

FPC
CPÉ

2008
ANNUAL
REPORT

Fair Practices Commission

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

Également disponible en français

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

www.fairpractices.on.ca

Phone

416-603-3010

866-258-4383

TTY

416-603-3022

866-680-2035

Fax

416-603-3021

866-545-5357

Fair Practices Commission 2008 ANNUAL REPORT

Mission Statement

The mission of the Fair Practices Commission is to facilitate fair, equitable and timely resolutions in individual complaints brought by workers, employers and service providers and to identify and recommend system-wide improvements to Workplace Safety and Insurance Board (WSIB) services. In carrying out its mission, the Commission will contribute to the WSIB's goals of achieving greater openness, better relationships and improved services.

Contents

From the Commissioner 3

The Acronyms 4

Final Report on Occupational Disease Process Issues..... 5

What Else is New at the WSIB 8

What’s New at the Commission 10

Education 11

Outreach 12

Systemic Issues..... 14

Best Practices 18

Case Summaries..... 20

The Story in Numbers 24

How We Work..... 29

Budget 32

From the Commissioner

I am pleased to present the annual report of the Fair Practices Commission for 2008. This past year marked our fifth as Ombudsman for the Workplace Safety and Insurance Board of Ontario, and it was in many respects a banner year – for both the Commission and the WSIB.

Two particular things stand out.

First, although the number of complaints to the Commission increased by five per cent this year, for the first time in the Commission's history the number of complaints that presented fairness issues requiring action by the WSIB decreased significantly, by 20 per cent. This is the WSIB's achievement, not ours, but I believe it is compelling evidence of the systemic importance of the Commission's role.

The substantial decrease in the number of times the Commission had to involve the WSIB in resolving complaints is attributable, in my view, to the WSIB's increasing commitment to identifying and resolving fairness issues on its own initiative, fostered by the Commission's ongoing work with the WSIB.

The second major highlight this year was the WSIB's highly satisfactory response to the Commission's 2007 Occupational Disease Report. As I was pleased to report to the board of directors in September, the WSIB implemented all 10 of my recommendations in a manner that will have a positive effect on the thousands of workers who have, now or in the future, occupational disease claims. The details are set out in the body of this report.

Finally, I thank our Commission staff for another year of their remarkable commitment and professionalism. It has often been said that the success of any organization depends on getting and keeping good people. We did, and we have, and as always, I am especially grateful for that.



Laura Bradbury
Commissioner

The Acronyms

| | |
|-------|--|
| ARO | Appeals Resolution Officer |
| BOD | Board of Directors |
| FIPPA | Freedom of Information and Protection of Privacy Act |
| FPC | Fair Practices Commission |
| LMR | Labour Market Re-Entry |
| LOE | Loss of Earnings |
| MPP | Member of Provincial Parliament |
| NEL | Non-Economic Loss |
| NIHL | Noise-Induced Hearing Loss |
| OD | Occupational Disease |
| ODSD | Occupational Disease Services Division |
| OEA | Office of the Employer Adviser |
| OWA | Office of the Worker Adviser |
| PEIR | Program for Exposure Incident Reporting |
| PDD | Program Development Division |
| RTW | Return to Work |
| SIP | Serious Injury Program |
| SSM | Sault Ste. Marie |
| WSIAT | Workplace Safety and Insurance Appeals Tribunal |
| WSIB | Workplace Safety and Insurance Board |

Final Report on Occupational Disease Process Issues

In 2006 the 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 focus of the investigation was on the institutional processes, not on the performance of individual staff.

The investigation started in November and the commissioner gave her preliminary findings to the WSIB on March 30, 2007. The WSIB president responded, and the commissioner issued her final report on May 30, 2007.

The commissioner made 10 recommendations including one that the WSIB report in a year's time on its response to the recommendations. The WSIB sent that report to the commissioner on June 9, 2008.

The results show an exceptional response to the commissioner's recommendations as well as a commitment to improving service to workers and their families. And, by the end of 2008, we were able to track the effect of the changes. Complaints to the Commission about occupational disease cases dropped by almost 50 per cent from 2007 and the backlog of occupational disease cases more than six months old decreased dramatically.

In September, the commissioner reported to the WSIB board that the WSIB's response satisfactorily addressed her 10 recommendations. The commissioner and the vice-president of the new Occupational Disease Services Division (ODSD) have agreed to continue to meet every four months to monitor the effect of the changes.

