



Fair Practices
Commission

Commission des
pratiques équitables

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

2023 ANNUAL REPORT



ANNIVERSARY

fairpractices.on.ca

LAND ACKNOWLEDGEMENT

To begin, we would like to acknowledge that the Commission’s office is in Toronto, which is located on the traditional territory of many First Nations including the Mississaugas of the Credit, the Anishnabeg, the Chippewa, the Haudenosaunee and the Wendat peoples. Toronto is now home to many diverse First Nations, Inuit and Métis peoples. Toronto is covered by Treaty 13, signed with the Mississaugas of the Credit, and the Williams Treaties, signed with multiple Mississaugas and Chippewa bands.

WE OFFER THIS STATEMENT TO ACKNOWLEDGE AND PAY RESPECT TO THE INDIGENOUS PEOPLES WHO HAVE INHABITED AND CARED FOR THE LAND SINCE THE BEGINNING.



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FPC

CPÉ

Fair Practices Commission

Commission des pratiques équitables

Fair Practices Commission

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FROM THE COMMISSIONER

RONAN O'LEARY

IT IS MY PRIVILEGE TO PRESENT THE 20TH ANNUAL REPORT OF THE FAIR PRACTICES COMMISSION.

Since the Commission opened its doors in 2004, it has addressed over 39,000 complaints and identified more than 5,000 fairness issues for the WSIB to resolve. Furthermore, the Commission has prevented countless other fairness issues from arising by helping the WSIB to identify and address various systemic issues over the last 20 years. Some of the highlights include:

- Granting claim information access to third-party employers when they have been deemed responsible for some or all of the cost of a claim.¹
- Creation of an escalation protocol to address delays in obtaining medical information from health care professionals.²
- Changes to the WSIB's practice of issuing appealable decisions based on expected outcomes rather than the specific evidence on the claim.³
- Prompting the WSIB to change its practices when its decisions are consistently overturned on appeal.⁴

I would like to recognize the work of the four prior Commissioners: Laura Bradbury, Tom Irvine, Anna Martins and Tom Barber. Their leadership and dedication laid the strong foundation on which we



continue to build. In particular, I want to thank the last Commissioner, Tom Barber, both for his immense contributions to the Commission since 2017, and for his mentorship while I worked alongside him.

In reviewing prior annual reports, an observation from the Commissioner's message in 2014 resonated with me. Then-Commissioner Tom Irvine said, "[t]he legislation governing the WSIB is complex and powerful. This makes the duty for fairness and the need for transparency even more important." It struck a chord with me for two reasons: firstly, because I believe it's true. And, secondly, because it raises an important question that should permeate all of the Commission's work: how can we help make it less complex for stakeholders to deal with the WSIB?

One way we can assist is by putting a renewed focus on helping the WSIB to identify and address the root causes of the complaints that are made to the Commission. In this report, you will read several examples of systemic improvements the WSIB made to its service following inquiries by the Commission (see p.13). In the coming year, we will put greater focus on sharing complaint trends and identifying systemic issues to improve service for all who rely on the WSIB.

The Commission's most important function is to provide an avenue to resolve individual issues quickly and informally. We recognize that oversights can

39,000

complaints addressed since 2004

+ 5,000

fairness issues identified

happen, processes may have gaps, or unusual situations may arise that are not resolved through the WSIB's complaints process. In these situations, an ombudsman is often well-placed to bring a fresh perspective and cut through the complexity that may exist in any large organization in order to seek a fair resolution.

In 2023, we received 1,890 complaints, an 11% increase on the previous year. Of the complaints in which we made inquiries, we identified 267 fairness issues that the WSIB then resolved. This is 2% lower than the previous year, which suggests the WSIB's complaint process was effective in resolving many of the complaints where we provided referrals.

I would like to sincerely thank all of the workers, employers and stakeholders who contacted us this year to share their concerns. I recognize that it's not always easy to come forward, but your feedback is invaluable in guiding our efforts to ensure fairness and accountability in the system.

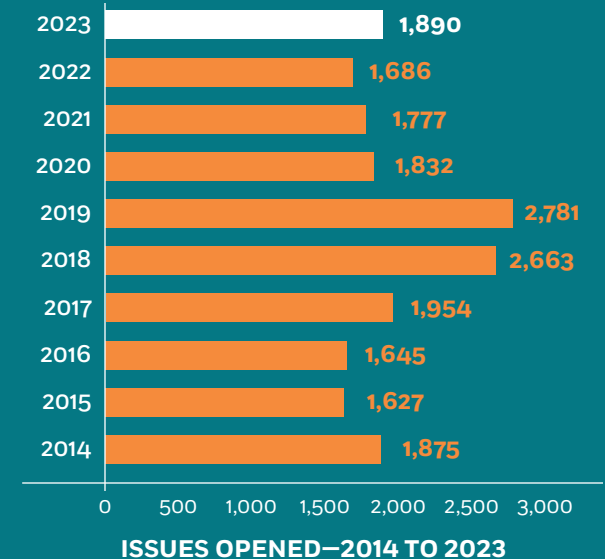
Thank you also to the WSIB Board of Directors and particularly the Chair, Grant Walsh, for the continued support of the Commission's important work.

The success of any organizational ombudsman depends not only on the effectiveness of its own staff but also on the engagement of the staff of the organization it oversees. Thank you to the WSIB staff for continuing to provide timely and helpful responses to our inquiries.

Lastly, I would like to express my sincere gratitude to the Commission staff for their hard work, dedication and adaptability as we navigated a challenging year together. **R.O.**

THE MISSION OF THE FAIR PRACTICES COMMISSION

To facilitate fair, equitable and timely resolutions to individual complaints brought by workers, employers, service providers and their representatives, and **to identify** and **recommend** system-wide improvements to Workplace Safety and Insurance Board services.



¹ 2005/06 Annual Report, at p. 14

² 2006/07 Annual Report, at p. 15

³ 2014 Annual Report, at p. 9

⁴ For an example raised by an employer, see our [2009 Annual Report](#), at p. 6. For an example raised by a workers, see our [2020 Annual Report](#), at p. 7

HOW WE WORK



AN INDEPENDENT OFFICE

THE FAIR PRACTICES COMMISSION IS AN INDEPENDENT OFFICE THAT WORKS TO PROMOTE AND ENSURE FAIR PRACTICES AT THE WSIB OF ONTARIO.

