



Fair Practices Commission

Annual Report for 2005–2006

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

Aussi disponible en français

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Fair Practices
Commission
Commission des
pratiques équitables

“I would like to say thank you again for everything you have done for me in this matter. Your help has been of great assistance in this heartbreaking situation. I am glad that you and the Fair Practices Commission are there to help people like me at times like these. It really matters.”

Mission Statement

The mission of the Fair Practices Commission is to facilitate fair, equitable and timely resolutions in 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.

Contents

Message from the Commissioner	3
The Charter	4
Complaint Process	6
Important Initiatives	9
Systemic Issues	12
Case Summaries	20
Outreach	26
Education	27
The Story in Numbers	28
WSIB Fairness Initiatives	37
Strategic Plan	39
Communication Plan	39
Budget	40
Staff Development	41
Staff Profiles	42
Inquiries and Investigations	
Practices and Procedures	44

From the Commissioner

I am very pleased to present the Commission's second public annual report for the period from April 1, 2005 to March 31, 2006.

Since the Commission started its work two and a half years ago, we have received 3,000 complaints. Many of these are resolved individually, but some complaints show us that there are broader, system-wide, issues. The Commission's arm's-length relationship with the WSIB, and impartial perspective, presents a unique opportunity to identify systemic concerns and recommend solutions.

Systemic issues resolved this year addressed the earnings of injured young workers, consistent decision making in the final 72-month loss-of-earning review, notice to older survivors about reduction in benefits, faster decision making in traumatic mental stress cases, the establishment of guidelines for the appeals officers to consider in retroactive experience rating claims, and access to worker files by transfer-of-cost employers. Several of these have been long standing issues in the worker and employer communities. Their resolution shows the Commission's value in assisting the WSIB to improve the fairness and equity of its services.

The WSIB's commitment to improvement is demonstrated by the decision to establish the Program Development Division, in part to resolve the system-wide issues the Commission has identified. Commission staff now meets regularly with the Program Development vice-president and adjudication director to share our perspectives and information. The division has taken important steps to reduce delays and set standards in areas such as reconsideration requests, internal referral processes, and obtaining requested medical reports.

Another measure of the Commission's work this year is reflected in the remarkable results of our user satisfaction survey. Overwhelmingly, 98 per cent said Commission staff took the time to listen to their complaints, 95 per cent said they would call the Commission again and 96 per cent reported they would recommend the Commission to someone else in a similar situation. These results reflect the commitment and dedication of our staff, at both the intake and specialist levels.

As we enter our third year of operation, we look forward to working with the Honourable Steven Mahoney, new chair of the WSIB. And I am confident that the Commission will continue to help with ensuring fair processes and practices at the WSIB.



Laura Bradbury
Commissioner

The Charter of the Fair Practices Commission

The WSIB board of directors approved the Commission's charter on March 4, 2004. The full text is available on the Commission's web site.

Role and mandate

The Commission is the organizational ombudsman, addressing service delivery issues raised by workers, employers and service providers. It operates impartially and consistently with the WSIB principles of high quality services, fairness, equity, openness and transparency.

The Commission's mandate is to

- receive, investigate and resolve complaints about alleged acts, omissions and unfair practices by the WSIB.
- identify complaint trends, policy matters and systemic issues and recommend improvements.

The Fair Practices commissioner can act on her own initiative to identify and make recommendations about systemic service delivery issues within the WSIB. The commissioner has the discretion to decline a complaint based on its timeliness or whether it falls within the mandate. Generally, the Commission accepts complaints that have current implications for fair practices.

The commissioner issues quarterly reports to the board on the Commission's activities, findings, statistics and systemic issues. The commissioner provides information to the president and senior managers as required. The commissioner also issues a public annual report.

Arm's-length relationship

The charter safeguards the Commission's arm's-length relationship with the WSIB by providing that "just cause" for terminating the commissioner's appointment "does not arise in the case of disagreement over a recommendation or report made by the commissioner with respect to a complaint or other type of investigation within his or her mandate."

Core qualities

The Commission operates on the basis of the recognized ombudsman principles of independence, impartiality and confidentiality.

Independence

The Commission is free from interference in the legitimate performance of its duties. The commissioner and staff are not part of the line management or operations of the WSIB. The commissioner reports directly to the board of directors through the chair.

Impartiality

The Commission conducts investigations and makes recommendations in an impartial manner, free from bias and real or apparent conflicts of interest. The Commission treats all the parties to a complaint with respect and open-mindedness.

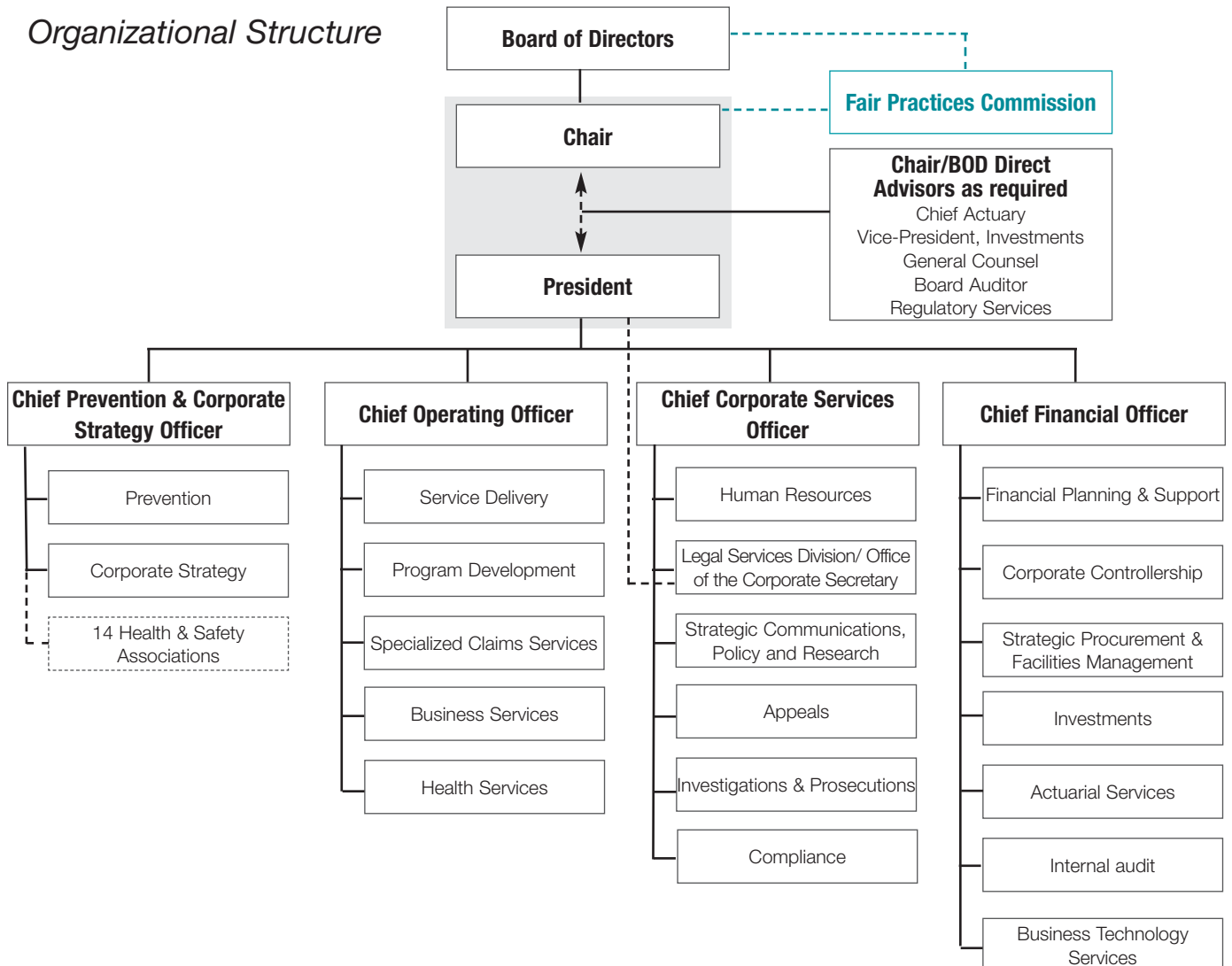
Confidentiality

The Commission ensures that all privacy matters applicable under the *Workplace Safety and Insurance Act* and *Freedom of Information and Protection of Privacy Act* are fully safeguarded. The Commission operates consistently with any guidelines established by the WSIB Privacy Office and consults on privacy issues with that office and with WSIB general counsel as necessary.

The Commission maintains systems and records separately from the WSIB.