Details of the recommendations, the WSIB's response to each recommendation and the current results are set out in the following pages.

| <i>Recommendation</i> | <i>WSIB Action</i> | <i>Result</i> |
|---|--|--|
| 1. Resources | | |
| Review staff workload. | Ten new positions added. | New adjudicators, a senior scientist and a medical consultant now available. |
| Acquire accessible, comprehensive database. | New data tracking tool developed that includes all case information since 1915. | New system allows multiple queries by disease type, exposure, geography, occupation, employer and others. |
| 2. Communication | | |
| Review practices. | Early contact required. Assessment and action plan required. | Workers are to be contacted within three business days for information on their condition, occupational exposure, medical condition, etc. Plans are put on file within 10 days; workers are updated regularly. |
| 3. Accountability | | |
| Develop management and accountability processes. | Integrated case management processes developed. Management review and escalation steps developed. | Early intervention now required in all cases to collect needed information. WSIB now has built-in reviews. Cases more than six months old are reported to assistant director, director, vice-president and president. WSIB currently monitoring results. |
| Develop a backlog plan to address cases older than six months. | Pilot project to identify and manage complex cases undertaken. Special backlog teams created: one for noise-induced loss of hearing (NIHL) cases and one for other occupational disease (OD) cases. | By December 2008, older NIHL cases reduced from 400 to three. Other OD cases (older than six months) reduced from 723 to 160. |
| 4. Statistics and reports | | |
| Develop effective mechanism to track and report all OD cases more than six months old. Separate PEIR, NIHL and cluster cases for accurate information. | New data tracking and reporting tool created. | Weekly reports provide accurate information and promote consistency. Claims more than six months old are identified. PEIR, cluster and NIHL cases are reported separately. |

| <i>Recommendation</i> | <i>WSIB Action</i> | <i>Result</i> |
|---|---|--|
| 5. Administrative procedures | | |
| Review roles of adjudicators and managers. | Focus groups held with OD staff. | New customized service delivery model to be implemented early in 2009. |
| 6. Cluster cases | | |
| Review process for identifying cluster cases. | Reviewed prior cluster processes. | WSIB board approved funds required to address cluster cases. |
| Work with stakeholders to develop best practices. | Tested new approach in one workplace. Met with worker and employer stakeholders. | Enhanced capacity to handle cluster cases is part of new service delivery model. |
| 7. Training | | |
| Consider assigning a trainer to OD and involve managers in designing and delivering training. | Trainer assigned to OD. | There is now a peer consultation and mentoring approach. |
| | Regular internal training underway. | Managers are involved in training. |
| | Managers received specialized training. | Change management strategies are highlighted. |
| 8. Northern Ontario exposure cases | | |
| Make outstanding decisions as quickly as possible. | Vice-president and director offered to meet with all affected workers. Special team assigned to expedite decision-making. | Decisions in outstanding cases made by February 2008. |
| 9. Reporting to board of directors | | |
| Provide regular reports to board on older cases. | President provided quarterly reports to board. | WSIB board has information on timelines and action plans for older cases. |
| 10. Follow-Up | | |
| WSIB to provide one-year follow-up report. | Report provided June 2008. | Report addressed all the commissioner's recommendations. |
| | Commissioner and ODSD vice-president continue to meet every four months. | |

What Else is New at the WSIB

New service delivery model

The WSIB launched a new service delivery model as part of its strategic plan. The Commission received regular updates on the model throughout the year and provided input on potential fairness issues.

The WSIB is phasing in the model from September 2008 through March 2009, beginning with the Ottawa office in September, followed by the Toronto office at the end of October, and then the remaining regional offices.

The main goal, as set out in WSIB communications, is to “significantly reduce the time it takes for workers to receive key services such as eligibility decisions and access to health care and Labour Market Re-Entry programs. Employers will have improved access to prevention and return to work services at the worksite.”

To accomplish this goal, the WSIB has completely redesigned the decision-making roles, including those of new eligibility adjudicators, nurse consultants and short and long-term case managers.

Temporary foreign agricultural workers

The WSIB’s Program Development Division (PDD) took a number of significant actions to better understand and serve temporary foreign agricultural workers.

Staff in the Guelph office, where the claims are handled, took sensitivity training to enhance their awareness of these workers’ issues. Worker representatives were invited to meet with the staff in Guelph to ensure an ongoing dialogue and open lines of communication.

WSIB Multilingual Services conducted English and Spanish-speaking outreach with foreign agricultural workers in the Ontario communities where they live, translated WSIB materials into several languages, including Spanish, and is now accepting collect calls from repatriated injured workers on the WSIB hotline.

The WSIB, in conjunction with the Farm Safety Association, completed a gap analysis of health and safety materials for the workers and is using the results to propose prevention solutions.

