

Fair Practice **NEWS**

Commissioner's Message

Commission releases first Annual Report



The Commission issued its first annual report in August 2005. The report covers the initial 15 months of the Commission's existence from January 2004 to April 2005, and one full year of service to the workers, employers and service providers of Ontario.

The report is detailed and comprehensive so that it can provide users and the public with a thorough understanding of the Commission's role and activities.

The report reviews the Commission's complaint process and the important initiatives we undertook, as well as the systemic issues we identified and a sample of case summaries.

We have mailed the report to the Minister of Labour, worker and employer advisers and 120 stakeholder groups and representatives. The report is in the libraries of the Ontario Legislature, the WSIB and the Tribunal. You can also find the report on our web site.

Response from all groups has been positive. We would appreciate your feedback too. You can send comments in writing or by telephone. Please see the contact information on page 2.

Laura Bradbury

123 Front Street West
Toronto ON M5J 2M2



Fair Practices
Commission
Commission des
pratiques équitables

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

BY THE NUMBERS

January 1, 2005 to September 30, 2005

The Commission received 1143 complaints.

Of the complaints received, 64 per cent were within the Commission's mandate.

The average turnaround time was 4.6 days.

The Commission's specialists handled 320 complaints.

Fairness Category

Delay	37.9%
Communication	10.9%
Behaviour	5.8%
Decision-making process	10.6%

User Groups

Worker self-referral	888	77.7%
Worker rep, family, MPP, OWA	165	14.4%
Employers, Employer reps	60	5.2%
WSIB staff who are themselves injured workers	11	1.0%
Service providers	4	0.3%
Anonymous	4	0.3%
FPC own motion	2	0.2%
Other	9	0.8%

Fair Practice News is published twice a year by the Fair Practices Commission, an independent office working to ensure fair practices at the Workplace Safety and Insurance Board of Ontario.

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

Phone: 416-603-3010 or
1-866-258-4383

TTY: 416-603-3022 or
1-866-680-2035

Fax: 416-603-3021 or
1-866-545-5357

www.fairpractices.on.ca

Complaint Resolution Outcomes

Advice given to complainant, no further action required	110
Referrals to WSIB	
Mandate	373
Non-mandate	94
Inquiries made to WSIB (including systemic issues)	
Action required by WSIB, complaint resolved	121
No action required	49
No current fairness issued identified	25
Complainant contacted/file reviewed, no current fairness issue identified	8
Right of appeal exists (non-mandate)	115
Issue under WSIB appeal or review	27
Complaint withdrawn	2

The above account for 81% of cases closed between January 1, 2005 and September 30, 2005. The other 19% of complaints are under WSIAT appeal, or not about WSIB, or were abandoned by the complainant.

Available from the Fair Practices Commission

- guide and form for submitting a complaint
- case summaries
- links and resources

www.fairpractices.on.ca

SYSTEMIC ISSUES RESOLVED

Survivor benefits

A widow receiving survivor benefits did not receive notice that her benefits would be substantially reduced when her youngest child turned 19. The acting director reviewed the issue to ensure that others in this situation learn about such a change in their benefits.

The director informed the Commission in August that they are obtaining a report on all “older” survivors in similar situations, and plan to send a letter one year before the youngest child turns 19, reminding the parent of the drop in benefits.

72-month lock-in of LOE

A worker representative complained about the process the WSIB used to make a decision on the worker’s final loss-of-earnings (LOE) benefits. The worker was recovering from surgery and 100 per cent disabled at the 72-month date. The representative felt the worker should be entitled to 100 per cent LOE benefits. The claims adjudicator deemed the worker capable

of earning more than his pre-surgery level, which dramatically reduced the final LOE benefits. The decision was made without notifying the worker or his representative.

The representative reported that she had talked with the chief operating officer about the fairness of the decision. The chief assured her that he would look into her concerns. The Commission followed up to ask about the individual’s concerns and the possible systemic unfairness, since the Commission had received more complaints about the 72-month-review decision-making process.

The chief investigated and discovered that some areas were not adhering to earlier communications about the 72-month review process.

The chief sent a memo to all managers instructing them to review with their teams the correct protocol for conducting a final 72-month LOE review.

The chief also implemented a process to obtain and monitor reports for the next two business quarters to ensure all final LOE decisions follow the

correct protocol.

The complainant received 100 per cent benefits pending a review of his future earnings capacity after maximum medical recovery.

Transfer-of-cost employers

A representative of a “transfer of cost” employer complained about the WSIB’s decision to deny access to the worker’s claim file. The representative was concerned that the transfer-of-cost employer could not meaningfully participate in the appeal process without access to the file. He asked the Commission to look into the access issue.

The Commission talked with the director of legal branch and chief corporate services officer. The WSIB advised the Commission that it was reviewing and revising its access policies. New policies that include provisions for access to a worker’s file by a transfer-of-cost employer are now awaiting executive committee approval. The policies are expected to be effective January 3, 2006.

