally

referred to the Secondary Entitlement team. This reduced the number of referrals to the Secondary Entitlement team by up to 50%.

Throughout 2021, the WSIB provided the Commission with regular updates on its progress in eliminating the backlog.

By the end of 2021, normal service levels had resumed, with an inventory of 97 cases and an average of 13 days to reach a decision.

2 Entitlement decision delays for federal government employees

Last year, the Commission reported on a complaint from a retired employee of the federal government who had been waiting more than 18 months for the WSIB to make an initial entitlement decision on his claim (see [2020 Annual Report](#), p. 9).

Under an agreement with the federal Minister of Labour, the WSIB administers compensation claims for federal employees covered under the *Government Employees Compensation Act*. Before the WSIB can adjudicate a claim, the agreement requires the WSIB to confirm the claimant's employment status with Employment and Social Development Canada (ESDC). In practice, this means that ESDC must countersign the *Employer's Report of Injury/Disease* (i.e., the WSIB's Form 7) before the WSIB will adjudicate the claim.



Under the *Employers' Initial Accident-Reporting Obligations* policy (15-01-02), the WSIB must receive an employer's complete accident report within seven business days of the employer learning of the reporting obligation. Employers who fail to comply with their reporting obligations may face fines for late reporting. However, the WSIB has exercised its statutory discretion to excuse federal employers from late filing penalties in consideration of inherent delays created by the ESDC's mandated countersigning process.

It should be noted that employees of the federal government generally receive advances on benefits when they are unable to work due to injury or illness. This mitigates the potential negative impact of delays in receiving LOE benefits. Yet, delays in adjudicating the claim may also result in delays to health care treatment or other benefits. Prompt access to treatment is important to facilitating a complete and timely recovery and return to work (RTW).

In the individual complaint, the WSIB ultimately adjudicated the claim without the countersigned Form 7 after multiple requests to ESDC went unanswered.

In discussions about the potential systemic implications of the complaint, a WSIB executive director acknowledged that the issue of delays with countersigned Form 7s is a well-known and long-standing problem.

She also noted that the WSIB has the discretion to adjudicate these claims without the countersigned Form 7 in "exceptional circumstances."

Following further inquiries by the Commission, the WSIB gathered data on claims involving federal employers, which confirmed that there were significant delays in reporting workplace incidents and returning countersigned Form 7s.

In May 2021, the WSIB met with senior ESDC staff, including the federal Assistant Deputy Minister of Labour, to share data regarding the delays and to discuss challenges surrounding claims that involve federal government employers. The WSIB committed to acquiring additional data for the ESDC to support them in educating the federal employers on the importance of prompt reporting and to explore ways to improve their claims registration process.

The WSIB planned to meet with the ESDC again in September 2021 to explore possible changes to the existing service-level agreement. However, these meetings were postponed, pending the appointment of a new Minister of Labour following the federal election.

At the time of writing, the WSIB was developing a process to allow it to adjudicate claims if countersigned Form 7s were not returned within a specified period.

Systemic Issues

The Commission did not receive any new complaints about this issue in 2021, but we will continue to monitor the WSIB's progress in addressing the broader systemic concerns.

3 Review of claim files with disruptive behaviour codes

In 2017, the Commission raised fairness concerns with the WSIB regarding its process for imposing communication restrictions on injured workers whose behaviour has been deemed inappropriate, abusive or threatening (for further information, see updates in the [2017](#), [2019](#) and [2020 Annual Reports](#)).

As a result, the WSIB reviewed its approach and took a number of steps, including: updating its Threats Protocol; incorporating a review of an injured worker's potential accommodation needs into the restriction process; and, conducting a review of all claims that have disruptive behaviour codes (i.e., codes that identify abusive and/or threatening conduct on the part of the injured workers) associated with them.

The WSIB prioritized its review of claims with contact restrictions (e.g., no telephone calls, no trespass notice) and completed this part of the project in February 2019. Then, in late 2021, the WSIB completed its review of all claims with notes about disruptive behaviour but no contact restrictions. In total, the organization reviewed 15,728 claims, which

also included new claims with disruptive behaviour codes identified during the course of the project.