AS THE ORGANIZATIONAL OMBUDSMAN FOR THE WSIB, WE:



LISTEN

to the people who contact us and provide options for resolving problems.



PROVIDE

a free and informal avenue for quick resolution of service issues.



IDENTIFY

recurring issues and report them to the WSIB with recommendations for improvements.

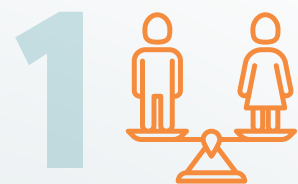


\$1.15 M

Our Operating budget for 2023



THREE MAIN PRINCIPLES GUIDE OUR WORK:



IMPARTIALITY

We advocate for fairness and do not take sides in complaints.



CONFIDENTIALITY

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



INDEPENDENCE

We serve injured workers, employers, service providers and their representatives, and we work independently in the interest of fairness. We operate at arm's length from WSIB management and operations and report directly to the Board of Directors—the governing body of the WSIB—through its Service Excellence Committee.

WE OPERATE AT ARM'S LENGTH FROM WSIB MANAGEMENT AND OPERATIONS AND REPORT DIRECTLY TO THE BOARD OF DIRECTORS.

THE VALUE OF THE COMMISSION'S WORK

1

PROVIDING ACCOUNTABILITY AND ENHANCING OVERSIGHT

Our independence from the WSIB provides an opportunity for the Commission to take a fresh look at concerns and find solutions. We gather information and apply the principles of administrative fairness¹ to our analysis of the issues. We assist the Board of Directors in its governance of the WSIB by reporting on the concerns raised by the people the WSIB serves and by highlighting trends.

PROMOTING FAIRNESS

By helping the WSIB understand the principles of administrative fairness, we foster a culture that promotes public confidence and trust in the WSIB. We can act as a resource for WSIB staff on questions of fairness and provide impartial analysis to help improve service.

2

3

RESOLVING ISSUES

We assist WSIB staff in understanding the concerns and frustrations of the people they serve. Experience shows that this type of informal facilitation helps to build stronger relationships and provides better tools for tackling future problems for all parties involved. Our intervention at an early stage may also help to avoid the expense and time invested in formal appeals if there is a procedural flaw in a decision.

IMPROVING SERVICE

We can prevent problems through our capacity to track complaints and identify recurring themes and patterns. We are able to identify systemic issues and recommend changes in an effort to avoid similar problems from occurring in the future. This helps the WSIB to adapt and respond to the needs of the people it serves.

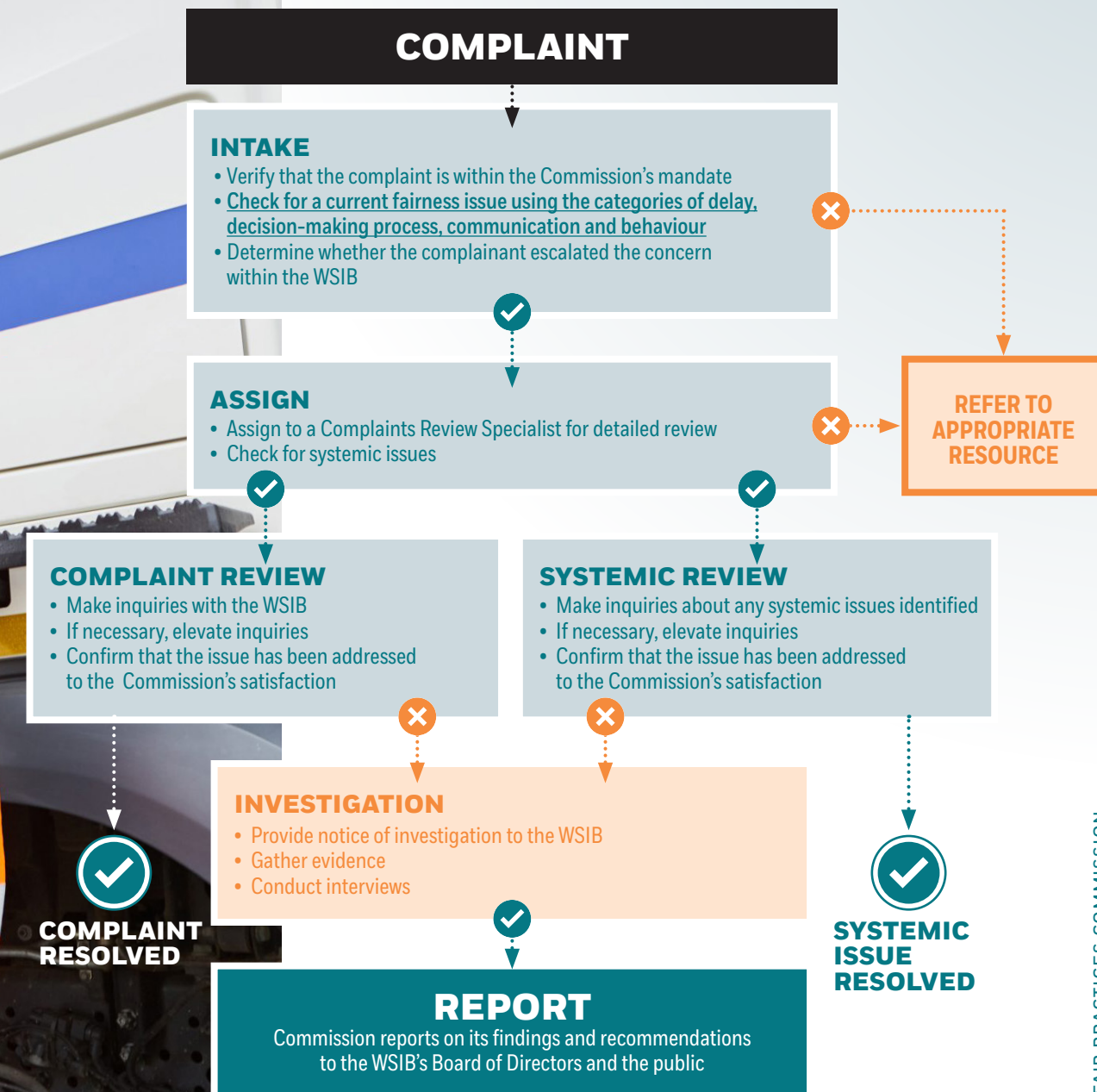
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¹ For further details on the principles of administrative fairness, see **Fairness by Design**, a guide that was developed by the Canadian Council of Parliamentary Ombudsman.

