

FAIR

PRACTICES

COMMISSION

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

Annual Report for 2006–2007

Également disponible en français

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

www.fairpractices.on.ca

**Phone
416-603-3010
1-866-258-4383**

**TTY
416-603-3022
1-866-680-2035**

**Fax
416-603-3021
1-866-545-5357**



Fair Practices
Commission
Commission des
pratiques équitables

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.

"I want to thank you and the FPC staff I have talked to for all the support you've given me and for taking the time to listen to me."
– Injured worker

"Thank you for your intervention and assistance.... I really don't think it would have happened without the existence of the FPC... it is back on track the way it should be."
– Employer representative

Contents

From the Commissioner.....	3
Outreach	4
Education	6
WSIB Fairness Initiatives	7
Investigation: Occupational Disease Process	8
Systemic Solutions	13
Best Practices.....	20
Case Summaries	22
The Story in Numbers	25
How We Work.....	31
Who We Are	34

From the Commissioner

I am pleased to present the Commission's annual report for April 1, 2006 to March 31, 2007.

We completed our third full year of operation with three important achievements.

The first was to work closely with the newly-established Program Development Division to identify and address systemic issues in the operations side of the WSIB. This year's report sets out the significant number of process changes that are aimed at reducing delays, improving the decision-making process and improving communications. These changes show the real commitment of the WSIB to addressing system-wide issues. The changes will have a positive effect on many workers, employers and service providers.

The second achievement this year was the Commission's investigation into occupational disease process issues. As a result of the investigation's findings, I made 10 recommendations that the WSIB acted on immediately. Consequently, I was able to report to the board of directors that the issues identified in the investigation have been satisfactorily addressed. Although my final investigation report is somewhat outside the reporting period, I have included it for the sake of completeness.

Our third important achievement this year was to reduce by half the time we take in handling individual complaints. Our staff have worked diligently to reach this goal while still participating actively in the Commission's occupational disease investigation.

I am proud to be part of such a dedicated and professional team at the Commission. In our three years, we have been able to facilitate some significant changes in processes at the WSIB, thus contributing to the fairness of the system for workers, employers and service providers.



Laura Bradbury
Commissioner

Clinics

The Commission organizes outreach clinics to increase public awareness of the office and to ensure people understand the Commission's mandate and jurisdiction.

Commission staff held clinics in Sault Ste. Marie on May 16, Ear Falls on October 3 and Red Lake on October 4. The Commission placed ads with local radio and newspapers and mailed invitations to local worker, employer and service provider groups.

In a clinic, staff first meet informally with community members at an open house. Then Commission specialists meet individually with people who have concerns about the fairness of service they currently receive from the WSIB.

International workshop

The commissioner and a specialist were invited to present a workshop, "A New Organizational Ombudsman—Successes and Challenges" at the International Ombudsman Association conference in San Diego, April 2–4. About 45 people attended the workshop. In evaluations, most people rated the presentation as excellent. Here are some comments:

"very informative for both new and veteran Ombudsman. Annual report is an excellent document"

"terrific – one of the better presentations"

"helpful, practical, generative. Thank you"

"information you have shared has been very helpful – a gem"

Newsletters

The Commission published our regular newsletter in June and November. Printed circulation is now more than 3,000. The Commission sent 760 copies to the WSIB, 1,100 to worker, employer and service provider groups and another 1,400 to the Ontario Federation of Labour for distribution to their workers' compensation representatives.

The newsletters are on the Commission's web site and on CONNEX for WSIB staff. This year they were also added to the workers compensation section web site of the Ontario Bar Association.

Meetings

with stakeholders

The Commission continued to meet with the community to increase awareness of our services. In 2006–07 the Commission met with:

- Industrial Accident Victims' Group of Ontario legal clinic staff and students
- Office of the Employer Advisor director and managers
- Conference for Schedule 2 Employers
- Office of the Worker Advisor director and provincial managers
- Legal Clinic training day
- United Steelworkers' health and safety and compensation representatives.

with Ombudsman community

The Commission participated in the Ombudsman community by attending the International Ombudsman Association conference in April.

Also, the commissioner

- met with a Brazilian ombudsman at the request of the Forum of Canadian Ombudsman
- met with the director of the new External Ombudsman for Health Canada
- attended a roundtable discussion with the New Zealand Health and Disability commissioner, organized by the Institute for Work and Health
- attended an International Ombudsman Association meeting in Vancouver, hosted by WorkSafe BC
- met by teleconference every three months with the Fair Practices Working Group (workers' compensation Ombudsmen from British Columbia, Saskatchewan, Manitoba, Ontario and Nova Scotia).

The Commissioner also met in October with City of Toronto senior staff as they were preparing to open the new municipal Ombudsman's office. The city manager wrote, "Thank you for sharing the Commission's experience and lessons learned. Your guidance and insights were invaluable to us as we worked towards establishing an independent Toronto Ombudsperson."

Second annual report

The Commission released our second annual report on August 28. The Commission distributed 515 copies: 300 to external stakeholders, 102 to MPPs, and 113 to WSIB staff and the WSIB information centre.

The report, in English and French, is available on the Commission's web site. It is also available on CONNEX to all WSIB staff and on the web sites of the Ontario Bar Association and the Forum of Canadian Ombudsmen.

Case summaries

The Commission posted 20 new case summaries on our 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.

Education

The Commission's fairness awareness training is designed to focus attention on potential fairness issues and to identify best practices for resolving them. This year the Commission did seven sessions for new WSIB decision-making staff and for staff who have regular contact with workers and employers. The sessions included case studies specific to each group.