Workplace Safety and Insurance Board of Ontario

Organizational Structure



Complaint Process

Making a complaint

A complaint guide and complaint form are available on the Commission's web site. Or, anyone can just phone the Commission.

Is there is a fairness issue?

To help determine whether a complaint involves potential fairness issues, the Commission relies on these four administrative fairness benchmarks:

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? Was correspondence answered or were calls returned in a timely fashion?

Communication

Was the decision or action communicated clearly? Were reasons provided to those affected? Did staff explain what the decision was based on? Were next steps or options explained?

Behaviour

Was the staff unbiased and objective when reviewing information? Did staff overlook any relevant information in their actions or in making a decision? Was the staff courteous and professional? Were wrongs acknowledged and apologies offered?

Decision-making process

Did the person affected by the decision or action know it would happen? Did the person have input or an opportunity to correct or respond to information? Was information overlooked? Is there a policy or guideline related to the matter? If so, was it applied in a manner consistent with how it was applied in similar matters?

Intake

Intake staff members answer all complaint calls.

They first encourage callers to try to resolve a complaint with the WSIB. They give callers the name and phone number of their adjudicator and the adjudicator's manager, or account manager if the caller is an employer.

The Commission's experience is that if something has been overlooked or misunderstood, the WSIB staff may quickly and easily solve the problem at this early stage.

Commission intake staff help callers focus on their fairness concerns and may provide guidance to help in their discussions with the WSIB staff.

If callers are unable to resolve the complaint with the WSIB directly, intake staff obtain the caller's consent to let the Commission look at their file and discuss the concern with their representative and the WSIB staff.

If a concern is not within the Commission's mandate, intake staff provide information about the contact numbers for resources that may be able to help the caller.

Specialists

Specialists handle complaints that raise a potential fairness issue that the complainant has not been able to resolve directly with the WSIB.

The specialists review the claim or account file and discuss the concerns with the complainant and his or her representative.

Specialists contact the appropriate WSIB staff for their perspective and information. If the specialist's inquiry finds that the complaint does not raise a fairness issue or it raises an issue that the WSIB has already dealt with, the specialist explains the situation to the complainant.

If the inquiry finds a fairness issue, the specialists explore possible remedial action with the WSIB. If the matter is not resolved, they take the matter "up the line," for example, to the WSIB manager, assistant director, director or vice-president.

Specialists consider whether a complaint has broader implications that may affect other workers or employers. If it does, they consult with the commissioner and may raise the systemic concern.

Commissioner

The commissioner investigates systemic issues that she identifies or that arise from individual cases. The commissioner also authorizes investigations conducted by the specialists. She monitors the progress of inquiries and investigations, makes recommendations and meets regularly with senior staff at the WSIB. The commissioner is responsible for reporting to the WSIB board of directors and the public on the Commission's activities, the results of investigations, and the status of the Commission's recommendations.

The value of the Commission's work

Relationship building

The Commission explains to callers how the WSIB operates and gives them options for resolving problems. The Commission assists the WSIB staff in understanding the concerns and frustrations of the complainant. Experience shows that this type of informal facilitation helps to build better relationships between the complainants and the WSIB staff and provides all of them with better tools for tackling future problems.

Resolving conflict

The Commission's arms-length relationship with the WSIB provides an opportunity for a fresh look at a dispute and a creative outcome. The Commission's intervention at an early stage may help to prevent future unfairness and the expense and time of formal appeals. In cases where no unfairness is found, the Commission's neutrality reassures the complainant and WSIB staff about the process.

Preventing problems

The Commission can prevent problems through its capacity to track complaints and identify recurring themes and patterns. The Commission identifies the WSIB's best practices and recommends changes to prevent similar problems.

Acting as an agent of change

By helping complainants and the WSIB understand how to resolve conflict and build better relationships, the Commission fosters a culture in which the organization adapts and responds to the needs of its clients.

Important Initiatives

Inquiries and investigations practices and procedures

In February 2006 the Commission developed written practices and procedures for its inquiries and investigations. (See page 44.)

The Commission conducts an inquiry when a potential fairness concern is identified in a complaint and the complainant has been unsuccessful in resolving the concern with the WSIB. An inquiry tries to resolve concerns informally.

An investigation addresses systemic issues — matters that have implications beyond the individual cases. Examples are issues that would affect anyone in a particular situation or set of circumstances, a large number of complaints on one issue, and issues that may unfairly put a particular group of people at a disadvantage.

The commissioner may also initiate an investigation.

The Commission uses investigations to help identify and address the causes of a number of similar complaints, to respond to trends identified, and to forestall new issues of a similar nature.

Open House and Intake Clinics

The Commission's 2005 business plan included a commitment to conduct intake clinics to ensure access to the Commission's services throughout the province. The Commission conducted three open house and intake clinics this year.

Clinics were held in Dryden on May 2, Kenora on May 3 and Sarnia on October 5.

The Commission organized the clinics to increase public awareness and ensure people understand the Commission's mandate and jurisdiction.

All the clinics are advertised locally on radio, cable television and in the newspaper. Individual invitations are mailed to local worker, employer and service provider groups.

Commission staff meet informally with interested community members at an open house. Following the open house, Commission specialists meet individually with people who have a concern about the fairness of service they are currently receiving from the WSIB.

The clinics have been well attended and the Commission will hold more in 2006–2007. The next one was set for May 16 in Sault Ste. Marie.

User satisfaction survey

The Commission conducted a user satisfaction survey between November and March. The telephone survey was designed to gain a better understanding of how people learned about the Commission and its services, to measure service satisfaction, and to learn what improvements users would like.

Methodology

As the Commission wanted the survey results to be thorough and credible, Commission staff worked with staff from the WSIB research and evaluation branch to design the survey.

The database included the names and phone numbers of everyone who called the Commission during the survey period (November to February) and had their complaint dealt with and their Commission docket closed. Individuals or representatives who had more than one complaint during the survey period were entered only once. Each person was asked if he or she would participate in the survey. This resulted in a list of 219 people.

The Commission hired two temporary employees, whom the WSIB trained to administer the 16-question survey and record the answers using customized software.

At the beginning of the call, the phoners emphasized that the results would be confidential, that the WSIB would have no access to individual surveys and that their answers would have no effect on their case.

A test of the survey showed that the questionnaire worked and no changes were needed. The phoners completed 173 surveys, which was a response rate of 79 per cent. Of the completed surveys, 76 per cent represented cases resolved at intake and 24 per cent represented cases resolved by specialists. This is consistent with the ratio present in normal Commission activity.

The research and evaluation staff considered the survey results accurate because they were uniform and the sample was comprehensive.

Results

Overwhelmingly—98 per cent—users said the Commission took the time to listen to their complaints. Eighty per cent said the staff knew the issues, 87 per cent said the staff understood their needs, and 99 per cent found the staff to be polite and courteous.

Of those surveyed, 88 per cent felt the Commission treated them fairly.

Users (84 per cent) reported they felt comfortable contacting the Commission about their issues, and 91 per cent felt confident their privacy would be protected.

When it comes to repeat business, 95 per cent said they would call the Commission in the future if they had a similar issue, and 96 per cent reported they would recommend the Commission to someone else in a similar situation.

The survey showed that users learned about the Commission mostly through worker representatives (21 per cent), WSIB staff (20 per cent), and the Internet (17 per cent).

Only a few respondents made comments that could lead to suggestions for improvements. These included suggestions for better promotion of Commission services, the ability to complete the complaint form electronically, and more clarity about standard response times.

Generally, the people who participated in the survey had very positive comments about the Commission.

User comments from the survey

"I received the most information from the Commission than anywhere else I called."

"The Commission provided information to move my claim along and get things resolved."

"Just want to say that I have never dealt with any organization that was as helpful and professional as the Commission."

"They truly read through files and knew and understood the issues."

"They were wonderful. Kept me informed about what was going on every step of the way. And that is an important thing to do when a person is in distress!"

"It's a great resource. We need a neutral body to act between employers and the board."

Systemic Issues

One of the Commission's core functions is to identify system-wide issues and recommend improvements.

Issues identified and resolved

Decision-making for 72-month final LOE review

A worker's representative called about the process used to determine the worker's 72-month loss of earnings benefits (LOE). As a result of the inquiry, the Commission raised systemic fairness concerns about the process with the WSIB chief operating officer (COO).

The Act requires the WSIB to make a final decision on loss of earnings benefits and lock these in, 72 months from the date of accident. The COO found that some staff were not adhering to earlier communications about the 72-month review process and did not understand the WSIB's obligations.

He sent a memo to all staff outlining the correct protocol for conducting a final 72-month LOE review and told the managers to review the protocol with their teams.