WSIB staff is working with FARMS, the farm employers' administrative body, to discuss how to communicate with employers about their workers' entitlement to health care.

PDD staff met with Mexican consulate staff to explain WSIB programs and services, to invite consulate staff to the Guelph office to learn more about day-to-day operations, and to share some of the systemic issues the WSIB hears from worker representatives.

WSIB is sharing information and best practices with other Canadian workers' compensation boards, as migrant workers have been identified as an emerging issue in all Canadian jurisdictions.

What's New at the Commission

New case management system

In 2007, the WSIB board of directors approved the Commission's request for a new computerized case management and tracking system.

The Commission purchased the system from the British Columbia Ombudsman's office in 2008 and worked with their staff to customize the system. The system will be up and running in April 2009.

This stand-alone system will allow the Commission to track and provide more detailed information on complaint trends and systemic issues to the WSIB and to the public.

Improving the website

Commission staff met with a website consultant in October to consider options for making our website more informative and user-friendly. The Commission plans to implement the changes in 2009.

"Plain language" brochure

The Commission developed a new bilingual brochure that explains, concisely and clearly, what we do. We sent the brochure to all WSIB offices as well as legal clinics, unions and various service providers across the province.

The logo for the Fair Practices Commission, featuring the letters 'FPC' above 'CPÉ' in white on a teal square background.

*Can the
Fair
Practices
Commission
help you?*

We are an independent office
working to ensure fair practices at the
Workplace Safety and Insurance Board of Ontario
www.fairpractices.on.ca

Education

Education and training is a major focus of the Commission's work. In 2008 the Commission increased the scope and number of our Fairness Awareness sessions for new decision-makers, as the WSIB started up its new service delivery model.

Training

The Commission provided 14 sessions in Ottawa, Hamilton and Toronto for new nurse consultants, telephone enquiry representatives and adjudicators.

The Commission will provide 10 sessions for new eligibility adjudicators throughout the province in 2009, as well as additional sessions for new nurse consultants.

Workshops

In September, Commission specialists conducted two half-day workshops for all decision-makers in the group that deals with pre-1990 cases, at the invitation of a director. Commission staff used an anonymized case as a working tool to identify fairness issues and to discuss best practices. This marks the first time the Commission has provided in-depth workshops for front-line adjudicators, and we received good feedback from both adjudicators and managers.

Sectors

The commissioner and a specialist met with directors and managers in two different WSIB sectors to provide a one-year follow-up on identified fairness issues. In both cases, the commissioner was able to report that the steps taken by the sectors had resulted in a significant decrease in complaints.

Outreach

The Commission marked our first five years of operation with an expanded outreach program that provided an overview of the Commission's work since 2004.

Open House

The Commission held an open house in Thunder Bay in April to thank the community for their support of our Thunder Bay office and their contribution to the Commission's work. A diverse cross-section of people attended, including representatives of unions, injured workers, employer groups, service providers, the OWA and area MPPs, as well as the WSIB's Thunder Bay director.

Meetings

The Commissioner provided a five-year review for

- Building and Construction Trades Council of Ontario conference in Windsor
- WSIAT vice-chairs and members' training day
- constituency assistants of Liberal MPPs.

The commissioner has agreed to provide the review for the Office of the Worker Adviser and Office of the Employer Adviser in January 2009.

Two Commission specialists met with the Thunder Bay and District Injured Worker Support Group in May.

Fair Practices Commission

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

FPC
CPÉ

Commission des pratiques équitables

un organisme indépendant veillant à l'équité des pratiques de la Commission de la sécurité professionnelle et de l'assurance contre les accidents du travail de l'Ontario

www.fairpractices.on.ca

The Commission has started using this banner for open houses, clinics and meetings.

Newsletter

The Commission published its seventh newsletter in November. More than 3000 copies were distributed to stakeholders, the WSIB, and the Ontario Federation of Labour for their workers' compensation representatives.

Ombudsman community

The Commission is an active participant in the Ombudsman community. This year, our intake staff attended a Forum of Canadian Ombudsman workshop on "Dealing with Difficult Complainants," and the commissioner attended its annual general meeting.

The commissioner participated in three teleconference meetings of the Fairness Working Group with representatives from British Columbia, Saskatchewan, Manitoba, Nova Scotia and Newfoundland. The group provides an informal forum to discuss issues relevant to workers' compensation.

Systemic Issues

One principle of fundamental justice is the right to a fair process. The courts have referred to this as “the duty to be fair.” The Commission’s mandate includes helping to ensure fair processes at the WSIB by identifying broader, system-wide issues and making recommendations for improvements.