The Commission provided the sessions for claims adjudicators in Sudbury, Windsor and Toronto, telephone clerks in Toronto and for the nurse case manager professional practice leaders and for nurse case managers.

In addition, the commission met with Learning and Development staff to provide input into the development of the WSIB's new manager training program.

WSIB Fairness Initiatives

The WSIB continues to improve the fairness and quality of its services. These are some of the changes made this year.

Role review project

A multidisciplinary WSIB project team from across the province is examining roles and responsibilities within the service delivery teams and will make recommendations to increase team effectiveness. The estimated date is summer 2007.

Re-designed training

The new adjudicator training program was revamped in early 2007. Fairness principles are now woven into the core curriculum. Fairness best practices learning materials have been developed and the Commission continues to participate in each new hire program.

Systemic issues addressed

The Program Development Division recruited for the new position of systemic issues manager, who will report to the director of the Adjudication Branch. The new position will coordinate and oversee the WSIB's response to systemic issues and trends that the Fair Practices Commission has identified.

Revised web site

In September the WSIB launched the first phase of a major web site re-design to make it easier to use. The WSIB's goal is to also make the web site more accessible by making it compatible with technology such as screen readers, screen magnifiers and voice recognition software.

Investigation: Occupational Disease Process

In 2006 the Fair Practices commissioner decided that an investigation into decision-making processes about occupational disease was necessary to understand why some claims were taking longer than six months to adjudicate. The Commission wanted to find out whether any unfairness was resulting from the processes and the time taken.

The investigation was based on complaints received from some workers about the lengthy and complex decision-making processes they encountered and the limited communication they received from the WSIB. Their complaints included stories of serious financial and emotional hardship. A group of cases from Northern Ontario was one focus of the investigation.

The commissioner gave written notice to the president and to the chief operating officer of the WSIB on October 30 that she intended to investigate occupational disease cases (excluding noise-induced hearing loss cases) that had been pending for more than six months. The focus of the investigation was on the institutional processes, not on the performance of individual staff.

The notice advised that the investigation would look at timeliness, decision-making processes and communication practices.

The Commission started the investigation in November. On March 30 the Commissioner gave the WSIB her preliminary findings and recommendations. The WSIB president responded in writing on May 10. The commissioner delivered her final report on May 30, 2007.

Methodology

- The Commission conducted file reviews of a statistically valid sample of pending claims that were more than six months old to find out if the process concerns reported to the Commission were a fair representation of occupational disease practices overall.
- The Commission requested and obtained statistics and data on occupational disease claims and met with the WSIB staff to review the reports.
- The Commission interviewed management and staff in the occupational disease unit.

- The Commission met with the directors of the offices of the Worker Advisor and Employer Advisor and some union representatives who were engaged with the WSIB on cluster claims.

Findings

Overall, the Commission found that the occupational disease unit made real progress towards more timely decision-making between 2000 and 2006. They had added some staff to address the increasing number of claims and had developed training programs and adjudication modules in response to the June 2005 recommendations of the chair of the Occupational Disease Advisory Panel (ODAP).

The Commission found that staff in the occupational disease unit are committed, hard-working, and professional.

The investigation, however, identified two main concerns:

- the decision-making process is too often unnecessarily prolonged
- the potential human costs of delayed decision-making are serious and need to be given more weight in the adjudication model.

The investigation found that:

- statistical information on the pending occupational disease claims is inconsistent and, as a result, the WSIB cannot accurately identify the number of older claims
- processes to ensure adherence to timeframes for decision-making are insufficient, particularly in older claims
- there is no specific organizational focus on cases that become prolonged
- communication with parties is less frequent as claims become older
- more resources are needed for timely and efficient decision-making
- a better balance is required between the institution's need for persuasive evidence and the potential prejudice to workers who are waiting for decisions.

Recommendations

Statistics and reports

The commissioner recommended that the WSIB:

- Develop an effective mechanism to track and report all occupational disease cases more than six months old. The reports should separate PEIR cases (Program for Exposure Incident Reporting) and cluster cases, which skew the timelines at each end.

Accountability

Reports to the board

Cluster cases

Training

Administrative procedures

Resources

Communication

Northern Ontario cases

Monitoring

- Develop management and accountability protocols to prevent backlogs of older cases and to ensure that problematic or delayed cases can be identified and resolved quickly.
- Create a backlog plan to identify and address the current pending cases that are older than six months.
- Report quarterly to the board of directors on occupational disease cases that are more than six months old.
- Review the process for identifying clusters of cases. The goal is to treat similar cases consistently and provide appropriate resources at the outset.
- Meet with stakeholders to help develop best practices for identifying and adjudicating cluster cases.
- Review the training processes for new occupational disease claims adjudicators.
- Consider having a trainer within the Occupational Disease unit and have managers involved in designing and delivering the training.
- Review the roles of the occupational disease adjudicator and managers.
- Consider appointing at least one assistant director for the occupational disease unit, consistent with the operational sectors.
- Address resource needs for the occupational disease unit, including an accessible database and additional occupational hygienist and chest consultant resources.
- Review the occupational medical consultants' consultation process.
- Review the workload of adjudicators and managers, which has increased steadily in the past three years.
- Review its communication practices.
- Expedite the collection of all information required in the Northern Ontario cases and make entitlement decisions.
- Have senior managers meet in person with each of the workers and their representatives to review the status of their claims.

One year from the final report the Commission will inquire into and report on the measures that the WSIB has undertaken.