CASE SUMMARIES

Delay in referral to Appeals Branch

A worker’s representative complained about a four-month delay in referring his client’s file to the Appeals Branch. The Commission found that new medical information, attached to the objection form, had prompted the adjudicator to consider additional areas of entitlement related to the issues being appealed.

A four-month wait can be serious for a worker. However, the Commis-

sion sees nothing inherently unfair with a process that triggers a reconsideration when new medical information is received, providing that every effort is made to move quickly.

In this case, it appeared that every effort was made to obtain and review the evidence needed to make an entitlement decision. The Commission noted proactive information gathering, timely consideration of new information, and regular reports to the worker and representative. No delays were observed with internal referrals.

The Commission declined to look further into the complaint.

Delay in sending forms

A worker’s representative reported that he had not received an objection form despite calling and writing many reminder letters over 10 months. He also wrote to the manager twice. When he did not receive a response from the manager he spoke to the Commission.

The Commission reviewed the claim file and found the letters in the

continued on page 4

OUT AND ABOUT

Meeting with Ontario Federation of Labour

On September 30 the Fair Practices Commission participated in the Ontario Federation of Labour's three-

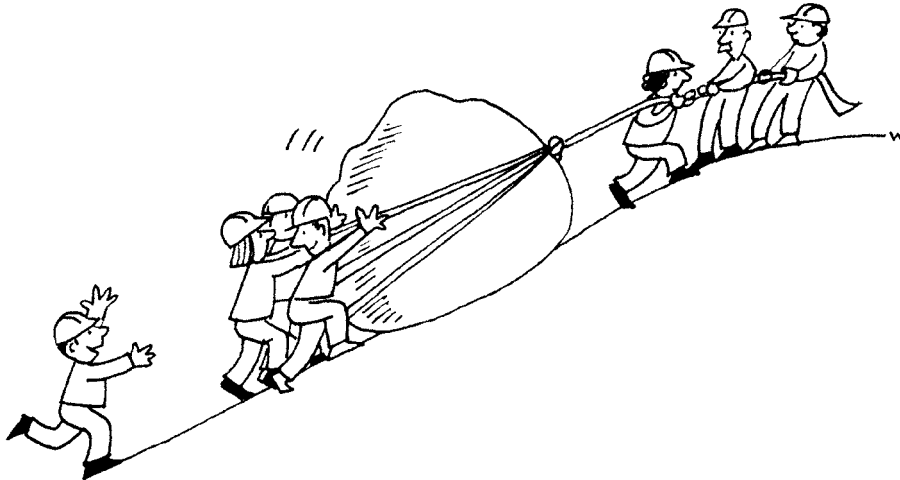
day WSIB/health and safety conference. Commissioner Laura Bradbury and specialists Mary Carl and Tom Irvine reviewed the Commission's role and mandate and the types of individ-

ual and systemic fairness concerns that have been received during the first year of service.

The more than 150 union representatives appreciated the opportunity to share valuable information about how they and the Commission can work with the WSIB to address process and fairness concerns.

Open House and Intake Clinic in Sarnia

Commissioner Laura Bradbury and specialists Mary Carl and Tom Irvine were in Sarnia on October 5 to host an open house and intake clinic. Community members were able to learn more about the Commission and to raise individual issues related to fairness of service or treatment they received from the WSIB.



Commission staff used several cartoons to enhance their presentation. This one shows everyone working together to improve the system.

CASE SUMMARIES *continued from page 3*

“to be filed” folder. The Commission asked the manager if she was aware that mail addressed to her was in the claim file. The manager said she was unaware of the representative's letters. She agreed to review the letters and to contact the representative immediately to apologize for the delay.

A review of the file a few days later showed that the claims adjudicator had sent the requested form and started a referral to the Appeals Branch based on the detailed objection letters in the file. The manager wrote a letter of apology to the representative and worker.

Since this was one of a number of complaints involving a delay because a manager did not receive mail, the Commissioner raised the concern to a higher level in the organization. The WSIB is reviewing the mail processing system to ensure managers receive

mail addressed to them.

Delay in implementing ARO request

A worker contacted the Commission about a delay in implementing a request from the appeals resolution officer (ARO). The Commission noted that four months after the ARO sent the worker's claim file back to operations with instructions to obtain more medical information, the work was not completed.

Workload was the primary reason given for the delay. The claims adjudicator reported she was still waiting for one doctor's report and a copy of the worker's birth certificate.

Review of the file revealed that the WSIB had received the medical report three months earlier. However, it was part of faxed correspondence that the

representative had submitted and was not filed separately. The claims adjudicator said she had not seen the report and agreed to look at it immediately and contact the worker within one week with the outcome of her review.

The request for the birth certificate to process a NEL assessment was based on a policy that applies to claims on or after 2002. The Commission noted that this worker's claim was prior to 2002. The adjudicator acknowledged her error and immediately sent the NEL referral form for processing.

When the Commission reviewed the file one week later, the claims adjudicator had contacted the worker and her representative and sent the new medical information to the medical consultant for review. NEL assessment arrangements were also underway.