Here are some of the systemic issues the Commission addressed in 2008.

Improving the decision-making process

Young workers

The Commission identified issues concerning young workers (age 15 to 24) who are not students, learners or apprentices. The commissioner was concerned that no specific provisions exist to address the potential loss of future earning capability of those young workers who have permanent work-related impairments.

The WSIB Benefits and Revenue Policy Branch researched the issue and reported in October 2008. Based on the research results and the Commission’s findings, the chief operating officer and the vice-president of the Policy and Research Division recommended policy revisions to allow enhanced labour market re-entry programs for some young workers who are in low-paying jobs at the time of their injury.

In addition, to ensure consistency of treatment and decision-making, the WSIB will identify one group of adjudicators to handle all the young worker cases.

Extension of SIP services

The Program Development Division agreed with the Commission that two important issues relating to seriously injured workers needed to be addressed. The first concerned early identification of those injured workers who are eventually transferred to the Serious Injury Program (SIP), when they become 60 per cent disabled. The second concerned the needs of workers who are significantly impaired but are expected to improve after treatment.

The WSIB decided to extend SIP services. Details will be developed as the new service delivery model is implemented.

Temporary foreign agricultural workers

In 2007 and 2008, the Commission facilitated meetings between the WSIB and legal clinic staff to address issues relating to temporary foreign agricultural workers. As a result of the discussions and other external consultations, the WSIB revised Policy 12.04.08. The policy now includes:

- calculating long-term average earnings to include a worker's earnings in the off-season, and/or
- calculating the probable employment insurance that would otherwise be payable to a resident worker.

The WSIB developed a document to help decision-makers manage claims from temporary foreign agricultural workers. As well, it published a new brochure to inform health care professionals about the WSIB coverage for these workers.

Paying LOE benefits in cases of delayed health care

The Commission worked with the Policy and Research Division and the Program Development Division (PDD) to address an issue concerning inconsistent use of policies in cases where a worker did not obtain health care soon after a injury-related lay-off. As a result, the PDD prepared a document for the intranet site to remind decision-makers of the factors that should be considered when assessing a worker's entitlement to loss-of-earnings (LOE) benefits in this situation.

Notice of third-party elections

The Commission received a complaint from a representative about how the WSIB notifies workers of the option (under section 30 of the Act) to either elect benefits under the Act or to bring an action against a potential third-party. The chief operating officer and the director of the legal services branch agreed to develop:

- an information package for workplace parties that will be available on the WSIB website
- a training package for adjudicators to identify cases where notice under section 30 may be required.

Improving communication

Publication of ARO decisions

The commissioner raised the issue of having Appeals Resolution Officer (ARO) decisions available to the general public to enhance the transparency of the appeal process. The chief operating officer and the acting director of the Appeals Branch agreed the WSIB would have a publication process in place by the end of December. The process includes using the CanLII website to post some anonymized decisions that can be accessed without charge, developing guidelines for an internal selection and tracking process, and liaising with WSIB's Privacy Office and the Legal Services Branch.

Most of the initial processes were in place by December 31. However, the target date for publication was moved to the second quarter of 2009 to allow time to make all the necessary changes.

Access to PVA reports

A representative asked the Commission to inquire into the process for workers to obtain access to psychosocial vocational assessments (PVA) that may be conducted to determine labour market re-entry (LMR) plans. Until recently, workers had to request the reports from their WSIB adjudicators and there was often a delay in receiving them. The Commission raised the issue with the Program Development Division. As a result, LMR primary service providers are now authorized to give workers their assessment reports, upon request. The Commission anticipates that early access to the assessment reports will support workers in their participation in the LMR process and avoid delays.

"No contact" cases

The WSIB has a policy of zero tolerance of threatening or aggressive behaviour. Workers found in violation may be issued "no contact" orders that limit them to written contact with their adjudicators for two years. The Commission suggested that some built-in review process of the two-year restriction may be appropriate and that some consideration be given to those workers who are illiterate.

In response, the Program Development Division is conducting a "best practices" review of security issues.

Reducing delays

NEL process

The commissioner and a specialist met with the non-economic loss (NEL) director in April to review the status of process changes undertaken by the division in 2007 and 2008. Although the desired service levels will not be implemented fully until the end of the second quarter of 2009, the commissioner was satisfied that the changes will improve the overall fairness of the NEL rating process.

Mail management

The Program Development Division developed “Fax it Right” information for the WSIB’s public website in response to the Commission’s findings about lost and delayed faxes. The public site now includes one central fax number and detailed instructions on sending faxed information.