The WSIB's response

The WSIB accepted the recommendations. In her May 10, 2007, response to the Commission's report, the president listed the following steps the WSIB will be taking:

- The formation of an Occupational Disease Services Division (ODSD) within the operations cluster to bring a new alignment and coordination to the occupational disease work.
- An increase in resources for the ODSD including 10 new staff positions: an assistant director, a manager to strengthen leadership and support for adjudicators, one new "floater" adjudicator and three additional ones to expedite decision-making, one occupational hygienist and one occupational medical expert, one senior scientist to provide expert advice, and one support clerk.
- Development of a new database with inquiry functions by employer, exposure, disease type, geography, occupation and others.
- A special team dedicated to workers' claims where no entitlement decision has been made by six months.
- Quarterly reporting for one year to the WSIB board of directors on claims older than six months.
- New tracking and reporting mechanisms.
- New accountability measures including increased management reviews of pending cases and an integrated case management approach.
- A review of the process for identifying cluster cases, which will include working with stakeholders to help identify best practices.
- A dedicated training resource to work with managers to develop and deliver training for new occupational disease adjudicators.
- A review of the roles of the occupational disease adjudicator and manager as part of the Service Delivery Roles Review Project.

In response to the commissioner's recommendations for the Northern Ontario cases, the president said the WSIB was currently scheduling meetings with the workers and their representatives. The WSIB is also using a special team to develop action plans for the cases. The president wrote: "We are committed to resolve these cases as soon as possible, recognizing the impacts on workers and their families. We also recognize the length of time these workers' cases have been under review." The president undertook to keep the Commission apprised, monthly, of the results.

Resolving the Northern Ontario cases

The commissioner has arranged monthly meetings about the Northern Ontario cases with the director and assistant director of the ODSD. The commissioner recommended that the WSIB work towards the goal of having all pending entitlement decisions in those cases made by the end of August 2007. Then the commissioner will issue a separate report on these cases.

Satisfactory conclusion

The commissioner is satisfied that the steps outlined by the president satisfactorily address the concerns raised in the investigation. The commissioner reported to the WSIB board of directors that she finds the seriousness with which the WSIB has addressed the issues very encouraging. At the end of May 2008, the commissioner will inquire into and report on the measures taken to address the identified issues.

Systemic Solutions

The Commission's arm's-length relationship with the operational side of the WSIB, coupled with our mandate to review complaints objectively, gives the Commission the opportunity to identify systemic concerns and the vantage point from which to see possible solutions.

Last year, the WSIB set up the Program Development Division, intended in part as a unit that would address systemic issues identified by the Commission.

The Commission is pleased to report that our work with this division in the past year has led to a significant number of process improvements. Also, our ongoing work with other parts of the WSIB's operational organization has resulted in similar systemic improvements.

Reducing delays

Traumatic mental stress cases

Last year, the Commission reported that the director and assistant director of the WSIB's traumatic mental stress unit had increased its staffing levels and had implemented a new reporting strategy to help reduce delays in decision-making. That strategy was refined this year. Cases more than 28 days old must be reported to the manager, and the manager holds case conferences between 42 and 56 days. Managers must report cases more than 56 days old to the assistant director. This system prevents cases from becoming unduly delayed, it identifies which cases need extra resources, and it ensures that the assistant director and director are aware of older cases.

Dental consultations

The Commission received several complaints about decisions that were delayed as a result of a backlog in dental consultations. Delays of three months or longer were reported.

A Commission specialist met with the dental professional practice leader on August 9 and on February 21 to review the steps being taken to eliminate the backlog.

The professional practice leader reported that the backlog was reduced from 177 cases on June 30 to 80 cases at the end of February. The turn-around time is three to four weeks, compared with three to four months a year earlier. Steps taken include using external consultants and streamlining the referral process. The Program Development Division has helped develop a dental reference manual for adjudicators. The professional practice leader has developed a form

for adjudicators to send to dentists when they are requesting information. The professional practice leader is also examining the feasibility of digital dental x-rays.

Mail management

The Commission first raised the issue of lost or misplaced mail and faxes in July, 2005. Our annual report last year noted that the WSIB had established a project team to review all incoming mail processes, to analyze the mail problems, and to develop guidelines for staff. The project team reported in September that it has developed a plan for handling faxes, which are the source of many of the concerns. The plan includes re-routing faxes from individual machines to central claims processing. It also includes additional staff and a focused project team for continuing improvements. The chief financial officer has given priority to upgrading the mail server to improve capacity.

Re-consideration decisions

The Commission identified issues that contributed to delays in re-consideration decisions. These included the lack of timelines, of manager involvement and of processes to deal with complex cases. Last year, the Commission reported on a pilot project that set a 30-day limit for re-consideration decisions and enabled managers to monitor outstanding decisions.

In a recent review the Program Development Division found significant improvement, from 55 to 40 days. The division continues to monitor the process for further improvements, particularly the time taken in the manager review process.

Appeals returned

The Commission raised the issue of undue delays in cases that appeals officers return to Operations. The appeals process cannot continue until Operations has completed the needed action. The Program Development Division found no protocols for staff to follow up on these returned cases. About 600 cases are returned to Operations each year (out of 10,000 appeals).

The division is meeting with the director of the Appeals Branch and others to develop a process for tracking returned cases. It will apply across the system.

Expense payment processing

Last year, the Commission reported complaints about delays in reimbursing workers for health care and related travel expenses. The Program Development Division developed a plan to review outstanding bills, with particular focus on bills more than 30 days old. The Commission's statistics show this issue is now the third most common delay complaint.