“You... have been so friendly and punctual. I get returned calls no more than a day later. You have been so informative, I appreciate it.”

—Worker

The disruptive behaviour code was removed in approximately 10,500 claims, was reduced in a further 1,300 files, and 91 claims had the codes increased. (Note: In some cases, disruptive codes were removed due to a lack of supporting evidence of disruptive behaviour. Other disruptive codes were removed in claims where there had been no abusive or threatening behaviour for two or five years respectively, which meant that the disruptive behaviour code was no longer current.)

Moving forward, the WSIB will review claims with disruptive behaviour codes once every two years in order to ensure that the codes remain current.



4 Modernization of the WSIB's Anonymous Claim Management system

In early 2021, the Commission learned that claims assigned to the WSIB's Anonymous Claim Management (ACM) team were not included in its recent review of all claims with contact restrictions (see above). The result: Instead of conducting individual reviews, the WSIB decided that restrictions for approximately 50 individuals with claims assigned to the ACM team would remain the same.

Despite the small number of claims assigned to the ACM team, we have fielded several complaints about the service received from individuals whose claims have been assigned to this group in recent years.

In one instance, a community legal clinic contacted the Commission on behalf of an incarcerated worker because he had not received seven of his LOE cheques. During our review, we discovered that the WSIB continued to send the worker's LOE cheques to his previous representative, even after the representative asked the WSIB in writing to remove him from the claim. Following Commission inquiries, the WSIB updated the worker's address, set up direct deposit and replaced the missing LOE payments.

In 2021, another worker whose claim is also managed by the WSIB's ACM team



According to internal guidelines, the WSIB's ACM process was created for some of its more extreme security files.

In such cases, the names of WSIB staff members working on the files are removed from all documents and neither the worker nor their representative is allowed to contact the WSIB by telephone or to communicate directly with the ACM team.

Systemic Issues

complained to the Commission that he was unable to refill a prescription that was being paid for by the WSIB. We asked the worker to raise his complaint with the WSIB by sending a fax to the WSIB's Security Office, as this was the only method workers assigned to the ACM team could use to communicate with WSIB at the time. However, the worker returned to the Commission when he did not receive a response.

The WSIB explained to the Commission that because the claims are paper-based, no system reminders were generated to remind staff of the need for the prescription renewal. Within a few days of the Commission's inquiry, a prescription renewal was approved.

Following Commission inquiries in late 2020 and early 2021, the WSIB recognized the need to modernize its ACM processes, improve communication and provide better access to information for workers with claims assigned to the group.

In late 2021, the WSIB updated its ACM guidelines and finalized the creation of two detailed forms (*Intake* and *Request for Review and Removal*) in order to formalize and promote consistency in the decision-making process when placing workers on or taking them off ACM.

In early 2022, having completed enhancements to its case management system, the WSIB began uploading ACM claims to it, thus allowing WSIB staff to take

advantage of its system reminders and other case management features.

At the time of writing, the WSIB has advised that it has reviewed all of the claims currently assigned to the ACM team.

We await results of this review and will continue to monitor the issue to its resolution.

5 IT glitch affects outgoing mail

In the Commission's [2020 Annual Report](#), we reported on a communication glitch that caused outgoing correspondence from the WSIB to be misdirected on multiple claims.

“Whether I like what you say or not,
you're a good go-between.
I sincerely appreciate your efforts.”

—Worker

A solution for this problem was implemented in September 2020. Yet, a law firm contacted the Commission shortly after the release of last year's Annual Report to report that they were continuing to experience issues with receiving mail from the WSIB.



(They had already been in contact with the WSIB to report the problem and provide specific examples.)

Upon further Commission inquiry, a WSIB director clarified that a new issue had arisen that was unrelated to the glitch in 2020. This new concern had already been escalated to the IT department to investigate on a priority basis. Furthermore, the director agreed that the WSIB would remedy any claims issues resulting from missing letters (e.g., missed time limits to object to decisions).