The Commission identified concerns about undelivered mail to managers. In response, the PDD began tracking managers’ mail to identify where gaps are occurring. The result has been a reduction in complaints to the Commission.

Best Practices

Resolutions to some individual complaints highlight best practices of the WSIB. Here are two examples.

Delay addressed by a director

An injured worker reported a 10-month delay in adjudicating her claim for a recurrence of her injury. The Commission's review of the file found delays in requesting medical information, delay in acting on the medical consultant's review and no response to letters or telephone calls. Given the history of the case, the Commission asked the director to review the file and provide his perspective.

The director acknowledged the concerns and reported an action plan to resolve the case and to prevent similar incidents:

- He instructed the manager to have the adjudicator write a decision letter by end of the day and to show the letter to the director.
- If the decision had been adverse, he would have arranged for it to be fast-tracked if the worker filed an appeal.
- He called the injured worker and the representative to apologize for service gaps.
- He discussed expectations with managers at their next meeting, reminding them of the serious consequences of not following up to ensure a claim is being processed as expected when they respond to fairness concerns that claimants, representatives, or the Commission bring to them.

New process to address employer concerns

An employer complained to the Commission about the WSIB's practices concerning collections.

The Commission's inquiry found that the employer's accountant was working with the WSIB account manager to correct inaccuracies in a reconciliation statement, which showed an overdue balance. Collections Services was not told recalculations were in process and deducted the sum from the employer's bank account. Although the money was returned to the employer's account immediately, the employer was concerned about the repercussions the garnishment proceeding had on his business and his relationship with the bank.

The Commission raised the process concerns with the assistant director who said a memo was being sent to all staff to remind them they must notify Collections Services when a file is being reviewed. The assistant director said he would also start working on a written protocol for staff. In addition, a new Collections Services hotline will be created so that staff can notify a Collections Specialist of any impending adjustments to an employer's account.

Case Summaries

The resolution of individual complaints is an important part of the Commission's work. The Commission can provide assistance when people feel they have been treated unfairly, when they believe the WSIB is taking too long to make a decision, or when they simply don't know what steps to take next.

Here are some of the concerns the Commission helped resolve this year. Other case summaries are available on the Commission's website at www.fairpractices.on.ca.

Delay in implementing ARO decision

A worker's representative contacted the Commission about a one-year delay in implementing an Appeals Resolution Officer (ARO) decision. According to the worker, he had made numerous calls to the adjudicator but still had not received the benefits the ARO had granted. As a result of this delay, the worker suffered serious financial and personal difficulties.

The Commission reviewed the worker's file and discovered that the adjudicator had requested income tax information from 2002 to 2005 to calculate the benefits. The worker submitted his Notice of Assessments from Canada Revenue Agency in May 2006. The adjudicator asked for more detailed information, which the worker sent in July 2006. However, it appeared that the adjudicator had not reviewed this new information.

The Commission contacted the manager who asked the adjudicator to expedite a request to the payment specialist for a review. Following the review, the manager determined there was enough information to process the benefits owed to the worker. Payment was made and the manager apologized to the worker for the delay. The manager also reviewed this case with her whole team to illustrate how delay can have a serious impact on a worker's life.

Young worker with a permanent impairment

A young worker contacted the Commission with concerns about the WSIB's lack of communication and the decision-making process in his claim. The worker suffered a partial amputation of his middle finger while he was using a saw at work. It took six weeks for the worker's loss-of-earnings (LOE) benefits to be processed, and he was never contacted in person by his

adjudicator. The worker felt he was being forced to return to work that was not suitable and that his adjudicator was not listening to his concerns. By the time he called the Commission, the worker had developed an infection at the wound site but was unable to reach anyone at the WSIB to inquire about further benefits.

Because of the seriousness of the worker's injury and his young age, the Commission contacted the assistant director. The following then happened:

- The nurse case manager became involved and arranged for a priority referral to the WSIB's hand clinic. The clinic confirmed the worker had return-to-work (RTW) restrictions and recommended physiotherapy and a functional restoration program.
- The worker received LOE benefits for the recurrence of his injury.
- The WSIB obtained all outstanding medical evidence.
- Once the worker completed his rehabilitation program, an RTW specialist visited the worksite to help the employer and worker find suitable modified work.
- The worker returned to modified work.

The worker said to the Commission, "I finally feel like someone cares."

Delay in deciding expense payments

A worker's representative contacted the Commission about a lengthy delay in a manager's response to letters requesting a review of a decision to deny the worker's medical expenses and transportation costs.