Escalation for delayed medical reports

Although there has been some slippage in meeting the 30-day goal, other steps have been taken. An information sheet for staff went out in August. The Program Development Division is helping to revise the expense claim form. It is also examining ways to reduce the number of cases that require an adjudicative decision and, thus, reduce the delays. The division is also working with Operations to develop a plan to standardize the payment process.

The Program Development Division worked with Clinical Services and the Commission to prepare an escalation protocol for decision-makers who face delays in obtaining information from workers' doctors.

The protocol was finalized in May and distributed to all adjudication staff. It sets out timeframes for following up on medical information and also provides for the director of Clinical Services to report serious delays to the College of Physicians and Surgeons of Ontario. The Commission uses the protocol as a benchmark.

Standards for specialist and advisory services

Specialist and Advisory Services finalized their service standards in May and distributed them to the adjudication staff. The Program Development Division and the Commission continue to monitor their effect on reducing delays in making and responding to internal referrals.

Improving the decision-making process

Temporary foreign agricultural workers

A legal clinic brought a complaint to the Commission that identified a number of systemic issues regarding the WSIB's treatment of temporary foreign agricultural workers. The Commission suggested a meeting with clinic representatives, worker representatives, and senior WSIB staff to discuss these issues.

At two meetings, the first in November and the second in February, the group addressed access to medical care, return to work, suitable work, average earnings, direct deposit, physician awareness, and communication and outreach.

About 15,000 temporary foreign agricultural workers work in Ontario. The legal clinic is pleased with the WSIB's progress on this issue.

Holistic adjudication

The commissioner reported that delays in decision-making often occur when adjudicators take one step at a time rather than initiating several actions at once. In response, the Program Development Division reviewed its training processes to help adjudicators approach cases holistically. A number of initiatives are underway, including case management training, return-to-work pilot projects and service improvement planning for managers. The new program focuses on fair practice principles and worker sensitivity.

Decisions when employer information outstanding

In our first annual report, the Commission noted there are often delays in decision-making when employers delay or refuse to provide information to an adjudicator. The Program Development Division responded, first by reminding adjudicators about the penalty provisions in the Act. Then, in early 2007 the division advised adjudicators that injured workers should not be disadvantaged when employers fail to provide information on time. Adjudicators were encouraged to tell delinquent employers that a decision will be made on the available evidence if the information is not provided by a set date.

Personal care allowance information

Seriously injured workers may be entitled to an allowance to hire a care provider. The commissioner and a specialist met with the WSIB after receiving several complaints about the allowance. The WSIB agreed that injured workers should receive written notice, with detailed reasons, of any changes to their allowance and should also receive notice about how the cost of some assistive devices affect the allowance.

As part of its response, the WSIB gave the Commission drafts of a new fact sheet and revised assessment and re-assessment letters. They incorporated the Commission's comments into the documents. The letters have gone into effect and the fact sheet is being finalized.

Loss-of-retirement-income process

The loss-of-retirement-income benefit is important since it is intended to help replace an injured worker's lost retirement income when the worker turns 65. Workers who receive benefits for more than 12 months have the option of contributing an extra five per cent of their loss-of-earnings benefits to the five per cent the WSIB puts aside for a pension benefit. The Commission identified problems that may occur when a worker does not return the form. In one case, a worker's benefits were terminated and in another case a worker did not receive payment for loss of earnings.

The Program Development Division prepared a document on the correct process. The document is expected to be finished during the second quarter of 2007.

Explanation of benefit payments

One of the most common concerns the Commission hears from callers is that they cannot determine what benefits are being paid when they receive a cheque from the WSIB. If workers request detailed information about the payment, they often experience delays in receiving it. Then, the information may be incomplete and difficult to understand.

The Commission raised the issue with the Program Development Division. The division has developed a draft protocol for adjudicators so that they can communicate information about complex payments. The division has also revised the CONNEX payment page and will provide a staff training refresher on the issue once the protocol is final.

Access to investigation documents

The Commission inquired into concerns about access to documents used in an investigation. The inquiry arose out of a worker's complaint that a regulatory claims officer did not provide timely access to all the investigation documents that were used in making the decision to suspend the worker's benefits.

As a result of the inquiry, the WSIB now provides workers with automatic access to the investigation record when they are notified of a preliminary decision to terminate benefits. The letter sent to workers has been rewritten to outline clearly how they can participate in the final decision-making process.

As well, the director of prosecutions is reviewing and revising the investigation processes and procedures.

Young workers' policy

In December 2005 the Policy and Research Division prepared an extensive Q&A for adjudication staff on policies relating to students, learners and apprentices. The purpose was to help address the Commission's findings that the policies were not being applied consistently or correctly in some cases, with serious consequences for young workers.

The WSIB also agreed to review its current policies in light of the commissioner's suggestions about the treatment of seriously injured young workers who are not students, learners or apprentices. The commissioner's concern is that the average earnings of injured youth at the time of an injury may not reflect their true long-term loss of earnings. Other provinces have developed policies that allow them to

consider what a young worker likely would have earned were it not for the injury.

The review, set for 2006, has now moved to 2007.

Improving communication

Introductory letter

To address workers' concerns about the need for more regular communication throughout the WSIB decision-making process, the commissioner suggested an introductory letter for all new occupational disease claimants. The letter, now mandatory, explains the process and gives some timelines.

File transfer protocol

The Commission identified a systemic lack of notice and of communication with workers when new adjudicators are assigned. The Program Development Division prepared new protocols, which include a "warm" transfer with a telephone call and a letter to the worker providing the name and contact information for the new adjudicator.

Health care advice documents

The Program Development Division agreed with the Commission that the WSIB's newly developed health care advice documents should be on the WSIB web site. They were added in the first quarter of 2007.