COMPLAINTS

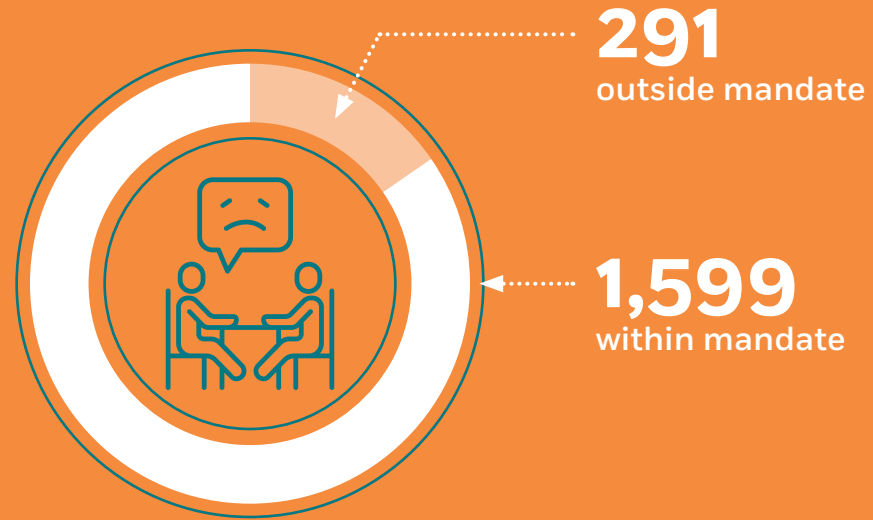


THE PROCESS

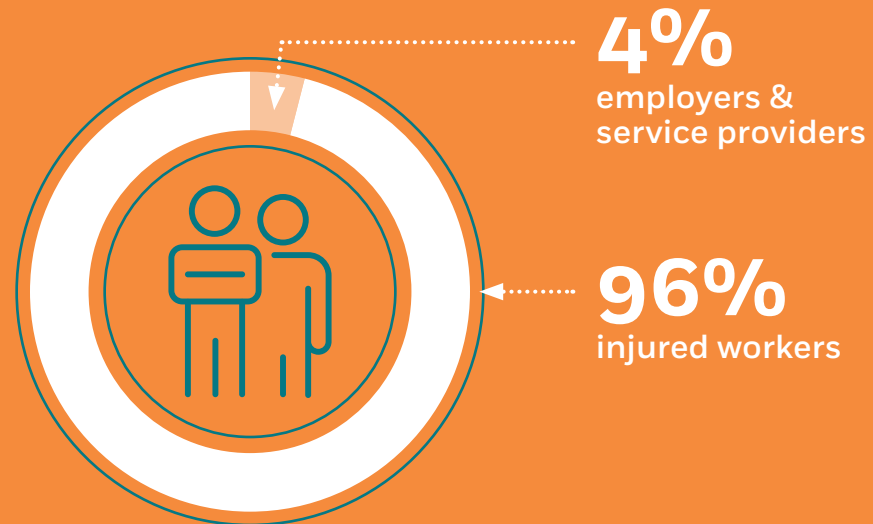


BY THE NUMBERS

COMPLAINTS TO THE COMMISSION IN 2023

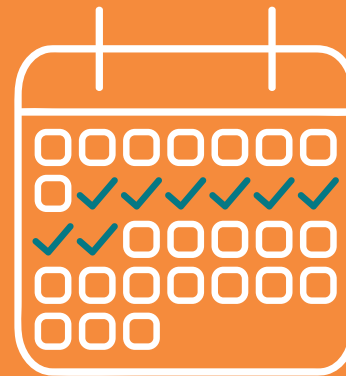


WHO CONTACTED THE COMMISSION IN 2023



It took an
average of

8
days

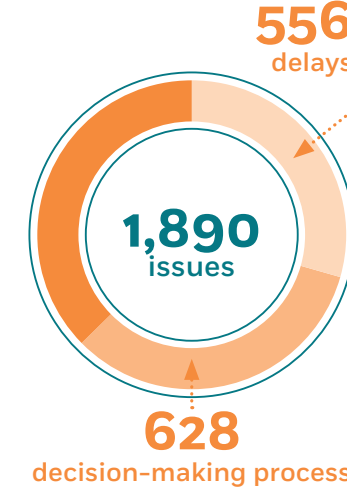


for the
Commission to resolve
complaints
in 2023.

COMPLAINT TRENDS

ISSUES OPENED

The Commission received **1,890 issues** in 2023, compared to 1,686 in 2022. Most of the issues in 2023 were about **delays (556)** and the **decision-making process (628)**.



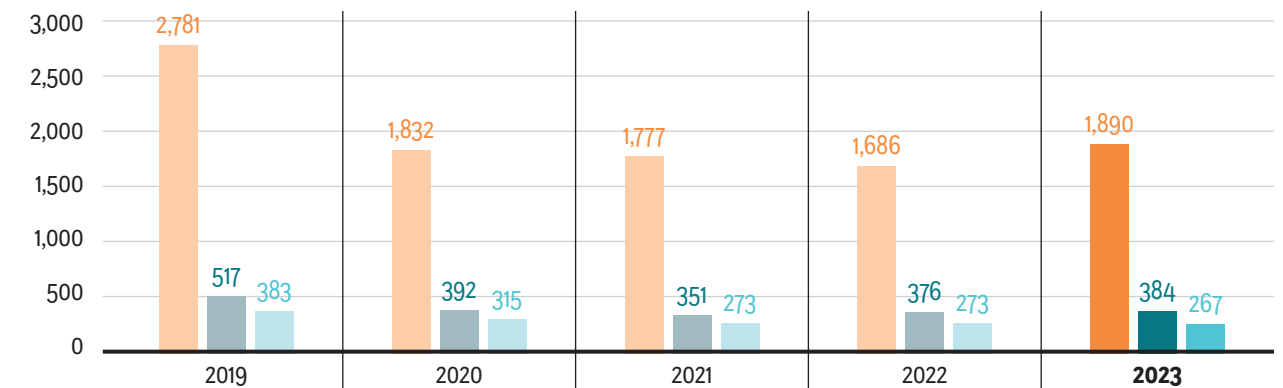
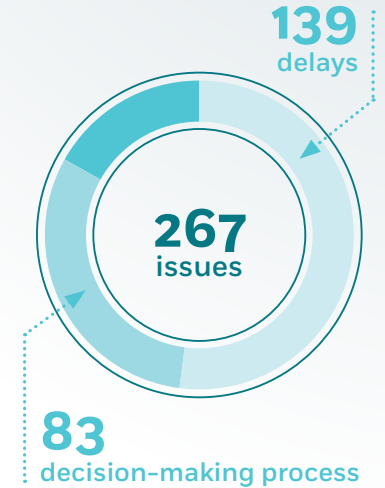
INQUIRIES MADE BY COMPLAINTS REVIEW SPECIALISTS