The IT investigation revealed that when a claim's status was updated more than once in a day, the transactions created errors with scheduled outgoing letters. The error occurred primarily when the main recipient of the outgoing letter was a third party, such as a legal representative, with copies going to the worker and employer. As a result, the outgoing letter may not have been sent or a duplicate letter may have been sent to one of the copied parties.

Additional IT solutions for this problem were implemented in September 2021, and we will continue to monitor for any further issues as they arise.



Individual Case Resolutions

Delay

1 Year-long delay to review entitlement to LOE benefits

An injured worker called the Commission in September 2021 to complain that the WSIB had not reviewed his entitlement to LOE benefits since his layoff a year before.

The worker told the Commission that he had contacted various WSIB staff over the past year and had raised the issue several times, noting that he had no income and was in financial distress. He also said that he had provided the WSIB with requested documents, including his record of employment.

Finally, in August 2021, the worker raised a number of service concerns with a WSIB customer service representative (CSR), including the frequent reassignment of his claim and a lack of communication or follow-up on unresolved issues.

The aforementioned CSR was unable to locate a manager to speak with the worker. As such, the worker requested that someone call him back as soon as possible.

Two weeks later, the worker had still not heard from the WSIB, so he called the Commission for help.



After we brought this issue to a manager's attention, the claim was reassigned to a new case manager. Two weeks later, the claim was referred to a specialized team to make a decision on the worker's entitlement to LOE benefits post-layoff.

The worker was later found to be entitled to full LOE benefits since the date of his layoff and was subsequently enrolled in a work transition program.

“Thank you for your help.
Now things are finally moving along.”

—Employer Representative

2 Employer representative complains of delay in accessing RTW services

An employer representative wrote to the Commission to ask for assistance in reaching a WSIB case manager. The employer representative told the Commission that the injured worker had refused to provide information about his functional abilities, which would allow the employer to arrange suitable modified duties and further their planning for the worker's RTW.



The representative told the Commission that he had left multiple voicemails for the original case manager, along with one for that person's manager, but he received no response.

Then, a CSR informed him that the claim had been reassigned to a new case manager, who would require a few days to review the file. The representative told the Commission that he left six voicemails for the new case manager over the course of the next two weeks. Again, he received no response.

We made inquiries in order to clarify which team had carriage of the claim and we were able to connect the case manager with the representative.

The case manager then created a referral to the RTW area and referred the worker to a specialty clinic to have his functional abilities evaluated.

3 Two-year delay to issue non-economic loss decision

A community legal clinic contacted the Commission regarding a delay on the part of the WSIB in issuing a decision on a non-economic loss (NEL) award. The legal clinic had written to the WSIB in December 2018 and again in 2019, but the WSIB did not respond.

As the claim was unassigned (also known as "system owned"), we contacted the WSIB to

request that the claim be assigned to a case manager.

The manager explained that the NEL referral had been completed but was returned, unrated, by the NEL area. Subsequently, the WSIB manager requested that the NEL be completed on a priority basis and contacted the representative to apologize for the administrative error.

Three days after the legal clinic contacted the Commission, the worker was awarded a 2.25% NEL rating and was sent a cheque for approximately \$1,200.

4 Worker waits 15 months for adjudication of chronic mental stress claim

A worker contacted the Commission because she had been waiting more than 15 months for the WSIB to adjudicate her January 2020 chronic mental stress claim. The worker had promptly provided a written statement when asked to do so and made several follow-up phone calls with the case manager and manager but received no response.

Upon Commission inquiry, the manager explained that he was aware of the case and had been working with the case manager to obtain two outstanding witness statements.

Within a week, the case manager issued a decision and they also called the worker to

Individual Case Resolutions

apologize for both the delay and the poor service she had received.

Further, we followed up with the director of the Mental Stress Injury Program (MSIP) to clarify service standards for making decisions on MSIP claims. The director explained that 80% of MSIP claims are adjudicated within 56 days but some claims may take longer, depending on complexity or if they experience difficulties in obtaining witness statements and/or information from the employer.