In the course of looking into this issue, the Program Development Division found no existing protocols for adding documents to the site. Guidelines are now being developed.

Feedback and complaints about RECs

The Commission met with the vice-president of Health Services in April to review a physician's complaint about the treatment of workers at several Toronto regional evaluation centres (REC).

The vice-president took the following steps:

- New contracts with the centres will include a requirement for worker satisfaction surveys.
- The surveys will include information about how and where workers can lodge complaints about an assessment or about the centre.
- WSIB staff will be reminded to send any complaints about the evaluation process or individual institutions to the liaison office.

Unpaid and returned Form 8s

Several emergency room physicians complained to the Commission that, although they must notify the WSIB after treating an injured worker, they often have problems receiving payment.

The commissioner suggested the WSIB conduct an audit to review all Form 8s returned to physicians over a three-month period. The results could then help establish processes to ensure that claims are registered when workers are injured and treated by physicians and that physicians are paid when the form is filed.

As a result of the audit a new system was introduced in December to pay all Form 8s filed by treating physicians. The audit results also showed that, as a general practice, claims are registered when the form is filed.

Participant forms

The Commission received complaints from an employer's representative about how the WSIB provides parties with notice of an appeal.

The commissioner raised the issue with the WSIB, which then took the following steps:

- A notice went up on the WSIB web site to tell workers and employers of their right to participate in the objection and appeal processes and the importance of completing and sending in the participant forms.
- The participant forms were revised to include specific information about the consequences of not returning the forms.
- Appeals Branch intake staff now advise parties in a letter that an appeal is underway and give the parties another chance to send in the forms.

Psychology fee schedule

Several psychologists complained to the Commission about inconsistent payments under the fee schedule and a lack of understanding by some adjudicators about what is included, or not included, in the schedule. The commissioner worked with the executive director of Health Services Management to redraft the wording of the schedule. The new version was sent to the Ontario Psychological Association in March for their feedback. The Program Development Division will use the revised document to train adjudicators.

The revised fee schedule will help clarify understanding about psychological report fees and will provide consistent approaches to payment.

Stakeholder input

Following a suggestion from the Commission, the director of the Appeals Branch regularly seeks input to proposed changes to the practices and procedures from the offices of the Worker Advisor and Employer Advisor as well as from stakeholder representatives.

Best Practices

These case summaries illustrate some of the best practices the Commission has observed recently. The Commission provided feedback directly to the managers and directors involved in the cases.

Managerial action

In one complaint involving an issue of delay, a Commission specialist spoke to the manager who:

- personally reviewed the claim file rather than simply referring it to the adjudicator
- wrote to the worker, not just to his representative
- wrote the letter in plain language and provided a detailed explanation of how and why there was confusion in the file and why the delay occurred
- took responsibility for what happened
- expedited file access and arranged for the appeal to be dealt with as a priority.

The specialist wrote to the manager's director about the excellent service. The director responded: "Comments like yours go a long way in supporting staff and managers that take a fair and reasoned approach when dealing with stakeholders."

Occupational disease

The Commission made inquiries into an occupational disease complaint and found that the worker received excellent service, as:

- team members regularly and frequently initiated contact with the worker
- team members also dealt with the worker's spouse, who called regularly to express concerns and opinions
- the communication and file documentation were neutral and objective.

Young worker

A young worker complained to the Commission about delay, poor communication and inconsistent decision-making. In response:

- the director and assistant director reviewed the worker's entire claim file
- appropriate actions were taken to minimize the risk of future occurrences
- the director wrote to the worker, apologizing for the poor service.

Employer's appeal

An employer's representative contacted the Commission about a six-month delay in processing an objection form for an appeal. The assistant director acknowledged there were service gaps in the administration of the claim and:

- telephoned the representative to acknowledge responsibility and apologize for the gaps, explain the reasons and report the steps taken to remedy the appeal delay
- referred the claim to the Program Development Division for an analysis of why the established process had failed in this case.

"I just wanted to thank you for getting involved. Not only did you get things put back on track—things are moving along very quickly—thank you for making this happen."

"Thank you so much. You have lifted a bit of the weight off my shoulders."

"I appreciate the time of people like you who take the time to listen and give good advice. I appreciate it, thank you."

Case Summaries

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

Social work consultation

A worker's representative contacted the Commission in September with a concern about the length of time it was taking to obtain the results of a psychological/permanent disability assessment.

The Commission found that the psychological consultant had received the referral in May and referred the claim to a social worker for further assessment in July. However, the assessment had not yet taken place. The social worker had decided that since the matter was not urgent, the worker should be assessed in person. The Commission was told that as the worker resides outside the Greater Toronto Area, an assessment would only be scheduled when more than one assessment was required near the worker's community.

The commissioner and a specialist met with the associate director of Clinical Services in October to review the process for social work consultations when workers live outside Toronto.

Following the inquiry, the professional practice leader reviewed the matter with Health Services. Health Services decided, as a social work visit to the community was not expected soon, the worker should be assessed in Toronto. The social worker conducted the assessment in November.

Personal care allowance

A worker's representative contacted the Commission about the length of time it was taking the WSIB to make a decision about a personal care allowance.

The worker sustained a head injury in February 2002 when a piece of steel fell on her from about 4.6 metres. Within a year the worker's alertness, ability to speak and mobility declined dramatically and medical specialists said her condition was chronic. In October 2004 the worker received a 95 per cent non-economic loss (NEL) award.

The worker's spouse and her adult son are her primary caregivers. The spouse left work to care for his wife and has since been appointed her legal guardian.