The COO also implemented a process to obtain and monitor complaints for the next six months to make sure all final LOE decisions followed the correct protocol. The process included a contact name and number to which the Commission could refer workers who had concerns about their 72-month review.

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

Young workers' long-term earnings

The Commission identified concerns about the long-term earnings basis for young workers who have significant permanent injuries. The commissioner provided the WSIB president with a summary of these issues and met with senior staff to review them in October and again in November.

One concern was about inconsistent understanding among decision-makers of the current policies. In response, the executive director of the policy and research division prepared questions and answers (Q and A) for staff on the current policies relating to workers, students, learners and apprentices. She reviewed the draft Q and A with the Commission in January. It is now on the WSIB internal network and will also be available to the public on the WSIB web site.

The Commission's second concern was that the average earnings of injured youth who are not students, learners, or apprentices may not reflect their true long-term earnings loss. In 2006, the WSIB will look at this issue to see if it should review its policies.

Guidelines for retroactive experience rating adjustments

An employer representative raised a concern about the lack of criteria when the WSIB decides whether to grant retroactive adjustments in allowed Second Injury and Enhancement Fund appeals.

The commissioner met with the director of prevention services and the chief corporate services officer. As a result of the review, the Appeal System Practice and Procedures were revised. A new appendix F sets out guidelines for appeals resolution officers to consider when deciding whether exceptional circumstances exist for granting retroactive experience rating adjustments.

The guidelines are similar to the criteria applied by the Workplace Safety and Insurance Appeals Tribunal. This will help ensure that this issue receives consistent treatment at the WSIB and at the tribunal. The guidelines should also help reduce the number of appeals.

Delays in decision-making on traumatic mental stress

The Commission received several communication and delay complaints involving traumatic mental stress claims.

The WSIB cited workload strain as the predominant reason for the complaints and listed several causes:

- a steady increase in volume of claims since the unit opened
- not enough staff to cover absences
- highly complex claims
- significant time involved in dealing with emotionally vulnerable and fragile people
- the reallocation of longstanding claims from other units.

"I express my sincere appreciation for the promptness with which your office has responded to my concerns."

The commissioner and a specialist met with the director and assistant director about the potential systemic service delivery problems. The director agreed there was a problem and made plans to address it. By March, the director reported that staffing levels had been increased permanently. There was also a new reporting strategy. If a claim

(including reconsideration cases) is not decided within 56 days, managers review claim files with staff to explore barriers and determine how to expedite the decision. A similar review occurs between the manager and the assistant director when a claim reaches day 84.

When the strategy was implemented, the unit had 103 cases older than 56 days. Within four months, only 16 cases were older than 56 days.

Notice about survivor benefits

While inquiring into a complaint from a widow who did not receive notice that her benefits would be substantially reduced when her youngest child turned 19, the Commission identified a systemic concern that could affect “older” survivors in the system, people who were granted benefits before 2000.

The WSIB acting director agreed to obtain a report on all families in similar situations and send a letter to the families one year before the youngest child turns 19, reminding the parent of the drop in benefits.

Transfer-of-cost employers’ access to files

Where the WSIB finds that a third-party employer is responsible for an accident, the WSIB may transfer all or part of the accident costs to that employer. Transfer-of-cost employers, however, were not allowed access to a worker’s claim file. The representative of a transfer-of-cost employer complained to the Commission that they had to pay but could not participate meaningfully in the decision-making and appeal processes because they did not have access to the worker’s file.

The Commission raised the issue, and the WSIB changed its policies. Transfer-of-cost employers now may have access to a worker’s claim file when there is an issue in dispute.

Status of issues noted in previous report

These are updates on the issues reported last year as “in process.”

Delays in reconsideration

The commissioner identified issues that contributed to delays in reconsiderations, including lack of time limits, manager involvement and a process to deal with complex cases.

In the past year there have been two important developments. First, the WSIB, with the Best Practices Working Group, developed the best approaches guide to reconsiderations. The document sets a 30-day limit for reconsideration decisions.

Second, the Program Development Division began a pilot project in February that adds a system prompt when the WSIB receives an objection form. The prompt enables managers to monitor outstanding reconsideration decisions. The chief operating officer sent a memo to all adjudicators and managers in February, reminding them of the importance of timely handling of objections and reconsiderations.

Delays in obtaining medical reports from workers' doctors

To meet the goal of reducing delays, the commissioner recommended establishing protocols for decision-makers to prevent inconsistencies and delays in requesting and obtaining medical information.

The Program Development Division, with Clinical Services, drafted an escalation protocol and reviewed it with the Commission in January and February. The revised version was scheduled to go to staff in May.

The protocol sets out timeframes for follow-up on medical information. Medical consultants can now be involved in the follow-up, and the director of Clinical Services can report serious delays to the Ontario College of Physicians and Surgeons.

Chiropractic maintenance treatment

The commissioner noted that misunderstanding of policy or a refusal to consider individual treatment requests resulted in unnecessary appeals to the tribunal. The commissioner recommended that the WSIB develop a guideline for decision-making staff to use when considering non-acute, or maintenance, chiropractic treatment requests.

The WSIB developed a best practices document on maintenance treatment in consultation with the Best Practices Working Group. The document, which sets out protocols and guidelines, was posted on the WSIB web site in December.

Delays in getting information from the accident employer

The commissioner noted that significant delays may occur if an accident employer delays providing information to the WSIB. The problem is aggravated if the system does not set consequences for the delay.

The WSIB revised its training curriculum to emphasize the need for timely information from employers and the need to impose fines on non-compliant employers, as the Act states.

The WSIB communicated the same message to managers. Awareness sessions are planned to highlight their roles in promoting this message.

Complex cases and workload issues

The commissioner recommended that the WSIB consider adopting processes, procedures and administrative structures to provide more attention, expertise and experience to complex cases. The commissioner found that team managers may not have the subject expertise to support adjudicators who are handling complex cases. In addition, adjudicators often report stress from handling these cases.

The WSIB undertook a workload balancing initiative in 2005 to ensure equity in adjudicator workloads across the province. A larger review of service delivery positions has begun. The Kitchener model office pilot project, which uses a case management approach, will be expanded to 12 more sites in 2006. As well, the Program Development Division hired adjudication specialists to provide expert guidance and assistance for adjudicators on request. And, a training program for managers is in development.

“I wish to extend my personal thanks to [the specialist] and to the FPC for your very prompt and serious intervention.... without the able and focussed efforts of [the specialist] of the FPC, a successful resolution would not have been realized in time in this matter.”

New systemic issues in process

Set out below are the new systemic issues the Commission identified during this reporting period and the WSIB actions.

Occupational disease

Commission specialists met with the acting director of the Occupational Disease and Survivor Benefits program about a number of trends in occupational disease cases. These include delays and lack of regular communication with workplace parties during the decision-making process. The director agreed to consider the following:

- promoting case conferencing when decisions cannot be made in a timely fashion
- fast-tracking loss-of-earnings claims
- screening incoming medical information to identify gaps and get missing information
- reviewing WSIB response to return-to-work barriers while a claim is pending
- reviewing the initial and ongoing communications to workplace parties about the claim process.

The Commission continues to meet with senior staff to resolve these issues.

Managing mail

The Commission identified problems relating to mail management. Mail and faxes were not delivered to managers and therefore not acted on, and mail and faxes were lost and not scanned to the file. The Commission and the Program Development Division met in February and March and the Commission provided detailed information about specific cases.

In March, the vice-president of Specialized Claims and representatives of the Program Development Division established a team to review all incoming mail processes. The vice-president sent a message to all staff about managers' mail. The team will also analyze the mail problems and develop guidelines for staff.

The Commission undertook to continue to collect information during the next three months on complaints involving mail.

Standards for Specialist and Advisory Services

The commissioner identified delays in initiating internal referrals (to claims investigators, ergonomists and return-to-work mediators) as one of the factors contributing to decision-making delays. After a referral, workplace parties are often not advised about case activity, which leads to frustration.

The commissioner and a specialist met with managers and senior staff in Specialist and Advisory Services (SAS) to give examples and to identify the best practices the Commission has seen.

The SAS unit developed draft standards and gave them to the Commission in March. The standards give claims adjudicators advice about

- services available from SAS
- how to request specific services
- timelines for SAS responses
- the requirement for SAS to provide regular updates to adjudicators.

The final document was expected to be ready in May.

Step-by-step adjudication

The commissioner reported that delays in decision-making often occur when an adjudicator takes one step at a time rather than initiating several at once, when it is appropriate. For example, lengthy delays may result if an adjudicator requests an investigation, waits for the report, then requests an ergonomic review and waits for that report before asking a medical consultant to review the medical information.