In this case, the director agreed that the claim had taken an unusually long time to adjudicate and fell outside of accepted service standards.

5 Delay in obtaining medical report from hospital

A worker complained that the WSIB had been trying unsuccessfully for three months to obtain a report from a hospital that was required for the re-evaluation of his NEL award.

The WSIB had already sent multiple written requests to the hospital, along with leaving messages with the Health Records department. A WSIB manager informed the worker that they would continue to try until they got the report and suggested that the worker may wish to follow up himself as well. The worker was dissatisfied with this response.

The WSIB manager informed the Commission that the NEL branch could not conduct their review without this particular medical report.

We asked the manager if they had explored other avenues to acquire the report (e.g., approaching the claimant's family doctor or requesting it from the clinic). The manager stated that he would have the nurse consultant try these sources.

The next day, the manager reported that they were able to retrieve the report. The worker's file was referred to the NEL branch on a priority basis and the NEL award was increased.

“Open-minded people like you help people like me to seek justice. Thank you for all that you do.”

—Worker





Decision-Making Process

1 COVID-19 claim denied due to lack of confirmed diagnosis

A paramedic filed a claim for COVID-19 near the start of the pandemic. However, it was denied because she did not have a confirmed diagnosis.

The paramedic filed an objection in which she explained that, based on her symptoms, it was presumed that she had COVID-19 and was thus required to self-isolate. (Note: At the time, an emergency room physician informed her that swabs were in limited supply and thus, tests were only being performed on people who required hospital admission.) After multiple follow-up calls, she was told that the WSIB was “working on it.” Finally, a year later, the WSIB processed her objection and upheld the original denial.

We reviewed the WSIB’s COVID-19 guidance documents, which state that a confirmed diagnosis is not required for entitlement, and further, that a diagnosis based on symptoms may be sufficient, particularly as circumstances may make it difficult for people to be tested for COVID-19. Moreover, the documents recognized that the worker’s job put her at high risk for exposure.

Given that the WSIB’s COVID-19 guidance documents had evolved since the beginning of the pandemic, we made an inquiry with a WSIB manager to confirm that the WSIB’s current guidance had been considered when the WSIB upheld its original decision.

The WSIB reconsidered its decision and allowed the paramedic’s claim.

In thanking the Commission, the paramedic expressed that it was important to her mental health that this was recognized as a workplace injury: “You made a world of difference, not just to me but to the people whose homes I go into every day.”

2 Worker complains that health care and LOE benefits were terminated prematurely

An injured worker complained to the Commission that the WSIB had determined that his workplace injury had resolved, and thus, they ended his health care and LOE benefits. They also reversed a prior decision that allowed entitlement for a secondary injury.

The worker felt that the decisions conflicted with the opinions of his health care professionals. When he escalated his complaint to a manager, he was told that he could appeal the decisions.

Individual Case Resolutions

Based on the Commission's review of the claim, it appeared that the WSIB had not followed through on their attempts to collect updated information from the worker's physiotherapist. Nor did they seek updated medical information from the worker's family doctor.

We raised the worker's concerns with a WSIB manager. Following these inquiries, the case manager collected updated medical information and referred the claim file for an external medical consultant opinion.

After considering the updated information and the medical consultant's opinion, the WSIB accepted that the workplace injury was still ongoing and reinstated entitlement for the secondary injury.

3 Worker deemed capable of full-time work based on old medical evidence

A worker's mother, acting as her son's informal representative, contacted the Commission because she disagreed with the WSIB's decision that the worker was capable of returning to full-time work. In particular, she felt that the decision disregarded the opinion of the worker's psychiatrist. She had discussed her concerns with a WSIB manager, but the manager supported the decision of the case manager, pointing

towards a 15-page memo that the case manager had drafted to support the decision.

The claim file showed that the WSIB had accepted that the worker's condition worsened in 2018 and this had led to his NEL award being increased from 27% to 43%.

Upon reviewing the case manager's extensive memo, Commission staff noted that it relied predominantly on evidence that predated the worsening of the worker's condition. After we raised this issue with the WSIB manager, she determined that a formal reconsideration was required and the evidence predating the worsening of the worker's condition should be excluded.