Home modifications

In July 2005, the worker's new representative requested a personal care allowance assessment so that a decision could be made on compensation for the worker's care. The WSIB conducted a home visit in August 2005. The service delivery team decided to explore all levels of treatment before making a decision since they had concerns about the worker's symptoms.

The worker's representative contacted the Commission in November 2006 as the WSIB had not made a decision.

The commissioner and a specialist met with the director, who said internal referrals should have occurred shortly after the home visit in August 2005. The director committed to treating this case as a priority.

Five months later the issue remained unresolved. The Commission contacted the acting vice-president to discuss this case and other personal care allowance issues. One week later the worker's personal care allowance was allowed retroactively to the date when the worker was first unable to care for herself. The vice-president said the worker and her family could participate in a WSIB-funded assessment to identify possible therapy and treatment options that might improve her quality of life.

A 64-year-old worker's right leg was amputated at the hip as a result of complications arising from surgery for a work injury. The worker has been in a wheelchair since the surgery in 1997. The WSIB awarded the worker a 100-per-cent pension in 2000.

The worker complained to the Commission about unnecessary delays during the five years it took the WSIB to decide how much money he would get to modify his home for his wheelchair and other physical needs. During much of that time, the worker lived in his original house, one that all expert assessors had agreed was unsafe.

The Commission's inquiry found many of the worker's concerns were supported by the evidence on file.

The commissioner and a specialist met with two directors and management teams to discuss the decision-making process in this case, the lessons that can be learned from it, and opportunities for improvement in home modification cases. The Commission asked that

Employer departure premium

the WSIB consider our suggestions as it prepares its new guidelines for home modifications.

In this case, the WSIB agreed to review the information on file immediately.

An employer decided to cancel its voluntary WSIB insurance coverage after more than 27 years with no lost-time injuries. The WSIB applied a departure premium based on the employer's entry into the system in 1965.

The employer was concerned with the lack of notice about the premium. The WSIB's departure premium policy was implemented in December 1997 but was not sent to employers currently in the system.

The employer was also concerned about how the premium was calculated. The calculation was prepared using the 1965 entry date rather than 1997 when the policy came into effect. The departure premium was almost double the employer's annual premium.

The Commission made inquiries with the employer's account advisor, the revenue specialist, the assistant director of policy and the sector director.

The sector director was concerned about the lack of notice. The director compared the cost of the premiums paid by the employer since 1965 to the employer's accident costs, concluded it was unfair to charge the departure premium, and cancelled it.

"Thank you very very much for your patience and returning my call because that means a lot to me."

"Thank you so much. You have calmed me down and shown me there's a light at the end of the tunnel."

The Story in Numbers

The Commission has had a 61 per cent increase in complaints since opening in 2004.

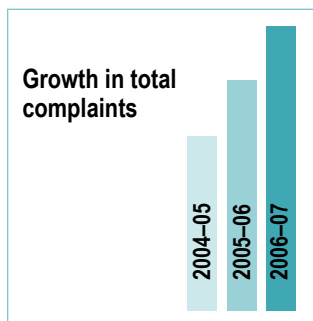
Complaints rose 20 per cent this year compared with last.

Complaints broken down by user group

Most complaints (92 per cent) continue to be brought by workers, their representatives and family members.

Employers and their representatives accounted for 4.5 per cent of complaints, compared with 5.5 per cent last year.

The Commission received 19 complaints (one per cent) from service providers, up from 14 (.9%) last year.



Category	2006-07	2005-06	2004-05
Workers			
Self-referral	1,532	1,242	917
Representative, family member, MPP, OWA	268	241	190
Employers and representatives	88	89	80
WSIB staff who are injured workers	6	15	9
Service providers	19	14	4
Commission, own motion	6	9	3
Anonymous	9	6	6
Other	29	17	9
Total	1,957	1,633	1,218

Timely response

The Commission reduced our complaint-handling time by half this year. The average age of a docket at closing was 2.1 days, compared with 4.4 days last year.

Intake staff resolved 92.3 per cent of all calls the same day. The average age of cases closed at the specialist level was 9.6 days, compared with 16.2 last year.

Only 10 cases remained open at the end of the year, down from 21 cases in 2005-06.

Fairness categories

About 60 per cent of complaints this year were within the Commission's mandate, compared with 64 per cent last year. Of the 1,119 mandate complaints, 382 (34 per cent) were referred to specialists.

Delay remains the primary concern of complainants.

Fairness category	2006-07	2005-06	2004-05*
Delay	37.6%	38.2%	34.3%
Communication	6.8%	10.2%	10.6%
Behaviour	5.9%	5.0%	9.3%
Decision-making process	6.8%	10.7%	11.1%
* nine months from July 1, 2004 to March 31, 2005			

Complaints handled by specialists

Complaints about delays accounted for more than half of the 404 mandate and non-mandate complaints that specialists handled this year, an increase of eight per cent over last year.

Fairness category	Handled by specialists	
	2006-07	2005-06
Delay	55.40%	47.6%
Communication	15.09%	14.8%
Behaviour	5.19%	6.2%
Decision-making process	18.81%	28.2%
Non-mandate	5.45%	3.2%

How people hear about the Commission

The WSIB's public web site now includes a link to the Commission's web site under its most popular links. As a result, the WSIB site is the second most common source of referrals to the Commission.