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

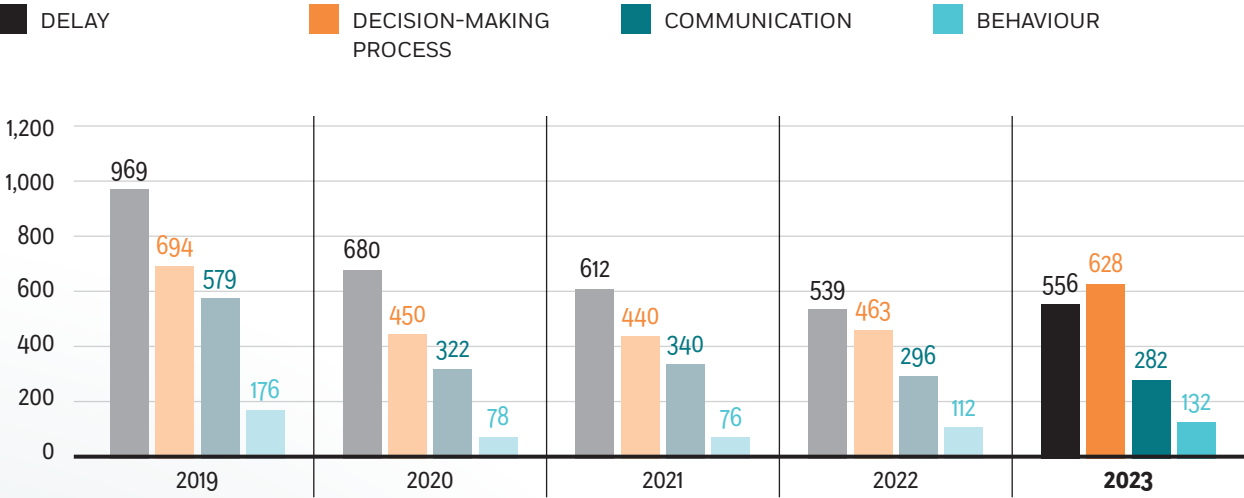


ISSUES THE WSIB HAD TO ADDRESS

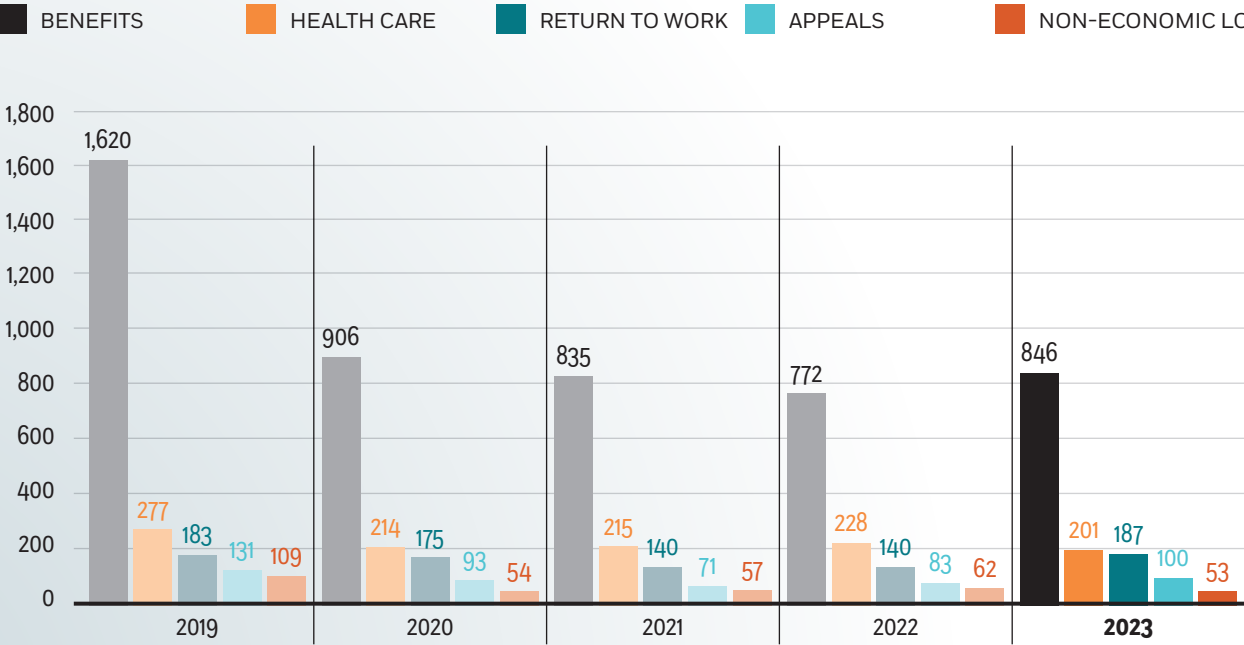
The number of fairness issues that required action by the WSIB decreased slightly in 2023 compared to 2022. Most of the issues were about **delays (139)** and the **decision-making process (83)**.



ISSUES OPENED BY FAIRNESS CATEGORY



TOP 5 RANKING OF COMPLAINTS BY SUBJECT



SYSTEMIC ISSUES

AN IMPORTANT PART OF OUR MANDATE IS TO IDENTIFY SYSTEMIC OR RECURRING ISSUES AT AN EARLY STAGE. IN REVIEWING EACH COMPLAINT, WE CONSIDER WHETHER IT MAY HAVE BROADER IMPLICATIONS. WE ALSO REVIEW OUR STATISTICS TO MONITOR FOR TRENDS.