The commissioner is reviewing available options with WSIB senior staff.

Expense payment processing

The Commission received complaints from workers about delays in reimbursing health care and related travel expenses. Delays of four to six months were reported. Generally, the delay occurred when the expense needed an adjudicative decision.

In February, the Program Development Division developed a plan to review all outstanding bills, with particular focus on bills more than 30 days old. It found about 1,800 of these bills. The plan was to set up a backlog blitz to eliminate all these bills by the end of June. Weekly reporting requirements, instead of monthly, were set. As well, vice-presidents' executive assistants now monitor billings older than 30 days.

Access for immigrant workers

At the request of the president, the commissioner met with several legal clinic staff to review their concerns about immigrant workers' access to the WSIB.

The commissioner prepared a paper identifying translation and interpretation as key to ensuring full access, both in the decision-making process and during appeals.

The commissioner met with the chief corporate services officer (CCSO) in March. The CCSO undertook to meet with clinic staff to hear their suggestions and to explore diversity training for decision-making staff.

Employer participant form

An employer representative raised a concern about the WSIB's employer participant form in a case where the WSIB failed to give the employer notice of the appeal even though the employer had sent in the form months earlier. As a result, the hearing was held without the employer.

The commissioner reviewed the issue and met with the acting director of the Appeals Branch and the chief corporate services officer (CCSO) to review two concerns:

- The form does not state the consequences of an employer's failure to return it. The consequences are serious, as an employer does not generally receive notice that a worker is proceeding with an appeal unless the form is returned. The comparable WSIAT form sets out the consequences of failing to return it.
- There is currently no follow-up at the intake level of the Appeals Branch to ensure that employers are informed when there is an appeal.

The CCSO said he would respond to the concerns during the second quarter of 2006, including revising the form and contacting the parties affected by an appeal.

Non-payment for Form 8s and lack of inquiry

An emergency-room physician contacted the Commission with a longstanding concern about Form 8s he submitted when a patient reported a work injury to him. The physician reported the WSIB routinely returned Form 8s to him when information was missing. He was concerned that the WSIB was not registering claims or inquiring into potential claims even when he reported a work-related injury. Also, he did not receive payment for completing the Form 8 even though he had met his legal obligation to notify the WSIB when a patient reported a work injury.

In March the commissioner and a specialist met with the director of Clinical Services and the vice-president of Health Services to review possible systemic issues:

- Does the WSIB inquire into cases where a physician files a Form 8 but the worker does not file a claim?
- What are the reasons for non-payment of Form 8s?
- Do processes exist to review broader issues within the WSIB such as those raised by the physician?

Case Summaries

In addition to systemic issues, the Commission helps to resolve individual fairness complaints. These summaries describe some of the results.

Delays

Delays caused by employer's failure to file accident report

A worker's lawyer contacted the Commission about a 10-month delay in making an initial entitlement decision. As a result of the delay the worker had to apply for welfare to support his family. The Commission noted that the employer had not filed a Form 7 until almost one year after the injury and had terminated the worker.

A Commission specialist wrote to the sector director. The commissioner and the specialist met with the vice presidents of service delivery and program development to discuss the effect of delays in initiating internal referrals for services as well as WSIB's responsibility to make sure employers fulfill their obligations. The WSIB can fine employers for non-compliance.

The case was resolved when the WSIB made a decision on initial entitlement in writing and apologized to the worker for the delay. The WSIB found the employer had breached its re-employment obligations and determined that the worker was entitled to one year loss of earnings benefits and to a labour market re-entry assessment.

Delays caused by workload

A worker complained to the Commission, for the second time, about being unable to reach her claims adjudicator by mail or phone.

The Commission contacted the adjudicator who did not remember receiving any calls from the worker and did not see any calls logged in his records. Nevertheless, he said his workload prevented him from delivering satisfactory customer service. He had advised his manager of his concern. Recently, too, he was covering for colleagues who were on vacation or ill. The adjudicator said that his top priority was to handle payment issues, and he believed that this worker was receiving benefits.

The Commission told him that the worker's benefits had been stopped with no explanation. The adjudicator said he would review the claim and call the worker immediately.

It appeared to the Commission that the primary factor causing the repeated delays was workload. The Commission was satisfied with the remedy in this case. However, due to the

frequency of delay complaints, the Commission will contact the director to explore options for resolution.

Delay in referral to Appeals Branch

A worker contacted the Commission about the delay in getting his file sent to the Appeals Branch. Throughout the decision-making process, he experienced delays. Mail was lost, and as a result he did not trust his adjudicator. He spoke to the manager, and although the manager arranged for the worker's claim to be referred to the Appeals Branch, the worker was frustrated that he had had to appeal the decision at all and remained convinced that his appeal would not be expedited.

It was difficult for the Commission to distinguish the worker's process concerns from his dissatisfaction with the decision. Since the worker had just called the manager, the Commission started there. The manager said he was planning to review the file with the adjudicator. The manager understood the worker's concern, since the worker's partial LOE benefits had mistakenly been terminated without notice. The manager reported he was reviewing the worker's file and planned a conference call with the worker, his representative and the claims adjudicator to apologize for the payment error, communicate the results of the file review, and identify and discuss any unresolved issues.

When the manager contacted the Commission after the conference call, he said that additional medical information was obtained, which was then reviewed in a meeting with the claims adjudicator, the injured worker and his representative. Based on the new information and a review of the file, a decision was made to award the worker 100 per cent future economic loss benefits to age 65.

Delay in implementing an ARO decision

A worker contacted the Commission about a delay in implementing a request from the appeals resolution officer (ARO). 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 done. Workload was the primary reason given for the delay. The claims adjudicator said she was still waiting for one doctor's report and a copy of the worker's birth certificate to process a non-economic loss (NEL) referral.

A review of the worker's file revealed that the WSIB had received the medical report three months earlier. However, it was part of a fax that the representative submitted and was not filed separately. The claims adjudicator said she had not seen the report but would 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 an NEL assessment was based on a policy that applies to claims made since 2002. The Commission noted that this worker's claim was before that. The claims 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 to provide a claim status update and sent the new medical information to the medical consultant for review. NEL assessment arrangements were also underway.

Delays in calculating earnings basis for concurrent jobs

An injured worker contacted the Commission after receiving no response to letters sent to the claims adjudicator about the calculation of her earnings basis. The worker had two jobs at the time of the accident, one with a Schedule 2 employer who paid her benefits. Earnings from the second employer were not included in the calculation.

The Commission spoke to the claims adjudicator about the WSIB policy on concurrent employment. The claims adjudicator contacted the two employers and reviewed the status with the worker by phone and letter. She agreed to recalculate the earnings basis after she received all the earnings information.

Follow-up processes to prevent delay

A worker complained about delays in the adjudication of his claim. One of the reasons for the delay was the wait for medical information. The claims adjudicator called and wrote the physician for almost a year before receiving the required medical reports.

The Commission found that, although there are many tools in the system to help claims adjudicators organize and manage their caseloads, there are no prompts to alert managers when there are significant delays.

The Commission raised this with the manager, who took immediate steps to ensure that the worker got a decision as soon as possible and that the delay was acknowledged.

The Commission also spoke to the director, who agreed to review the case and use it to develop a process to prevent this type of delay.

Communication

Reasons for decision

A worker, who was a WSIB employee when he was injured, said he was not given reasons for the decision to deny benefits for one of two repetitive strain injuries. The worker also complained that the WSIB did not respond to two inquiries his representative made about a related WSIB decision to cancel loss of earnings (LOE) benefits during the return-to-work process.

The Commission reviewed the file and discussed the concerns with the director and manager. The WSIB then wrote to the representative and the worker explaining why the worker was not entitled to benefits for the one injury. They also apologized for the delay in responding.

The WSIB did a further review of the information provided by the representative and restored the worker's LOE benefits for a defined period.

Employer audit process

An employer's complaint about the WSIB audit process focussed attention on broader issues related to communication, delays, staff behaviour and the decision-making process in employer audits. The Commission's inquiries revealed that the problems this employer had would not likely recur as significant improvements had been made. A Commission specialist facilitated a meeting of the employer, the WSIB manager and the director to give the employer a chance to express his concerns and hear about the changes. The division has improved technology and training and has established a revenue policy steering committee to review appeal trends and problematic classifications of particular rate groups.

Decision-making process

Access to investigation documents

A worker complained to the Commission when the regulatory compliance officer (RCO) failed to respond to his request for access to his claim file, including all the notes, audio tapes and surveillance gathered by the WSIB investigator. The worker had received a preliminary decision to suspend benefits based on information from the investigator. The worker wanted that information so that he could respond before a final decision was made on his entitlements.