The case manager subsequently determined that the worker was only capable of part-time work.

4 New medical information added to old file

An injured worker contacted the Commission to complain about the closure of his claim.

While performing modified duties for an existing injury, the worker was involved in a new workplace incident that affected the same area of injury. He was upset at being told that his existing claim would be closed and that he would have to register a new claim. The worker also told the Commission that recent medical investigations showed



that his injury was worse than originally thought. The worker attempted to address his concerns with the WSIB but his call to a manager was not returned.

Following Commission inquiry, we found that the worker's newly registered claim was "held in abeyance" due to a lack of medical information. However, relevant medical information had been filed on his previous claim.

A WSIB manager assigned a case manager to transfer the medical information and make an entitlement decision on the new claim. Action was also taken to gather updated medical information on the first claim.

Shortly thereafter, the worker's new claim was allowed and the worker received additional entitlement and benefits for his first claim.

Communication

1 Employer unable to get explanation for retroactive premium rate increase

An employer representative contacted the Commission because she was finding it difficult to get a clear explanation from the WSIB for a premium rate increase that had been applied retroactively to her account.

The representative spoke with five different staff members in Employer Services and received conflicting explanations on two issues: why the premiums had increased and why the increase was applied to a period that had already been paid. She asked to speak with a manager but an Account Specialist called her back instead. The last Account Specialist the representative spoke with suggested that she could outline her concerns in an appeal in order to receive an explanation.

"I've made a lot of calls and heard a lot of 'no's,' but you are a diligent problem-solver and you have given me a path forward. You are a breath of fresh air in my dealings with [the] WSIB."

—Worker

The representative filed an *Intent to Object* form, though she did not think that filing an appeal was an appropriate requirement, given that she had yet to receive a formal decision on the matter. And so, she approached the Commission for assistance.

Following an inquiry by the Commission, an assistant director in Employer Services

Individual Case Resolutions

agreed to review the account. He determined that the account was among a group of 1,300 employers who had experienced a technical error that caused their rates to be calculated incorrectly. And though the higher rate was correct, the WSIB agreed to apply the lower rate up to the point when the representative was first informed of the new rate.

The representative was notified of this and the account was credited accordingly.

2 Treatment for firefighter ends abruptly

A firefighter suffering from severe post-traumatic stress disorder (PTSD) was told that treatment with his provider—a social worker with extensive training in the condition—would no longer be approved.

Although he had been seeing the social worker for five years, a new nurse consultant determined in March 2021 that the social worker's treatment would need to be supervised by a psychologist. Otherwise, it could no longer be covered by the WSIB. As a result, the case manager told the social worker that he would only approve four transitional sessions with the worker.

The social worker asked the WSIB case manager to document the conditions required to continue treatment with the worker. Yet, this was never provided. The case manager also did not inform the worker of the decision

himself and instead, left it to the social worker to inform her patient.

The result: The firefighter was left to find a psychologist on his own in the middle of the COVID-19 pandemic. Finding a practitioner with availabilities proved difficult and in the meantime, his treatment with the social worker ended.

When the firefighter and the social worker escalated their concerns to a manager, they found the manager to be unhelpful and dismissive.

Following discussions with the worker and his social worker, Commission staff brought this issue to the attention of an assistant director at the WSIB.

As a result, the worker was provided with eight sessions of continued treatment with his social worker, pending the identification of a new psychologist. The WSIB also offered to help him identify a suitable psychologist and provided a detailed letter of apology to the worker for how his situation was handled.

3 Worker not informed of approval of replacement hearing aid

An injured worker contacted the Commission to ask for help in obtaining a response from the WSIB regarding a request for a replacement hearing aid after he had lost one while taking off his face mask.



The worker's audiologist submitted a Hearing Aid Special Needs request—asking the WSIB to approve a replacement hearing aid and noting that the mask mandate made lip-reading impossible for the worker, which meant that he was finding it difficult to communicate with his colleagues.