THE GOAL OF THIS PROACTIVE MODEL IS TO ADDRESS CONCERNS BEFORE THEY BECOME PERSISTENT PROBLEMS. THE COMMISSIONER AND STAFF ALSO MEET REGULARLY WITH WSIB STAFF ABOUT SYSTEM-WIDE FAIRNESS ISSUES. ADDITIONALLY, THE COMMISSIONER REPORTS TO THE WSIB’S BOARD OF DIRECTORS EACH QUARTER.

BELOW ARE SOME OF THE SYSTEMIC ISSUES THE COMMISSION HELPED TO ADDRESS IN 2023.

1 ENTITLEMENT DECISION DELAYS FOR FEDERAL GOVERNMENT EMPLOYEES

In our **2022 Annual Report**, we reported on the steps the WSIB was taking to address delays in entitlement decisions for some claims from federal government employees.

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

The WSIB acknowledged that this issue had been a longstanding problem. Following our inquiries, the WSIB met with senior ESDC staff to share data regarding the delays and to discuss possible remedies. ESDC committed to educating federal government employers on the importance of prompt reporting and made improvements to its own claim registration process.

WSIB staff also developed relationships with their ESDC counterparts, which can now be leveraged to resolve any claim-specific delays.

The WSIB had considered the possibility of renegotiating its agreement with the federal government, but it ultimately



decided not to proceed with that plan because it is currently focusing on modernizing its own operating model. Additionally, it was satisfied that the steps it had taken so far had been effective in mitigating the delays.

The Commission also saw a significant decrease in complaints about this issue in 2023.

2 IMPROVEMENTS TO THE WSIB'S FOREIGN PAYMENT PROCESS

In our 2022 Annual Report (see p. 20), we highlighted a longstanding problem the WSIB had in sending payments abroad.



[CLICK HERE](#)

Our inquiries into this issue stemmed from two complaints in 2021 from foreign agricultural workers who had returned home and encountered delays in receiving pre-approved payments for travel expenses for health care treatment.

When foreign agricultural workers are injured or become ill because of their job in Ontario, they are eligible for WSIB benefits and services like any Ontarian covered by the WSIB. The WSIB is required to help with the workers' recovery and return to work whether they are in Ontario or their home country.

The WSIB's preferred method to send payments abroad is via cheque, but it is sometimes necessary, for various reasons, to send payments via wire transfer. The WSIB acknowledged that it did not have a consistent process for making these payments. The process was further complicated by the differing fraud prevention and anti-money laundering rules between different countries and banks.

Following inquiries by the Commission throughout 2022 and in early 2023, the WSIB rolled out an enhanced process for its staff for sending and tracking foreign payments via wire transfer.

The WSIB also translated its forms to collect banking information into other languages such as Spanish.

THE WSIB IS REQUIRED TO HELP WITH THE WORKERS' RECOVERY AND RETURN TO WORK WHETHER THEY ARE IN ONTARIO OR THEIR HOME COUNTRY.

3 WSIB CLARIFIES ITS PROCESS FOR MAKING ADDENDUM REQUESTS TO SPECIALTY CLINICS

In 2022, a worker representative complained to the Commission about communication between WSIB Health Services staff and staff at a specialty clinic.

The emails in question, which the representative obtained via a Freedom of Information request, contained discussions about potential changes to a specialty clinic's assessment report because the case manager had concerns about the content of the original report. The ensuing addendum to the original report was included in the claim but the emails discussing the changes were not. The representative complained that the WSIB's process was not fair or transparent.

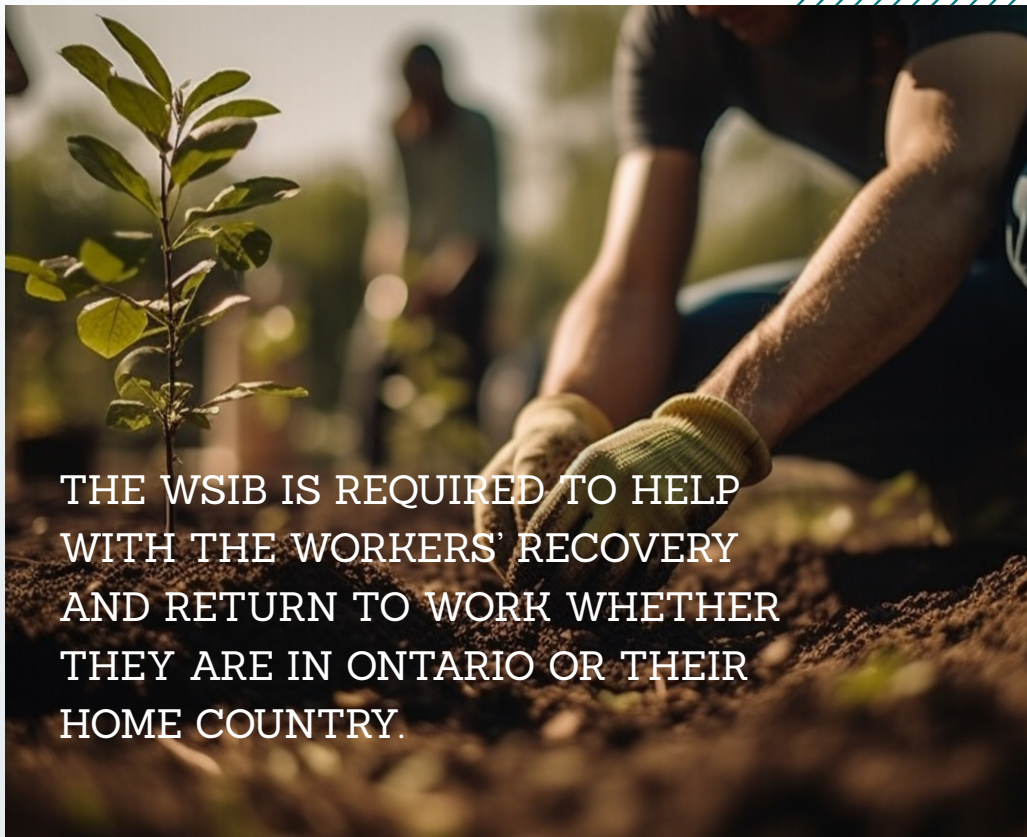
We brought this issue to the attention of Operations and Health Services. A director from Operations explained that addendum requests are occasionally necessary if information needs clarification, but he acknowledged that the WSIB did not handle this particular

addendum request appropriately. He explained that an addendum request was not necessary because the issue to be determined was an adjudicative decision and there was sufficient medical information on the claim to make a decision.