Category	Complaints	Ranking	
		2006-07	2005-06
Prior docket	568	1	1
WSIB web site	235	2	3
OWA	155	3	4
WSIB staff	124	4	2
Injured worker rep/group	93	5	6
Ombudsman Ontario	92	6	5
Re-open	85	7	12
Friend /co-worker	73	8	7
Other	50	9	20
WSIB publications	49	10	10
MPP	46	11	13
Union	43	12	11
FPC communication	33	13	10
FPC web site	25	14	8

As well, the Workplace Safety and Insurance Appeals Tribunal referred 14 people, employer groups and family members each referred nine, the Ministry of Labour referred eight and one each was referred by the Office of the Employer Advisor, Occupational Health Clinics for Ontario Workers and Ontario Human Rights Commission.

Complaints by category

Adjudication issues (delays in making a decision or not acting on information) represent almost half (46 per cent) of the complaints.

Complaints about operational appeals issues have decreased, primarily as a result of the new 30-day limit for reconsideration decisions.

The top 10 categories of complaints are set out below.

Category	Complaints	Ranking	
		2006–07	2005–06
Adjudication	719	1	1
No return phone call	159	2	3
Payment	133	3	2
Decision (release)	87	4	4
Unprofessional (rude, hostile, dismissive)	79	5	5
Access (file copy)	41	6	6
Letter not sent	41	7	19
General system complaint	37	8	9
Adjudication—reoccurrence	35	9	13
Policy unfair	33	10	7

Complaints by subject

The subject areas of complaints are almost identical to last year.

Subject	Complaints	Ranking	
		2006–07	2005–06
Benefits	1008	1	1
Early and safe return to work	151	2	2
Labour market re-entry	143	3	3
Health care	114	4	4
Appeals process	92	5	5
Non-economic loss	72	6	6
Employer assessment issues	46	7	8
Expenses	43	8	7
Earnings basis	31	9	9
Permanent disability	31	10	10

Complaints by sector

This year the Commission reports began to include the number of specialist inquiries by sector.

Sector	Mandate	Specialist	Non-mandate	Total
Hamilton & Primary Metals (St. Catharines)	156	(36)	85	241
Construction and Transportation	115	(43)	65	180
Industrial	110	(36)	58	168
Services and Health Care	101	(26)	57	158
Specialized Claims/Pre-1990	48	(20)	54	102
Ottawa office (Kingston)	62	(13)	36	98
Government Services (Toronto)	69	(18)	28	97
Kitchener	51	(13)	40	91
London office	44	(12)	34	78
Thunder Bay & Forestry Pulp & Paper (SSM)	41	(15)	33	74
Health Services/ODSB	52	(18)	19	71
Windsor office	43	(4)	27	70
Sudbury & Mining (Timmins & North Bay)	34	(8)	31	65
Small Business	30	(8)	18	48
Spec Claims/Specialist & Advisory Services	29	(10)	7	36
Regulatory Services/Appeals	16	(7)	8	24
Spec Claims/Serious Injury Program	18	(7)	6	24
Regulatory Services/Compliance	6	(1)	6	12
Guelph & Agriculture	9	(4)	1	10
Health Services/Clinical Services	5	(2)	1	6
Finance/Collections	3	(1)	2	5
Finance Corp Control/Treasury	4	(3)	-	4
Business Services	3	-	1	4
Finance/Rev Audit	3	(2)	-	3
Corporate Executive/Office of President	1	-	1	2
Prevention/Prevention Services	-	-	1	1
Health Services/Specialty Programs	-	-	1	1
Corporate Executive/Legal Services	1	-	-	1
Health Services/Health Services Management	1	(1)	-	1
Health Services/Professional Practice	1	(1)	-	1
Policy and Research/Benefit Policy	1	-	-	1
Not applicable to WSIB	-	-	71	71
Not determined	35	-	156	191
WSIAT	-	-	17	17

Complaint resolution outcomes

Of the cases opened and closed by the Commission from April 1, 2006 to March 31, 2007, 90 per cent were resolved as follows:

- advice provided to complainant 349
- referral to WSIB
 - mandate 601
 - non-mandate 167
- inquiries made by FPC (including systemic issues)
 - WSIB action required—complaint resolved 245
 - no WSIB action required 56
- file reviewed—no WSIB action required 22
- no current fairness issue identified 13
- right of appeal exists (non-mandate) 264
- issue under WSIB review 18
- issue under WSIB appeal (non-mandate) 23
- Total 1,758

The remaining 10 per cent include:

- abandoned by complainant 10
- under WSIAT appeal 23
- other non-mandate 49
- complaints against WSIAT (non-mandate) 23
- complaint against another organization (non-mandate) .. 24

“Thanks so much for your help. Thanks for giving me some hope.”

The complaint process

Is there is a fairness issue?

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

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?