A Commission specialist contacted the manager who addressed both the immediate issue and the broader concerns. The manager reported he had not received the representative's letters and:

- contacted Central Claims Processing about the mail protocol breaches
- directed the claims adjudicator to take immediate action and report to the manager
- monitored the case
- telephoned the representative to apologize for the service gap and to report on the action plan and timeline for resolution.

LMR decision-making process

A worker complained to the Commission about the process followed to consider travel expenses related to her labour market re-entry program (LMR).

The worker was nearing completion of the upgrading portion of her LMR plan when she married. She notified the WSIB and the LMR service provider of her intent to move to a different city. The claims adjudicator verbally agreed to allow travel expenses for the balance of the upgrade. However, the adjudicator wanted to review the plan amendment before deciding travel expense eligibility for the next phase of the plan.

Without notice to the worker, a new adjudicator was assigned. When the new adjudicator reviewed the plan amendment, she denied payment for all travel expenses as the worker had moved voluntarily. The worker felt she was unfairly disadvantaged since she had told the WSIB of her intent to move and had already moved before learning about the potential adverse impact. And, she was now unable to afford the travel expenses to complete the LMR program leading to her suitable employment or business (SEB) goal.

The worker contacted the manager, who upheld the denial decision. The worker appealed the denial but she also contacted the Commission about what she perceived as an unfair decision-making process.

The Commission spoke with the manager about the apparent lack of notice. The manager reviewed the file and agreed that the WSIB had not properly informed the worker about the full impact her move would have on her LMR program. The original decision was restored. The manager arranged a conference call with the claims adjudicator and the worker to discuss the decision. The worker was referred to the service provider to explore more affordable options for the final phase of the LMR plan. The manager also planned to discuss the worker's case with her team to review the protocol to follow when a worker in an LMR program reports a change of address.

Implementation of WSIAT decision

A worker's representative called the Commission in July to complain that she had been waiting seven months for the WSIB to implement a Workplace Safety and Insurance Appeals Tribunal (WSIAT) decision that granted the worker entitlement for a post-traumatic stress disorder. The worker's representative had called and written to the claims adjudicator and manager on many occasions but had not received a response.

The Commission contacted the acting manager about the delay. The acting manager met with the worker's representative to develop a plan of action, starting with a NEL assessment to determine if the worker was entitled to LOE benefits. The acting manager also undertook to follow up with the claims adjudicator to ensure the plan was implemented. The representative was satisfied with the outcome.

No unfairness found

A worker complained to the Commission that the WSIB and his LMR service provider did not adhere to his medical restrictions, and as a result he suffered further injury.

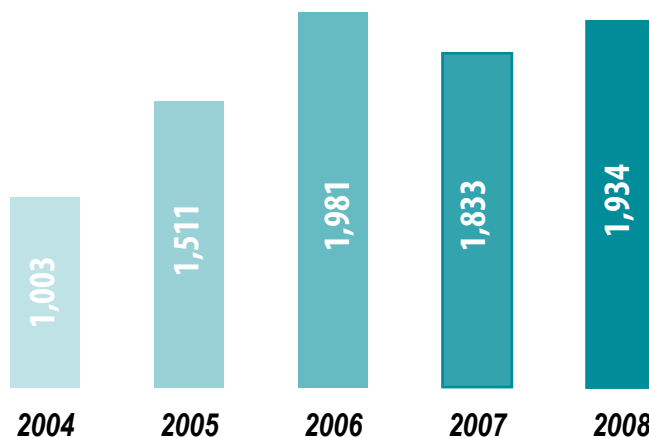
In reviewing the complaint, the Commission found that over the past year the worker had been sent for two assessments at the WSIB specialty hand clinic and one follow-up appointment. He had received non-dominant hand training. His LMR hours were reduced several times over the three and a half weeks he was in the training program to accommodate his injury. He was provided with voice-activated computer software. And, the assistant director wrote to him addressing all of his concerns.

The Commission advised the worker that the WSIB's actions and responses were reasonable.

The Story in Numbers

The Commission received 1,934 complaints in 2008 compared with 1,833 complaints in 2007, an increase of 5.5 per cent.

8,300 complaints in first 5 years



Delay continues to be the most serious issue for complainants. Complaints about delays accounted for 39 per cent of all incoming complaints in 2008.

The main delay issues in 2008 concerned:

- adjudication
- returned phone calls
- release of entitlement decisions.

As in previous years, most complaints (93 per cent) were brought by workers, their representatives and family members. Employers brought more complaints in 2008 (98) than in 2007 (89). Service providers accounted for 14 complaints, down from 15 last year.