The worker did not receive the investigation record until after the RCO made the final decision four months later, which confirmed the benefit suspension. When the worker received the investigation record, he found many parts were missing. He wrote to the RCO eight times between November and March, asking for specific missing information.

The Commission spoke to the RCO several times and to the manager to review the access process.

To follow up on the systemic issues arising from this case, the commissioner and the specialist met with the directors of prosecutions and compliance to discuss the investigation and the decision-making process after an investigation. The directors agreed to rewrite the letter sent to workers after an investigation is done and a preliminary decision made to suspend benefits. The letter will now state clearly how workers can participate in the process. The WSIB also agreed to provide workers with automatic access to the investigation record.

The director of prosecutions also said he was reviewing the process and procedures in investigations.

Sending out objection forms

A worker's representative contacted the Commission to report that he had not received an objection form after calling and sending the claims adjudicator many reminders over 10 months. He also wrote the manager twice.

The Commission reviewed the worker's claim file. The representative's letters were in the file, but in the "to be filed" folder. When the Commission contacted the manager, she said she was not aware of the letters. She agreed to review the letters immediately and apologize to the representative for the delay.

The Commission reviewed the file a few days later. The claims adjudicator had sent the form to the representative and at the same time started a referral to the Appeals Branch based on the detailed objection letters in the file. The manager wrote a letter of apology for the delay to the representative and worker.

Since this was one of a number of complaints involving a delay because managers did not receive their mail, the commissioner raised the concern to a higher level.

Delayed reconsideration due to lack of follow-up

A worker with a life-threatening disease was seeking a reconsideration of the WSIB decision to deny benefits. The worker called the Commission to complain about a prolonged delay. He had called his adjudicator every month for four months for a status update and an explanation for the delay and was told that the file was with the medical consultant.

The worker called the manager. The manager said he would arrange to have the medical consultant review the file the next day and then call the worker. After waiting a week for the manager's call, the worker contacted the Commission.

The Commission called the manager, who reported that the referral had somehow disappeared from the medical consultant's work list. The manager noted, however, that the adjudicator had not followed up with the medical consultant in response to the worker's inquiries. The manager also acknowledged that he should have called the worker, if only to tell him there would be more delay because the medical consultant was ill.

The manager agreed to call the worker immediately to apologize and explain. He also agreed to speak to the medical consultant to ask him to review the worker's claim quickly.

A week after the Commission spoke to the manager, the medical consultant's review was on file. The consultant recommended that the adjudicator ask the worker's specialist some questions. The Commission followed up two months later and found that, although the

adjudicator had written immediately to the specialist, the specialist's report was not on file and there was no indication that the adjudicator had followed up.

The Commission spoke with the adjudicator, the manager and director about the protocol for monitoring and following up on outstanding medical information.

A few days after the specialist's report was finally received, there was a memo from the medical consultant on file with an extensive literature review to support his conclusions. The adjudicator called the worker to report her decision.

Behaviour

Lack of impartiality

A worker and his representative complained to the Commission about the treatment the worker received from his adjudicator. According to the worker, the adjudicator was hostile and demeaning in her communication with him. The representative confirmed that the adjudicator was personal in her comments and did not appear to be open-minded and impartial. Since the worker was suffering from physical as well as psychological injuries, the representative was concerned that the adjudicator's behaviour was having a negative effect on the worker's health.

The Commission found that the adjudicator's documents in the file appeared to have a negative personal tone. As well, requests made to internal WSIB consultants were not written in an objective manner. It appeared that new evidence and information submitted by the representative had not been reviewed objectively. Some memos indicated the outcome before the adjudicator had received expert advice.

As the representative had already raised her concerns with the adjudicator's manager and had written to the director, the Commission's specialist met with the assistant director, who was responding on behalf of the director. During the meeting, the Best Approaches document on adjudication practices was compared with the adjudicator's requests for internal consultations and the problematic memos were identified.

At a follow up meeting, the assistant director said that the claim had been assigned to a new team. In addition, the assistant director was going to ask the managers to review the Best Approaches document with their teams.

Outreach

Commission activities

The Commission continued to meet with the community to increase awareness of its services across the province. The Commission responded to the following invitations in 2005–2006:

- Occupational Health Clinics for Ontario Workers executive directors, April
- Food and Beverage sector advisory committee, May
- Injured Workers Outreach Services, June, September and February
- Ontario Federation of Labour conference for workers' compensation representatives (about 150), September
- Canadian Auto Workers conference on workers' compensation and health and safety (about 70), November
- Disabled Workers Complex Claims Network in Thunder Bay, December
- Injured Workers Consultants legal clinic staff, February
- Injured Workers Support Group (about 65), Thunder Bay, March

The Commission also met with the Ombuds community:

- Forum of Canadian Ombudsman conference, May. The commissioner co-chaired the session for public sector Ombuds.
- International Ombudsman Association. The Commission's proposal for a workshop on "A New Organizational Ombuds—Successes and Challenges" was accepted in January for delivery at the conference in San Diego in April.

Newsletters informative

The Commission published its second newsletter in June and its third in November. Readers have commented that the newsletters are "very informative." About 800 newsletters are mailed to MPPs, the ministry of labour, employer and worker advocacy groups and related WSIB agencies. Another 700 are delivered to the WSIB offices. The Ontario Federation of Labour agreed to mail the third newsletter to 1,400 union members who are trained as workers' compensation representatives. The newsletters are also available on the Commission's web site.

Case summaries published

The Commission posted 19 new case summaries on the web site. The summaries provide examples of the types of complaints the Commission helps resolve. The summaries also provide guidance to users in deciding whether to bring a complaint to the Commission, how to present the complaint and what outcomes they might expect.

The case summaries are listed by the date posted and by the fairness category. Of the 19 posted during this period, eight fall under the decision-making process category and 11 fall under the delay category. New case summaries are added regularly.

Education

Fairness awareness

The Commission has continued its commitment to provide fairness awareness training for all newly hired WSIB decision-making staff. Commission staff conducted five sessions for new claims adjudicators this year.

The Commission also did eight fairness awareness sessions for district office managers and some Toronto managers.

This year the Commission started customized fairness awareness sessions and provided them to eight WSIB specialty groups, including

- pre-90 managers
- labour market re-entry / return-to-work managers
- employer audit managers
- medical consultants
- specialist and advisory services managers (claims investigators, ergonomists and return-to-work mediators)
- occupational disease and survivor benefits managers
- government services managers, including the traumatic mental stress unit
- appeals resolution officers.

In these sessions the Commission provides case studies and information specific to the group. The informal, interactive style is effective in focussing attention on potential fairness issues and best practices for resolving them.

The Commission has received positive feedback on these customized sessions.

Comments from the customized training sessions

"I have identified a change I need to make when I respond to workers' concerns to ensure they perceive fair treatment."

"Revealed the importance of considering the perspective of the complainant."

"Will take this back to my team to ensure learnings are maximized – the power of listening and understanding even when we know we cannot change an outcome."

"Very informative and good feedback to share with staff and help us improve our communications with workplace parties."

The Story in Numbers

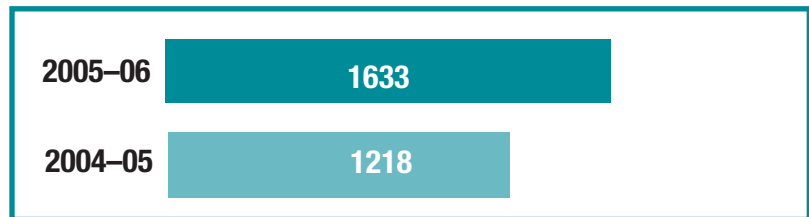
Since the Commission opened in April 2004, there has been a steady increase in complaints. In 2005–06, complaints increased 34 per cent, compared to 2004–05.

Most of the complaints (91 per cent) continue to be brought by workers, their representatives and family members.

Employers and their representatives accounted for 5.5 per cent of complaints, compared with 6.6 per cent last year.

The Commission received 14 complaints (0.9 per cent) from service providers, up from four (0.3 per cent) last year.

Total complaints received



Complaints broken down by user groups

	2005-06	2004-05
Workers		
self-referral	1242	917
representative, family member, MPP, OWA	241	190
Employers and representatives	89	80
WSIB staff who are injured workers	15	9
Service providers	14	4
Commission, own motion	9	3
Anonymous	6	6
Other	17	9
Total	1633	1218

Fairness categories

Complaints that fall within the Commission's mandate increased from 59 per cent in the last annual report to 64 per cent this year. Of the 1045 complaints that were within the mandate, 418 were referred to specialists. Delay continues to be the primary concern.