The director also acknowledged that the WSIB did not have any policy or procedure setting out the process for staff to follow when making addendum requests. He also said that the WSIB should clearly document all requests in the claim file and there should not be substantive discussions taking place via email. Following our inquiries, the director provided a reminder to all case management staff on the correct process to follow in making an addendum request.

In addition, Health Services had already begun work on developing guidelines for staff for making addendum requests. Health Services prioritized the completion of these guidelines and rolled them out to staff in early 2023.

HEALTH SERVICES PRIORITIZED THE COMPLETION OF THESE GUIDELINES AND ROLLED THEM OUT TO STAFF IN EARLY 2023.



4 CONCERNS RAISED ABOUT THE WSIB'S RESPONSE TO VALUE FOR MONEY AUDIT ON APPEAL PROCESS

The Commission received several complaints from injured worker groups and representatives about the WSIB's acceptance of recommendations made in a Value for Money Audit (VFMA) of its dispute resolution and appeals process.

The complainants were primarily concerned about the recommendation for the WSIB to work with the Ministry of Labour, Immigration, Training and Skills Development to consider making legislative changes to implement a 30-day timeframe to object for all decisions. The complainants also raised concerns about other recommendations in the VFMA, as well as a lack of adequate consultation in both the VFMA process and the WSIB's implementation process.

We made inquiries with staff in the WSIB's Appeals Services Division, as well as the Policy and Consultation Services Division. The WSIB staff we spoke with emphasized that the changes the WSIB is contemplating to its appeals and dispute resolution are intended to make the process less adversarial and to resolve issues as early as possible. They also explained that the WSIB is not currently engaged with the Ministry in relation to the recommendation to reduce the period to file an Intent to Object form to 30 days for all decisions.

With respect to concerns about the WSIB's consultation process, the WSIB began soliciting feedback on the VFMA's recommendations

THE WSIB EXPLAINED THAT IT WOULD PUBLISH THE SPECIFIC POLICY OR PROCEDURAL CHANGES THAT IT IS CONSIDERING AND PROVIDE FURTHER OPPORTUNITIES FOR CONSULTATION AND FEEDBACK ON THOSE SPECIFIC CHANGES.



last summer. The WSIB explained that it would publish the specific policy or procedural changes that it is considering and provide further opportunities for consultation and feedback on those specific changes.

We provided a summary of the responses received from the WSIB to the complainants and invited them to contact us again should they have further concerns. We also suggested to the WSIB that it clarify which changes it is and is not considering.

In October, the WSIB published the feedback it received during the summer consultation process. It also provided further detail on which recommendations would be implemented and confirmed it would not be pursuing any legislative changes to the objection periods. The WSIB has held further online seminars in early 2024 to provide updates and allow for feedback as it implements changes to the appeal process.

We have not received any further complaints about the matter.

5 IMPROVEMENTS TO RETURN-TO-WORK PROCESS IN CLAIMS INVOLVING TEMPORARY EMPLOYMENT AGENCIES



During our inquiries, a manager explained that once a TEA returns a worker to the roster they were on before the injury, the worker is usually considered to have returned to their prior work pattern and this means the TEA has met its RTW obligations. They noted that the placement employers want to fill roles quickly and the TEA wants to protect its relationship with its clients so it is often difficult to obtain details of job duties quickly when the jobs are offered.

Our inquiries into this issue stemmed from a complaint we received from a worker representative about the suitability of modified duties for a worker who had suffered a serious hand injury while working in a job through a temporary employment agency (TEA). He complained that the worker was disadvantaged because the WSIB was unable to investigate and mediate a dispute about modified duties as it would in a claim involving a conventional employer.

In such cases, the TEA is the sole employer of record and is responsible for all the claim costs and return-to-work obligations. This means there is little incentive for a placement employer to participate in the return-to-work (RTW) process.

As there was no room for informal resolution, we referred the worker to the appeal process. The decision was overturned on the basis that the worker had not returned to his pre-injury work pattern by being placed on the TEA's roster because he had permanent restrictions that prevented him from accepting certain job offers.

As this issue has systemic implications and is likely to disproportionately affect marginalized workers, we revisited the issue and asked the RTW team if there were any takeaways from the decision. A director told us they were planning on providing more guidance and training to staff on how to deal with RTW issues involving TEAs.

With input from the WSIB's Legal and Operational Policy teams, the

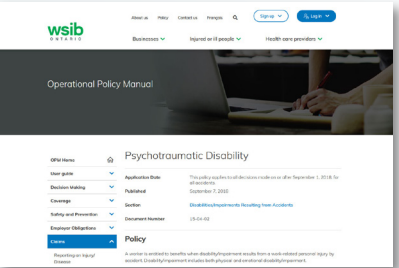
THE [WSIB] DEVELOPED NEW DETAILED TRAINING MATERIAL AND ROLLED IT OUT TO STAFF IN EARLY 2024. ... THERE WILL BE FAR MORE EMPHASIS ON GATHERING INFORMATION FROM THE TEA UP FRONT, BEFORE A JOB IS OFFERED.

RTW team developed new detailed training material and rolled it out to staff in early 2024. The director explained to the Commission that there will be far more emphasis on gathering information from the TEA up front, before a job is offered. RTW staff will require the TEA to provide details of which roster a worker is being placed on, the minimum physical demands and skillset required, as well the types of jobs that are offered. Once the worker has been placed on a roster, the RTW specialist will follow up later to confirm that the jobs offered were suitable.

6

WSIB CLARIFIES ADJUDICATIVE APPROACH FOR PSYCHOTRAUMATIC DISABILITY POLICY

The Commission received several complaints about how the WSIB adjudicates claims in which a worker has entitlement under Policy 15-04-02 (*Psychotraumatic Disability*) as a secondary condition to an organic (physical) injury.