Mandate concerns accounted for 61 per cent of complaints in 2008, compared with 60 per cent in 2007.

Specialists inquired into 22 per cent of the mandate complaints in 2008, compared to 27 per cent in the previous year. However, complaints about delays accounted for 58 per cent of the mandate complaints that specialists handled, down from 65 per cent in 2007.

The Commission continues to provide timely responses. We reduced our complaint-handling time again this year. The average age of all Commission cases at closing (those opened and closed in the year) was 1.7 days. Specialists' cases took 7.1 days on average, compared with 7.8 days in 2007.

Complaints broken down by user group

| Category | 2008 | 2007 | 2006 |
|---|--------------|--------------|--------------|
| Workers | | | |
| self-referral | 1,566 | 1,452 | 1,527 |
| representative, family member, MPP, OWA | 230 | 224 | 277 |
| Employers and representatives | 98 | 89 | 103 |
| WSIB staff who are injured workers | 3 | 8 | 11 |
| Service providers | 14 | 15 | 25 |
| Commission, own motion | 2 | 5 | 4 |
| Anonymous | – | 9 | 8 |
| Other | 21 | 31 | 26 |
| Total | 1,934 | 1,833 | 1,981 |

Fairness categories for the 61% of complaints within mandate

| Fairness category | 2008 | 2007 | 2006 |
|-------------------------|-------|-------|-------|
| Delay | 38.6% | 39.7% | 37.4% |
| Communication | 9.0% | 6.2% | 7.8% |
| Behaviour | 4.9% | 5.5% | 5.6% |
| Decision-making process | 8.3% | 8.3% | 7.8% |

Mandate complaints handled by specialists

| Fairness category | 2008 | 2007 | 2006 |
|-------------------------|-------|-------|-------|
| Delay | 58.1% | 65.4% | 54.6% |
| Communication | 15.7% | 8.9% | 16.3% |
| Behaviour | 3.9% | 5.8% | 6.1% |
| Decision-making process | 22.3% | 19.9% | 23.0% |

Complaints by category

| Category | Complaints | | Ranking | |
|--|------------|------|---------|------|
| | 2008 | 2008 | 2007 | 2006 |
| Adjudication | 659 | 1 | 1 | 1 |
| No return phone call | 200 | 2 | 2 | 4 |
| Payment | 130 | 3 | 3 | 3 |
| Decision (release) | 101 | 4 | 4 | 5 |
| Unprofessional (rude, hostile, dismissive) | 69 | 5 | 5 | 6 |
| Letter not sent | 44 | 6 | 10 | 8 |
| Access request | 42 | 7 | 14 | 7 |
| Implementation of WSIAT decision | 42 | 8 | 9 | 13 |
| Reconsideration (WSIB) | 38 | 9 | 6 | 11 |
| General system complaint | 33 | 10 | 7 | 12 |

Complaints by subject

| Subject | Complaints | | Ranking | |
|-------------------------------|------------|------|---------|------|
| | 2008 | 2008 | 2007 | 2006 |
| Benefits | 921 | 1 | 1 | 1 |
| Labour market re-entry | 143 | 2 | 2 | 3 |
| Health care | 142 | 3 | 3 | 4 |
| Early and safe return to work | 136 | 4 | 4 | 2 |
| Appeals process | 101 | 5 | 5 | 5 |
| Non-economic loss | 62 | 6 | 6 | 6 |
| Employer assessment issues | 61 | 7 | 7 | 7 |
| Expenses | 45 | 8 | 8 | 8 |
| Earnings basis | 16 | 9 | 10 | 9 |
| Future economic loss | 16 | 10 | 14 | 13 |