Fairness category	2005–06	July 1/04 – Mar. 31/05	Factors considered
Delay	38.2%	34.3%	Was there an unreasonable delay in taking an action or making a decision? Was the person affected notified of reasons for the delay? Was correspondence answered, or were telephone calls returned, in a timely fashion?
Communication	10.2%	10.6%	Were reasons communicated clearly, using appropriate language and in a timely fashion? Did staff explain what the decision or action was based on? Were reasons provided to all those affected? Were next steps or options explained?
Behaviour	5.0%	9.3%	Were staff unbiased and objective when reviewing information? Were staff courteous and professional? Were wrongs acknowledged and apologies offered?
Decision-making process	10.7%	11.1%	Did the person affected by the decision or action know it would happen? Did the person have input or an opportunity to correct or respond to information? Was information overlooked? Was policy applied consistently?

Fairness category	Handled by specialists
Delay	47.6%
Communication	14.8%
Behaviour	6.2%
Decision-making process	28.2%

Delay represents an even greater percentage of the 418 matters Commission specialists handled this year.

Timely response

The Commission continues to respond quickly. The average age at closing of all dockets was 4.4 days. The average age of cases closed by intake staff was 0.4 days. The average age of cases closed at the specialist level was 16.2 days.

“Thank you so much. It’s the most help I’ve had since the accident.”

General Trends

How people hear about the Commission

This year, 27 per cent of complainants said they came to the Commission because of an earlier complaint that the Commission had helped with. This number should start to decrease as the WSIB is becoming more responsive to the fair process issues raised by complainants and the Commission.

WSIB staff and the WSIB web site are the next most common sources of referral. The Office of the Worker Advisor and Ombudsman Ontario also regularly refer people.

Referral source reported by complainant	Number	Previous rank
Prior docket with Commission	446	3
WSIB staff	165	2
WSIB website	160	1
Office of the Worker Advisor	129	4
Ombudsman Ontario	89	5
Injured workers' rep or group	88	6
Friend or co-worker	63	10
Commission website	61	7
WSIB publication	55	11
Commission communication materials	50	9
Union	43	8
Re-open	39	
MPP	29	
WSIAT	20	
OHCOW	8	
Family member	6	
Employer rep or group	5	
Ministry of Labour	4	
OEA	2	
Other	34	
Not identified	137	
Total	1633	

Complaints by category

Adjudication issues (delays in making a decision or not acting on information sent) continues to be the main category. But, there were 125 complaints concerning operational appeals issues, which include getting file access, delays in reconsidering decisions and delays in sending files to the Appeals Branch, making this the second largest category. Expense payment issues moved to the third spot.

Categories	Complaints	Previous rank
Adjudication	540	1
Payment	102	7
No return phone call	90	2
Decision (release)	72	4
Unprofessional (rude, hostile, dismissive)	63	3
Access (file copy)	47	15
Policy - unfair	45	8
No referral to Appeals Branch	41	14
General system complaint	41	16
Reconsideration (WSIB)	37	23
Written response	36	11
Implementation of WSIAT decision	34	28
Adjudication - reoccurrence	30	
Reasons inadequate	25	
Biased	24	
Disregard for evidence	16	
Initial adjudication	16	
Confidentiality	15	
Letter not sent	15	
Notice not given	15	
No acknowledgement	13	
Opportunity to present information	11	
Medical examination	10	
Unclear	10	
Lost or misplaced information	10	
Internal consultation	9	
No contact	9	
Scheduling of appeal hearing	8	
Implementation of WSIB decision	8	
Arbitrary	8	
Incomplete (did not address all issues)	7	
Policy improperly applied	7	
Form	6	
Not determined	5	
Policy inconsistently applied	5	
Pension adjustment	5	
Discrimination	4	
Contact restriction	4	
Mediation	3	
Unavailable	3	
Policy gap	3	
Multiple claims	2	
Policy contrary to Act	2	
Reprisal	1	
Policy discriminatory	1	
General inquiry	175	
Total	1633	

Complaints by subject

The first four subject areas stayed the same this year. Appeal processing issues and expense issues are more significant.

Subject	Complaints	Previous rank
Benefits	764	1
Early and safe return to work	148	2
Labour market re-entry	128	3
Health care	105	4
Appeals processing	68	8
Non-economic loss	60	5
Expenses	43	9
Employer assessment	42	6
Earnings basis	31	7
Permanent disability	24	16
Future economic loss	23	14
LOE 72-month review	23	n/a
Psychiatric/ stress	19	
Collections	19	
Freedom of information	12	
Commutation	9	
Investigation	9	
Chronic pain disability	9	
Psychotraumatic disability	8	
Deemed worker	7	
Supplement	6	
CPP	5	
Indexing of benefits	3	
Regional Evaluation Centre	3	
Invoice for services	3	
Independent operator	2	
Retirement	2	
SIEF	2	
Personal coverage	2	
Interest	1	
Serious and willful misconduct	1	
Legal action	1	
New Experimental Experience Rating	1	
Functional ability	1	
Not applicable	44	
Not identified	5	
Total	1633	

Complaints by sector

The WSIB reorganized during 2005 and the Commission began collecting information based on the new organizational structure July 1, 2005. Thus, comparisons with the last fiscal year are not possible.

Sector	Size	Complaints		
WSIB	*Staff	Mandate	Non-mandate	Total
Hamilton & primary metals (St. Catharines)	183	117	41	158
Industrial	144	83	34	117
Specialized claims/Pre-1990	131	63	35	98
Construction and transportation	111	53	36	89
Services and health care	115	56	16	72
Ottawa office (Kingston)	141	38	27	65
Government services (Toronto)	97	50	11	61
Windsor office	91	41	20	61
Sudbury & mining (Timmins & North Bay)	92	28	32	60
Health services/ODSB	115	38	20	58
Kitchener	74	26	17	43
Thunder Bay & forestry pulp & paper (SSM)	65	27	12	39
Small business	106	15	18	33
London office	88	17	12	29
Regulatory services/Appeals	89	20	6	26
Spec claims/Specialist services	149	16	3	19
WSIAT	n/a	–	15	15
Spec claims/Serious Injury Program	46	10	1	11
Guelph & agriculture	35	9	2	11
Regulatory services/Compliance	5	7	4	11
Finance Corp Serv/Collections	66	1	4	5
Program Development/RTW/LMR	26	4	1	5
Prevention/Prevention services	85	4	–	4
Business services	444	4	–	4
Finance Corp services/Rev audit	107	3	–	3
Health services/Clinical services	83	2	–	2
Corporate executive/ Legal services	38	1	1	2
Health services/ Health services management	28	1	1	2
Specialized claims/Central processing	147	1	–	1
Employer Services Centre	52	1	–	1
Policy and research/Benefits policy	10	1	–	1
Policy and research/Revenue policy	9	–	1	1
Corporate executive/Office of the president	6	1	–	1
Not determined	n/a	14	84	98
Not applicable to WSIB	n/a	–	24	24
* Excluding directors and administrative staff.				

Detailed complaint resolution outcomes

Intake

Mandate concerns	
Complainant referred to WSIB	
manager	456
claims adjudicator	44
account manager	2
customer service representative	1
collections	1
director	1
other	15
Advice provided to complainant	45
File reviewed – complaint not substantiated	18
No current fairness issue	2
Under WSIB review	8
Mandate not determined (complaint form sent to caller)	30
Abandoned by complainant	8
Resolved independently of Commission	6
Other	4
Total mandate	641

Non-mandate concerns	
Advice provided to complainant	158
Right of appeal exists	143
OWA* referral for appeal	39
OEA* referral for appeal	6
Issue under WSIAT* appeal	23
Issue under WSIB appeal	22
Complaint about WSIAT*	12
Complaint about OWA*	2
Complaint about OEA*	0
Complaint about another organization	25
Complainant referred to WSIB	
manager	57
claims adjudicator	31
director	3
customer service representative	3
nurse case manager	1
collections	1
appeals branch	1
appeals resolution officer	1
Complainant referred to MPP	1
Abandoned by complainant	4
Other	41
Total non-mandate	574
* OWA – Office of the Worker Advisor; OEA – Office of the Employer Advisor; WSIAT – Workplace Safety and Insurance Appeals Tribunal	

Specialists

Mandate concerns

WSIB contacted

WSIB action required by	
manager	111
claims adjudicator	65
director	20
appeals resolution officer	8
vice-president	2
No current fairness issue	12
No specific action required	54
sub-total	272

File reviewed, no action required

Complaint not substantiated	8
Issue under WSIB review	23
Complainant referred to WSIB	
manager	11
claims adjudicator	8
policy branch	2
accounts manager	1
director	1
other	2
Advice provided	2
Abandoned by complainant	10
No current fairness issue	14
Commission decided not to pursue	5
Withdrawn	2
Resolved independently of Commission	1
sub-total	90
Total mandate	362

Non-mandate concerns

Advice provided to complainant	5
Issue under WSIB appeal or review	4
Issue under WSIAT appeal review	1
Right of appeal or review exists	7
Right of appeal or review exists and referred to OWA*	9
Referred to WSIB	
appeals branch	3
adjudicator	2
Concern about WSIAT – referred to MPP	1
Complainant was a third party	1
Abandoned by complainant	1
Mandate not determined	1
Total non-mandate	35

* OWA – Office of the Worker Advisor; OEA – Office of the Employer Advisor; WSIAT – Workplace Safety and Insurance Appeals Tribunal

Total dealt with by intake staff 1215

Total dealt with by specialists 397

Cases open at March 31, 2006 21

Grand total 1633

WSIB Fairness Initiatives

This year, the WSIB has taken a number of initiatives to improve the fairness and quality of its services.