CLICK HERE 

In the decisions in question, the WSIB essentially determined that entitlement for the psychological condition ends when the worker recovers from the organic injury. As a result, the decision-maker did not engage in any detailed analysis of the psychological evidence in the claim.

In one of the cases, the complainant sought clarification from the WSIB's Operational Policy Branch. The Policy Branch clarified that when an organic injury resolves, the psychotraumatic disability does not automatically end. Instead, a decision-maker should assess the facts of the case to determine ongoing entitlement.

In our initial inquiries, a manager explained that the approach taken in the claim was consistent with other decision-makers and in line with the training provided by the Psych/CPD Team.¹

In subsequent inquiries, a director in the Psych/CPD team explained that their team used to make all decisions related to psychotraumatic disability entitlement, but they now handle the initial entitlement decisions only. Other decisions regarding



psychotraumatic disability were transitioned to the regular case management teams approximately three years ago in order to ensure consistency in management of the claim and to address a backlog that had developed in the Psych/CPD team. The Psych/CPD area can provide guidance to those decision-makers when necessary.

The director confirmed that decision-makers must address the specific medical evidence on file

¹ The Psych/CPD team adjudicates entitlement issues that fall under the **Psychotraumatic (15-04-02)** and **Chronic Pain Disability (15-04-03)** policies.

THE DIRECTOR CONFIRMED THAT DECISION-MAKERS MUST ADDRESS THE SPECIFIC MEDICAL EVIDENCE ON FILE INSTEAD OF ENDING ALL ENTITLEMENT ONCE THE ORGANIC INJURY RESOLVES.

instead of ending all entitlement once the organic injury resolves. Following our inquiries, he disseminated a reminder to the relevant adjudicative staff. He explained that there may be exceptional cases where entitlement does not end, and in other cases it may be appropriate to follow a step-down process by allowing further psychological treatment for a limited period so workers can transition back to their regular activities.

He told the Commission that the above information is part of the refresher training on psychotraumatic disability, but he noted that some of it may be getting lost due to turnover amongst staff. The Commission will monitor for any further complaints about this issue.

RESOLUTIONS



INDIVIDUAL CASES

1

WSIB AGREES TO FUND OUT-OF-PROVINCE CONSULTATIONS FOR WORKER

A worker complained that the WSIB had denied entitlement for a consultation with a specialist in the United States to address persistent complications related to a serious leg injury from 2010. The worker had already undergone 16 surgeries in Ontario. Several Ontario surgeons had written to the WSIB saying the worker needed emergency care that was beyond their expertise and recommended a consultation with the US doctor who specialized in joint and bone infections.

The WSIB denied entitlement for the consultation in late 2022, so the worker paid out-of-pocket to see the US specialist in early 2023. She assessed the worker, provided a plan of care, and he returned to Ontario.

Unfortunately, the worker's condition deteriorated shortly afterwards and he required emergency surgery in Ontario.

The WSIB reconsidered and upheld its decision to deny entitlement for out-of-province care on the basis that the recommended health care is available in Ontario. The WSIB specialty clinic report cited in the decision said that much of the US specialist's plan of care is

available in Ontario but added that it would be difficult to find an Ontario surgeon willing to take on such a complex case.

With the worker's symptoms of infection persisting, two Ontario surgeons wrote to the WSIB to advise that the worker's condition was likely to deteriorate further and could result in his leg being amputated.

Given the seriousness and urgency of the situation, we inquired with a director about the WSIB's role in arranging necessary and appropriate health care treatment for the worker. The director took immediate action, and following a meeting with the case management team, he informed us that the WSIB could reconsider entitlement and reimburse the worker for his previous consultation with the US specialist because the Ontario surgeon had relied on her report when he carried out emergency surgery. Additionally, the WSIB granted entitlement for another assessment and updated treatment plan with the US specialist.

2

PAYMENT FOR SERVICE PROVIDER APPROVED ON AN EXCEPTIONAL BASIS

The owner of a physiotherapy clinic complained that the WSIB denied payment for a musculo-skeletal (MSK) program of care for an injured worker. The clinic owner presumed that the WSIB had allowed the claim because it had paid him for the completion of Functional Abilities Forms under the same claim. However, the WSIB had yet to make an initial entitlement decision at the time he followed up with the WSIB about

payment for the program of care. The WSIB told him he should have sought approval before treating the worker.

The clinic owner said he tried to escalate the issue through the WSIB's Clinical Expert Line but did not receive a call back. By that point, the worker had made a full recovery and was not returning the calls of the WSIB or the clinic.

Under new MSK program of care rules, the WSIB allows payment for an initial block of treatment for a single zone of injury regardless of the claim's status. A manager told us that the clinic treated the worker before the new rules came into effect. Since the clinic was new to the WSIB and this was their first experience with a denied payment, she approved payment on an exceptional basis.

3

UNCLEAR ESCALATION PROCESS LEADS TO DELAY IN EXTENDING TREATMENT

An injured worker complained to us that the WSIB was not replying to his physiotherapy clinic's request for an extension of treatment.

In line with the WSIB's regular process, the clinic had contacted the WSIB's clinical expert line several times but their voicemails had gone unanswered.

In reviewing the claim, we saw that the clinic had also spoken with the case manager, who told them to continue leaving voicemails on the clinical expert line if they did not receive a response within 3–5 days.

As the escalation process was unclear, we spoke with the manager responsible for the clinical expert line. He told us they were experiencing a backlog, and confirmed there was a voicemail from the physiotherapy clinic from two weeks prior. He had a clinical expert contact the clinic that day to approve the extension request. He also explained that WSIB staff could escalate any concerns about the clinical expert line to him.

We contacted the relevant manager in the case management team and she explained that her team had since become aware of the

HE HAD A CLINICAL EXPERT CONTACT THE CLINIC THAT DAY TO APPROVE THE EXTENSION REQUEST.

escalation process and were using it when necessary.

In a follow-up inquiry in October 2023, the manager responsible for the clinical expert line confirmed they had cleared their backlog.

4

OVERPAYMENT DEEMED UNRECOVERABLE DUE TO ADMINISTRATIVE ERROR

A worker complained that she was in financial distress because the WSIB was recovering a \$1,500 overpayment in her claim. She did not understand a manager's explanation that a recalculation of her earnings basis caused the overpayment.