The worker was given conflicting information from the WSIB about how long it would take to process his request; one CSR told him it would take two weeks, while another cited 12 weeks.

Initially the Commission referred the worker to a manager in the Noise-Induced Hearing Loss (NIHL) department, but he returned to the Commission because he received no return call.

Upon reviewing the file, our staff noticed that a WSIB audiologist had already reviewed the request and approved the replacement. However, this had not been communicated to the worker or his audiologist.

Further Commission inquiry with an NIHL manager prompted the WSIB audiologist to contact the worker's audiology clinic the same day to communicate the approval.

4

Worker unable to get response to complaint about unpaid pension contributions

A worker in the film industry was injured in January 2021 and later discovered that his

employer had not made contributions to his pension while he was on full LOE.

The worker raised the issue with both his guild and his employer. In discussions with his employer, he discovered that they had never paid into any worker's pension plan when a worker was unable to work due to a work injury. The reason: The employer believed that they were exempt. (Note: The film industry has certain exemptions, such as being exempt from the *Employment Standards Act*.)

After reading his employment agreement again, the worker found that, in fact, the employer was not exempt from WSIB Policy 18-01-12 (*Employer Contributions to Worker Benefits*).

The worker twice escalated his concerns to a WSIB manager but was left frustrated by the lack of inquiry or action, as there was uncertainty within the WSIB as to how to deal with the matter.

The worker sought assistance from the Commission in mid-November. Commission inquiries led to the matter being referred to the WSIB's Re-Employment team. Two weeks later, we inquired with the Re-Employment team manager and were told that the referral had been returned to the Claims Management team for more information.

After all necessary information was uploaded to the file, it was referred back to the Re-Employment team on a priority basis.

Individual Case Resolutions

Three days later, the employer was found to be in breach and told to make the necessary contributions to the worker's pension within 10 days or face a penalty.

The employer subsequently made the required contributions to the worker's pension.

Behaviour

1 Worker denied access to translator

An injured worker—whose first language is not English—complained about how she was treated by her case manager when she asked for an interpreter.

According to the worker, on one occasion the case manager told her that an interpreter was not required because he had no difficulty in understanding her. The worker explained that, on the contrary, it was she who required the interpreter, as she was having trouble understanding the case manager. On another occasion, the case manager claimed that she was only requesting an interpreter because she did not agree with his decisions, and he went on to speak over her during the conversation.

The worker complained to the WSIB manager, who agreed to listen to recordings of the telephone calls. Following the complaint to

the manager, a call was arranged between the case manager, the worker and an interpreter. However, the worker remained dissatisfied; she did not hear from the manager after he listened to the telephone calls and felt that she deserved an apology.

Upon Commission inquiry, the manager agreed that the case manager's calls were unprofessional. He called the worker with an interpreter to address her concerns in more detail.

“Thank you very much for listening and for your work.”

—Service Provider

Even so, the worker returned to the Commission: She was still dissatisfied with the manager's response, as she felt that no acknowledgment of the case manager's behaviour had been made. The worker was also concerned about a decision letter, which had not been translated into her first language.

After follow-up by the Commission, the manager sent the translated letter to the injured worker. He also changed the case manager on her file and sent her a letter of apology.



2

Worker complains case manager did not listen to her

After an upsetting discussion with a case manager, an injured worker contacted a WSIB manager three times but was unable to connect with her.

The worker wrote to the Commission about her conversations with the case manager, stating that he had antagonized her, hadn't listened to her and had neglected to review pertinent medical information before terminating her benefits.

Following an inquiry by a Commission specialist, the manager reviewed the recordings of two phone conversations and agreed that the second conversation was problematic. In that second conversation, the case manager told the worker that he had determined that she had fully recovered from her workplace injuries. However, the worker had just had a follow-up appointment with a neuro-optometrist the month prior, wherein the specialist recommended visual therapy to ease the worker's symptoms.

After further review, the case manager reconsidered his initial decision on the injury. Visual therapy was allowed for her post-concussion syndrome and the worker received further treatment.



It took an average of 5 days for the Commission to resolve complaints in 2021.





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

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