1. The WSIB, in consultation with the Best Practices Working Group, developed adjudicative best practices documents for decision makers. The documents were added to the WSIB web site in December. They include
 - weighing of medical evidence
 - decision writing
 - maintaining treatment
 - reconsidering decisions
 - return to work considerations – workers with psychological entitlement and chronic pain disability
 - recognizing time to heal – assessing timely and safe return to work.
2. The WSIB revised Forms 6, 7 and 8 to simplify the processes to report injuries and disease. Workers no longer have to sign an employer's Form 7; they only need to sign Form 6.
3. The board of directors approved the final report of the chair of the Occupational Disease Advisory Panel. The report sets out recommendations for using scientific evidence and legal principles in placing occupational diseases into a schedule under the Workplace Safety and Insurance Act, developing policies for compensating occupational disease claims and making decisions in occupational disease claims. The WSIB is training occupational disease adjudicators and appeals resolution officers in applying the legal principles in the report.
4. The WSIB developed a code of business ethics to help employees recognize and resolve ethical issues they may encounter. The code lists situations that could cause a conflict of interest and provides a process for responding.
5. The WSIB initiated a 14-month health care review process. The review consists of five sub-projects: best practices research, analysis of existing programs, outcomes and measures, management information and a health services business model. The WSIB expects the review to provide appropriate evidence-based quality health care for injured workers within a financially sustainable system.
6. The WSIB has set up its first e-service to calculate and report premiums. E-service allows signed-up Schedule 1 employers to calculate and pay premiums on line.

7. The WSIB entered into new contracts with labour market re-entry (LMR) providers to enhance the standards of service the WSIB requires. The contracts implemented the recommendations of the 2003 value-for-money audit.

“She explained everything to me in detail even though my English is not very good.”

“I would like to express to you my heart felt thank you for all your help in my dealings with the WSIB and the problems I have encountered simply getting the things I am entitled to. I believe that you understand completely just how frustrated I have been.”

Strategic Plan

Commission staff finished their strategic plan in February. It includes goals and key initiatives.

Plan goals

- provide the WSIB with the type of information it needs to build fair and effective problem-solving and service delivery processes
- balance individual and systemic investigations for effective use of Commission resources
- monitor the implementation and effectiveness of the WSIB's remedial actions
- identify and address the causes to eliminate repeated inquiries into the same issues

Plan key initiatives

- develop written practices and procedures for inquiries and investigations
- review systemic issues and set directions
- develop a code of fairness
- develop of a code of ethics and standards of practice.

Communication Plan

The Commission developed a communication plan for 2006 that focusses on

- improving the Commission's web site
- revising support materials
- preparing material for intake clinics
- up-dating power point presentations.

Budget

	2006 budget	2005 actual	2005 budget
Salaries - permanent	656,691	569,840	571,259
Salaries - temporary ¹	84,000	85,660	154,000
Total salaries	470,691	655,500	725,259
Benefits	85,802	73,966	75,049
Total salaries & benefits	826,494	729,466	800,308
Equipment & maintenance	26,000	1,896	25,000
Voice & data Communications	34,200	18,511	36,000
Publication & mailing ²	52,100	19,888	36,000
Occupancy	–	44	–
Travel ³	71,800	41,996	90,600
Supplies & services	23,400	22,477	24,000
Staff training	21,700	10,303	20,900
Specialized services ⁴	20,000	1,575	35,000
Other operating expenses	52,400	649	60,200
Depreciation and amortization		9,593	
Total non-salary expenses	301,600	126,932	327,700
Total operating expenses	1,128,094	856,398	1,128,008

Notes:

- 1 Temporary (roster specialist) salaries were reduced since one roster specialist has been moved to permanent staff.
- 2 Publication and mailing was increased because the Commission's annual report was issued to the public.
- 3 Travel costs were reduced, based on 2005 expenses.
- 4 Specialized services were reduced as the WSIB made a commitment to develop a code of fairness in 2006.

Staff Development

The Commission participates actively in Ombuds organizations and in training related to administrative justice and fairness. The Commission is a member of the Forum of Canadian Ombudsman and the International Ombudsman Association. The commissioner is a member of the Fair Practices Working Group, composed of WCB and WSIB fair practices commissioners across Canada.

This year staff attended the following conferences:

- Council of Canadian Administrative Tribunals, Ottawa, June. Theme was “Administrative Justice in the Modern Canadian Mosaic,” focussing on access issues and addressing diversity. Information on diversity issues training was passed on to the WSIB chief corporate services officer.
- Association of Workers’ Compensation Boards of Canada public forum, Vancouver, July
- Conference of Ontario Boards and Agencies, Toronto, November.

The Commission conducted in-house training sessions for its staff:

- labour market re-entry issues, April
- dealing with difficult cases, November
- non-economic loss processes, October
- WSIB privacy policies, January.

Staff Profiles

Full-time staff

Laura Bradbury, commissioner, is a lawyer who has a long history as a neutral adjudicator in workers' compensation matters in Ontario and British Columbia. In the early 1980s Laura was an investigator into workers' compensation complaints with Ombudsman Ontario. She was appointed to the Workers' Compensation Appeals Tribunal as a vice-chair in 1985. From 1988 to 1991 she served as alternate chair at WCAT. Laura chaired two other tribunals in Ontario, the Social Assistance Review Board and the Office of Adjudication, before moving to British Columbia in 1998. From 1998 to 2002 she was an appeal commissioner with the Appeals Division of the British Columbia Workers' Compensation Board, then the final level of appeal in that province.

Anna Martins, intake co-ordinator, came from the Workplace Safety and Insurance Appeals Tribunal (WSIAT) where she worked in a variety of capacities since 1988, including acting manager, Early Review Department; manager, Registrar's Desk; and case description writer. Prior to working at the WSIAT Anna worked as a law clerk at the Ministry of the Attorney General, Crown Law Office and various private law firms.

Amal Abboud-Hewitt, bilingual intake officer, most recently was employed as an early review officer at the WSIAT. Prior to that, Amal worked as a bilingual customer service representative at the CIBC for three years. She graduated from the University of Ottawa with a Bachelor of Science in civil engineering and had seven years of experience as a site inspector and contract administrator with a private engineering firm.

Tom Irvine, Fair Practices specialist, was employed as the senior advisor with the Ombuds/Diversity Group of Ontario Power Generation (OPG). Tom began working at OPG in 1999 as the complaints resolution manager, Ombudsman Nuclear. Prior to that, Tom had 10 years of experience working as an investigator and team leader at Ombudsman Ontario. Tom graduated from the University of Waterloo with a Masters in regional planning and resource development and has worked as a resource and land use planner.

Marie Metcalfe, Fair Practices specialist, has seven years' experience as a disability management consultant and senior medical resources advisor with Manulife Financial. Prior to that, Marie established the Medical Liaison Office at the WSIAT and was the manager of that office for 10 years. Marie is a registered nurse (retired) and has worked in a variety of clinical settings.

Mary Carl, Fair Practices specialist in Thunder Bay, was employed as an Ombudsman representative with Ombudsman Ontario between 1989 and 2000. More recently, Mary worked as an associate negotiator with the Ontario Native Affairs Secretariat.

Mary has a Bachelor of Administration and certificate in dispute resolution from Lakehead University.

Lalita Kulkarni, administrative assistant, has held various administrative positions over the past 16 years, including most recently, administrative assistant at Deloitte & Touche LLP and secretary to the manager, Fire Protection Department at Ontario Power Generation. Lalita has a Bachelor of Science degree and is currently enrolled in a certificate in management program at Centennial College.