The WSIB pays the first 12 weeks of loss of earnings benefits based on the worker's average earnings at the time of the injury. After 12 weeks, the WSIB may recalculate a worker's average earnings to reflect their long-term average earnings.

In this case, there was a two-month delay in recalculating the worker's earnings basis. During this period, the WSIB continued to pay her benefits at the short-term rate, which the WSIB subsequently found to be higher than her long-term rate.

WSIB Policy 18-01-04 (*Recovery of Benefit-Related Debts*) states that the WSIB does not pursue recovery of a debt if it is a result of an administrative error, and the debtor could not have reasonably been aware of the error.

In our initial inquiries, a manager said the WSIB would recover the overpayment only from the date when WSIB made the worker aware of the upcoming long-term rate review.

We escalated our inquiries to a director and he agreed that the delay was the WSIB's error and the worker would not have been aware the WSIB was overpaying her during the period in question. The WSIB deemed the debt unrecoverable and repaid the worker any funds they had already collected.

THE WSIB DEEMED THE DEBT UNRECOVERABLE AND REPAID THE WORKER ANY FUNDS THEY HAD ALREADY COLLECTED.



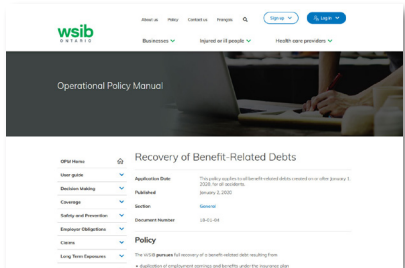
“THANK YOU FOR THE CALL. IT MAKES ME FEEL LIKE SOMEONE IS LISTENING AND CARES.”

—Employer



Operational Policy Manual

Recovery of Benefit-Related Debts



CLICK HERE



5

WSIB RECONSIDERS AND EXTENDS BENEFITS FOR OLDER WORKER

A 72-year-old transit worker, whose first language is not English, complained that the WSIB had ended his benefits too early. He sustained multiple injuries, including 11 fractured ribs, when he got stuck between a train carriage and a steel barrier for approximately an hour.

The worker's benefits were ended after approximately 12 weeks on the basis that the usual healing time for this type of injury is 8–12 weeks, and there was no objective medical evidence to support his ongoing reports of pain. The WSIB had not sent the worker for any further scans since the day of the incident. The most recent medical information from the worker's doctor and physiotherapist recommended that he remain off work, and they noted tenderness and swelling in the affected area.

Three weeks later, the worker returned to work on modified duties,

AFTER FURTHER REVIEW, AND TAKING INTO ACCOUNT THE WORKER'S AGE, THE WSIB RECONSIDERED ITS DECISION AND REFERRED THE WORKER FOR FURTHER HEALTH CARE TREATMENT.

on a part-time basis at first.

The worker also noted that he did not have an opportunity to speak with the case manager with the assistance of an interpreter even though the notes of the first call with the worker mentioned the language barrier.

The worker had tried to escalate his concern to a manager, but they were not able to connect due to difficulties scheduling a call with an interpreter present.

Due to the language barrier, we made an inquiry about the worker's concerns. After further review, and taking into account the worker's age, the WSIB reconsidered its decision and referred the worker for further health care treatment. They also determined that he had entitlement for full loss of earnings for three more weeks and partial loss of earnings to cover the period when he could only work part-time.

“ONCE YOU WERE INVOLVED, THEY ARE TRYING TO HELP AND FIND A SOLUTION. I'M SO HAPPY FOR THAT.”

—Worker

6

MEDICAL EVIDENCE REVIEWED AFTER SIX-MONTH DELAY LEADS TO RECONSIDERATION

A worker complained that he was in a dire financial situation because he could not work and the WSIB had denied loss of earnings benefits. He had returned to work as an electrician the day after his injury, but he was still experiencing pain and struggling to work. The same day, his employer laid him off along with two other workers.

Since he had returned to work, the WSIB determined that his layoff caused his wage loss. Therefore, he was not entitled to loss of earnings benefits.

A few months later, an MRI scan showed that the injury was significantly more serious than initially thought. The WSIB granted entitlement for healthcare benefits for the new diagnosis but continued to deny loss of earnings benefits without providing any rationale.



The worker complained to the WSIB several times about his financial distress. On one occasion, a WSIB nurse consultant asked the police to conduct a wellness check. The worker escalated his concerns to a manager who told him that he could appeal the decisions.

After reviewing the claim file, we noted that it was not clear if the WSIB had fully considered the impact of the MRI findings, submitted six months earlier, on the worker's capacity to perform his pre-injury work.

Following further review, the WSIB overturned its previous decision and granted the worker entitlement to retroactive loss of earnings benefits. As the employer had not re-hired the worker after the layoff, a WSIB return-to-work specialist also contacted the employer to determine if suitable work had become available since the injury.

“I WASN'T EXPECTING TO HAVE SUCH A LENGTHY CALL. I CAN'T BELIEVE SOMEONE IS TAKING THE TIME TO LISTEN. I REALLY APPRECIATE IT.”

—Worker

7

DISCOVERY OF ERROR FROM 2009 LEADS TO RETROACTIVE ADJUSTMENT TO BENEFITS

A worker complained that his partial loss of earnings benefits were too low because the WSIB calculated his earnings basis incorrectly in 2009 after he was injured while working as an apprentice. He said he had not appealed the decision in 2009 due to bad legal advice.

In accordance with legislation, the WSIB determines the average earnings for an apprentice by using the average earnings of a journey-person employed by the employer.

When the worker complained to the WSIB, a manager told him that the earnings basis was correct and based on the earnings information

for a journey-person that the employer provided at the time.

Upon closer review of the relevant documents, we noted that both the worker and the journey-person had worked 45-hour weeks but the WSIB had based its calculations on a 40-hour week.

“IF I DIDN'T KNOW ABOUT YOU GUYS, I WOULD REALLY BE PULLING MY HAIR OUT. YOU REALLY HELPED ME OUT.”

—Worker

Once we brought this to the attention of the manager, the WSIB conducted an earnings basis adjustment, resulting in a higher rate of pay and a retroactive payment to cover the 14-year period in which benefits had been paid incorrectly.





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