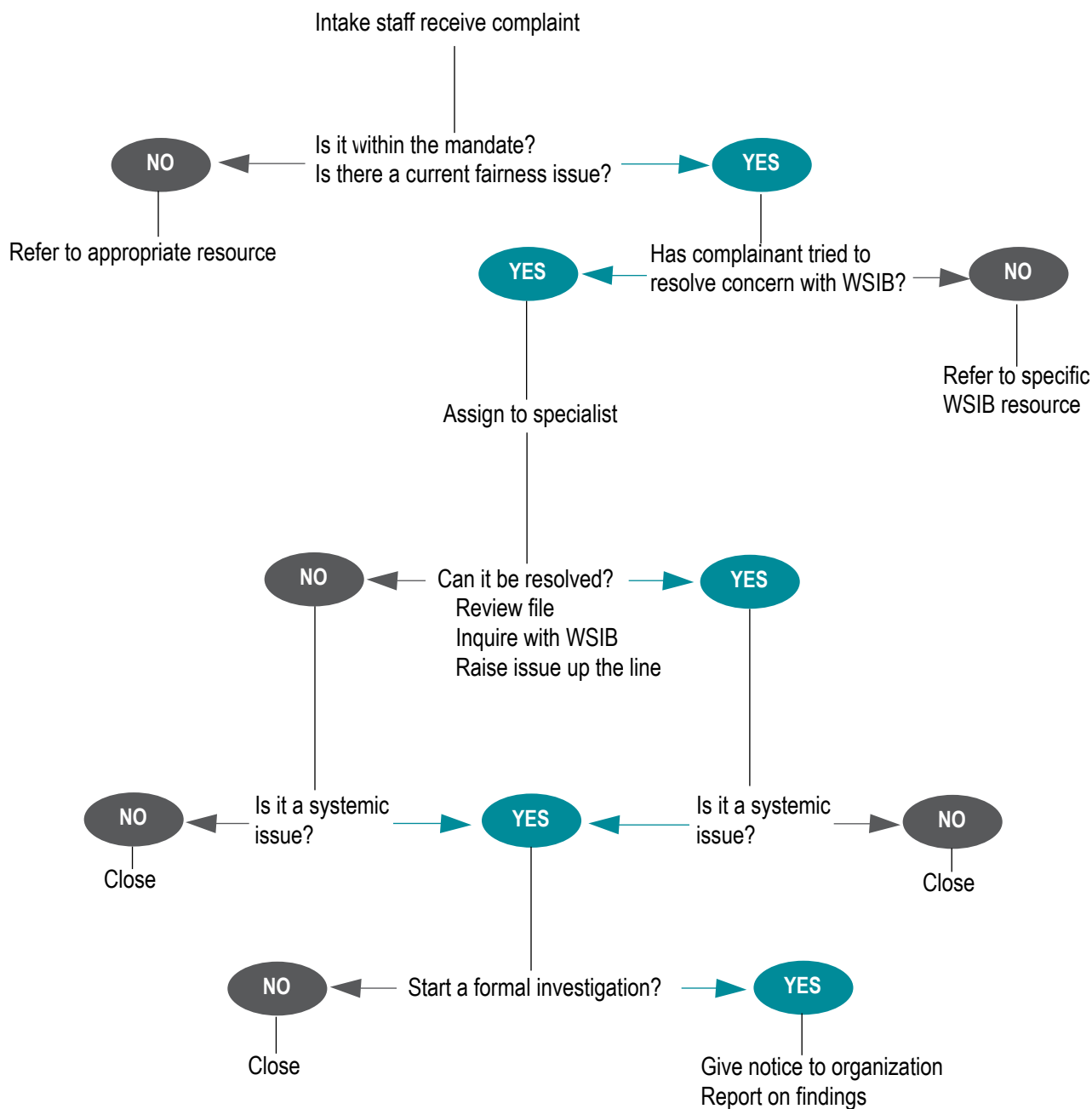
Behaviour

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 mistakes 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?

The complaint process



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.

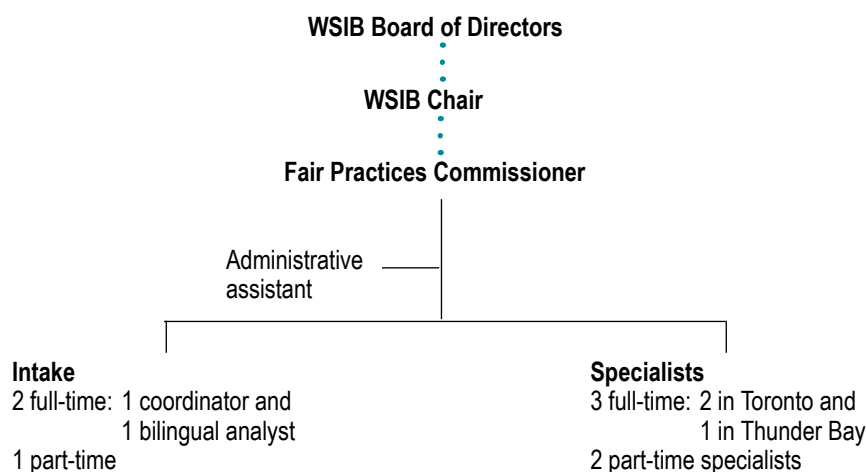
Preventing problems

The Commission can prevent problems through our 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.

Who we are



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 WSIB board of directors 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.

Budget

	2007 Budget	2006 Actual	2006 Budget
Salaries, permanent	616,863	593,769	656,691
Salaries, temporary	192,144	129,467	84,000
Total salaries	809,007	723,236	740,691
Benefits	84,087	78,381	85,802
Total salaries & benefits	893,094	801,617	826,494
Equipment & maintenance ¹	10,000	356	26,000
Voice & data communications	34,200	26,857	34,200
Publication & mailing	51,000	27,771	52,100
Travel	67,800	40,147	71,800
Supplies & services	23,400	17,350	23,400
Staff training	20,800	8,513	21,700
Specialized services ²	0	7,046	20,000
Other operating expenses ³	28,100	1,219	52,400
Depreciation & amortization	–	9,593	–
Total non-salary expenses	235,300	138,852	301,600
Total operating expenses	1,128,394	940,469	1,128,094

Notes:

1. Equipment and maintenance was reduced since the Commission is working with the WSIB to develop a case management system that it hopes to implement in 2008.
2. Specialized services were reduced as the WSIB committed to develop a code of fairness.
3. Other operating expenses include an amount for independent legal services. The amount was reduced based on the Commission's experience to date.