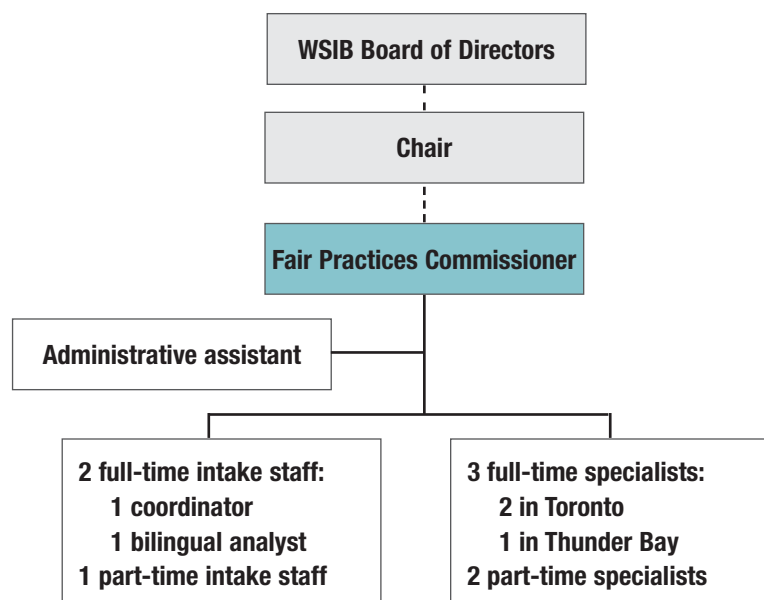
Part-time roster

Janice Sandomirsky, Fair Practices specialist, was a vice-chair at the WSIAT from 1990 to 2001. Prior to that appointment, Janice held counsel positions in the chair's office at WSIAT and in the Tribunal counsel office. She also was a part-time arbitrator at the Financial Services Commission of Ontario.

Susan Copeland, Fair Practices specialist, was the executive director of the Occupational Health Clinics for Ontario Workers between April 2002 and February 2003. Prior to that, she was appointed as an employer representative to the WSIAT from 1993 to 2002. Susan also worked as a compensation and benefits officer for Ontario Hydro for 16 years.

Karen DeNovellis, intake officer, was a customer service representative at Toronto Hydro for the last 10 years. She also has experience in human resources and benefits. Prior to that she had more than 10 years in the customer service field.

Fair Practices Commission



Inquiries and Investigations Practices and Procedures

The Fair Practices Commission is the organizational Ombudsman for the WSIB, addressing service delivery issues raised by workers, employers and service providers. The Commission operates impartially and at arm's length from the management and line operations of the WSIB.

The Commission's mandate and authority is established in its Charter, as approved by the WSIB Board of Directors on March 4, 2004.

The Commission's mandate is to

- receive, investigate and resolve complaints about alleged acts, omissions and unfair practices by the WSIB
- identify complaint trends, policy matters and systemic issues and recommend improvements.

The Commission is authorized to conduct investigations and to establish its own written practices and procedures for investigating and resolving complaints.

In addition, the Fair Practices commissioner can act on her own initiative to identify and make recommendations about systemic service delivery issues within the WSIB.

Practices and Procedures

The Commission may conduct informal inquiries or more formal investigations, or both. The Commission's procedures for each type of process are set out in this document.

Inquiries

The Commission conducts an inquiry where a potential fairness concern is identified and the complainant has been unsuccessful in resolving the concern directly with the WSIB.

Definition

An inquiry is the Commission's attempt to informally resolve a concern where possible and appropriate by collecting information, interviewing staff and analyzing options to address identified fairness concerns.

Process

A specialist

- thoroughly reviews the claim or account file and any documents the complainant provides
- discusses the concerns with the complainant and the representative, on consent
- contacts the appropriate WSIB staff for their perspective and information, which may involve telephone contact, written requests for information and interviews
- weighs and analyzes all the information received to determine what is probable or reasonable based on the information.

If the inquiry does not disclose a fairness issue, the specialist explains the reasons to the complainant and closes the docket.

If the inquiry does disclose a fairness issue, the specialist explores possible remedial options with the WSIB.

If the matter is not resolved, the specialist discusses the matter with the commissioner and may raise the matter up the line, for example, to the manager, assistant director, or director.

Once a resolution is reached, the specialist reports outcomes of the inquiry to the complainant, to the WSIB staff involved, and to the commissioner. The reports may be by telephone or in writing. The specialist summarizes the complaint and actions taken to resolve it and closes the docket.

If the matter remains unresolved, the specialist advises the commissioner who will decide whether to raise the concern at a higher level or whether an investigation is warranted.

Broader issues

The specialist considers whether a complaint has broader implications that may affect other workers or employers. If it does, the specialist consults with the commissioner and may raise the broader issue at the appropriate staff level, usually the director level.

The specialist may review with the WSIB management whether a complaint identifies a need for training to ensure similar concerns do not recur.

If the specialist identifies and makes suggestions about broader issues or training needs, the specialist may report in writing to the WSIB and to the complainant.

Investigations

The Commission may initiate an investigation to

- eliminate the need for repeated inquiries about the same types of issues by identifying and addressing the causes
- provide the WSIB with the information it needs to build fair and effective problem-solving and service delivery processes
- make the most effective use of the Commission's resources.

Definition

An investigation is the collection and analysis of information by the Commission to determine whether actions or processes of the WSIB are consistent with the principles of administrative fairness.

Types of Investigations

Systemic-issue investigations

A systemic issue refers to any matter that has implications beyond the individual case.

Examples include

- issues that would affect anyone in a particular situation or set of circumstances, such as a backlog in part of the organization or the lack of a defined process for dealing with a particular issue, which leads to inconsistent actions by staff
- a large number of complaints on one issue or problem.
- issues that may unfairly disadvantage a particular group of people, such as translation and interpretation issues that affect immigrant communities or policies that have an impact on young workers.

Own-initiative investigations

The commissioner may initiate an investigation without a specific complaint to

- identify the causes underlying a number of complaints
- respond to trends identified by the Commission
- take preventative action; i.e. forestall new issues of a similar nature.

Investigation Process

1. Notice

The commissioner will give the WSIB written notice of the intent to investigate,

- outlining the fairness issue raised by a complaint or group of complaints, or
- setting out a trend identified by Fair Practices Commission, or
- identifying core problems uncovered during the initial inquiry.

The WSIB is given an opportunity to respond, within a timeframe. The commissioner and senior WSIB staff may meet to discuss the issue.

2. Plan

A specialist or team of specialists prepares an investigation plan in consultation with the commissioner.

The plan will include

- who will be interviewed – staff, complainants, and others, including outside resources
- a list of documents, statistics or comparative information needed
- a checklist of information to be reviewed, such as policies, guidelines, best practices documents.
- expected timelines for investigation
- a process for monitoring. .

3. Investigation

The specialists conduct the investigation within a suggested timeframe. The investigation includes interviewing staff, the complainant and other relevant witnesses; examining documents and other types of information; and other actions as required.

4. Summary

The specialists prepare an investigation summary, including

- who was interviewed
- what documentary information was examined
- what steps were taken to ensure the Commission's process was procedurally fair (e.g. notice to WSIB and, if necessary, to third parties).

5. Analysis

The specialists analyze the findings from the investigation and review the findings with the commissioner.

6. Preliminary findings

The specialists set out preliminary findings from the investigation that either support or do not support the concern set out in the notice of intent to investigate.

If the concern is not supported, the commissioner advises the WSIB in writing and concludes the investigation.

7. Preliminary recommendations

If the concern is supported, the commissioner makes preliminary recommendations to address the concern. Recommendations are intended to give guidance or suggestions on how

to bring about the necessary improvements to address the fairness issue identified in the investigation

8. WSIB response

The commissioner sends the preliminary findings and recommendations in writing to the appropriate person or area at the WSIB and requests a response within a specific timeframe.

9. Review and recommendations

The commissioner reviews the WSIB's response and may

- decide that resolution is reached
- suspend making final recommendations if the WSIB responds with a plan to address the issues identified in the preliminary recommendations, to allow the WSIB time to implement the plan. The commissioner will set out a timeframe and monitor the progress of the WSIB's plan.
- make final conclusions and recommendations if the identified issues are not resolved or if the proposed plan does not appear adequate to address the identified issues.

The commissioner will notify the WSIB in writing of the results of the review, including any final conclusions and recommendations.

10. Board of Directors

The commissioner advises the WSIB Board of Directors of the investigation findings, together with any final conclusions and recommendations.



Fair Practices
Commission
Commission des
pratiques équitables

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