Complaints by sector

| WSIB sector | Mandate | Spec. inquiries | Non-mandate | Total |
|---|--------------|-----------------|-------------|--------------|
| Services and Health Care | 153 | (29) | 53 | 206 |
| Hamilton & Primary Metals (St. Catharines) | 136 | (26) | 53 | 189 |
| Construction and Transportation | 101 | (28) | 52 | 153 |
| Industrial (Toronto) | 108 | (18) | 40 | 148 |
| Specialized Claims/Pre-1990 | 99 | (43) | 46 | 145 |
| Government Services (Toronto) | 91 | (21) | 32 | 123 |
| Ottawa office (Kingston) | 75 | (17) | 47 | 122 |
| Kitchener/Guelph & Agriculture | 61 | (10) | 29 | 90 |
| Sudbury & Mining (Timmins & North Bay) | 42 | (5) | 26 | 68 |
| Occupational Disease Services | 47 | (14) | 19 | 66 |
| Windsor office | 42 | (4) | 18 | 60 |
| Thunder Bay & Forestry Pulp & Paper (SSM) | 29 | (7) | 26 | 55 |
| London office | 39 | (1) | 15 | 54 |
| Appeals | 22 | (5) | 15 | 37 |
| Spec Claims/Specialist & Advisory Services | 22 | (7) | 6 | 28 |
| Small Business | 13 | – | 12 | 25 |
| Spec Claims/Serious Injury Program | 18 | (4) | 6 | 24 |
| Regulatory Services/Compliance | 8 | (2) | 4 | 12 |
| Business Services | 10 | (2) | – | 10 |
| Eligibility Unit | 5 | – | 3 | 8 |
| Finance/Collections | 5 | (1) | 2 | 7 |
| Employer Services | 4 | (2) | 1 | 5 |
| Corporate Executive/Legal Services | 2 | – | 2 | 4 |
| Health Services/Health Services Management | 2 | – | 1 | 3 |
| Finance/Rev Audit | 2 | (1) | 1 | 3 |
| Prevention/Prevention Services | 3 | (3) | – | 3 |
| Spec Claims/Central Processing | 1 | – | 1 | 2 |
| Finance Corp Control/Treasury | 1 | – | 1 | 2 |
| Finance/Finance Planning/Employee Audit | 1 | – | 1 | 2 |
| Program Development/VP office | 2 | – | – | 2 |
| Corporate Executive/Office of the Chair | 1 | – | – | 1 |
| Corporate Executive/Office of the President | 1 | (1) | – | 1 |
| Health Services/Specialty Programs | 1 | (1) | – | 1 |
| Health Services/Clinical Services | 1 | (1) | – | 1 |
| Prevention/Best Practices | 1 | (1) | – | 1 |
| Prevention/Prevention Stds and Incentives | 1 | – | – | 1 |
| Policy & Research/Revenue Policy | 1 | – | – | 1 |
| Not applicable to WSIB | – | – | 43 | 43 |
| Not determined | 23 | – | 178 | 201 |
| WSIAT | – | – | 27 | 27 |
| Total | 1,174 | (254) | 760 | 1,934 |

Complaint resolution outcomes

Of the cases opened and closed by the Commission in 2008, 88 per cent were resolved as follows:

| Outcome | 2008 (88%) | 2007 (91%) |
|---|--------------|--------------|
| Advice provided to complainant | 350 | 311 |
| Referral to WSIB | | |
| mandate | 658 | 561 |
| non-mandate | 61 | 138 |
| Inquiries made by FPC (including systemic issues) | | |
| WSIB action required—complaint resolved | 192 | 240 |
| no WSIB action required | 62 | 56 |
| File reviewed—no WSIB action required | 62 | 36 |
| No current fairness issue identified | 15 | 12 |
| Right of appeal exists (non-mandate) | 238 | 246 |
| Issue under WSIB review | 20 | 36 |
| Issue under WSIB appeal (non-mandate) | 36 | 24 |
| Total | 1,694 | 1,660 |

The remaining 12 per cent include:

| Outcome | 2008 (12%) | 2007 (9%) |
|---|------------|-----------|
| Abandoned by complainant | 11 | 8 |
| Under WSIAT appeal | 8 | 10 |
| Complaints against WSIAT (non-mandate) | 27 | 16 |
| Complaints against another organization (non-mandate) | 37 | 34 |
| Other non-mandate complaints | 22 | 38 |

How We Work

Complaint handling process

Intake staff

- listen to concerns
- review claim file and determine if complaint is within mandate
- refer person to WSIB manager, if necessary, so that WSIB has an opportunity to resolve the complaint.

Specialists

- inquire into fairness issues WSIB has not resolved
- contact WSIB staff for their information and perspective
- escalate issue within WSIB, if necessary
- seek resolutions that are fair to both parties
- report unresolved matters and trends to commissioner.

Commissioner

- investigates systemic issues
- makes recommendations to WSIB senior executives or board of directors
- reports to WSIB board of directors and to the public.

What happens when you contact us?

We talk to you and listen to your concerns.

We can access most claim files immediately.

We may ask you to contact the WSIB manager to try and resolve the concern.

We will ask for your verbal consent to speak to your representative, or to the WSIB, about your concerns.

Is there a fairness issue?

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

Delay

Was there an unreasonable delay in taking action or in making a decision?
Was the affected party informed of the delay and the reasons for it? Was correspondence answered or were calls returned in a timely fashion?

Communication

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

Behaviour

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

Decision-making process

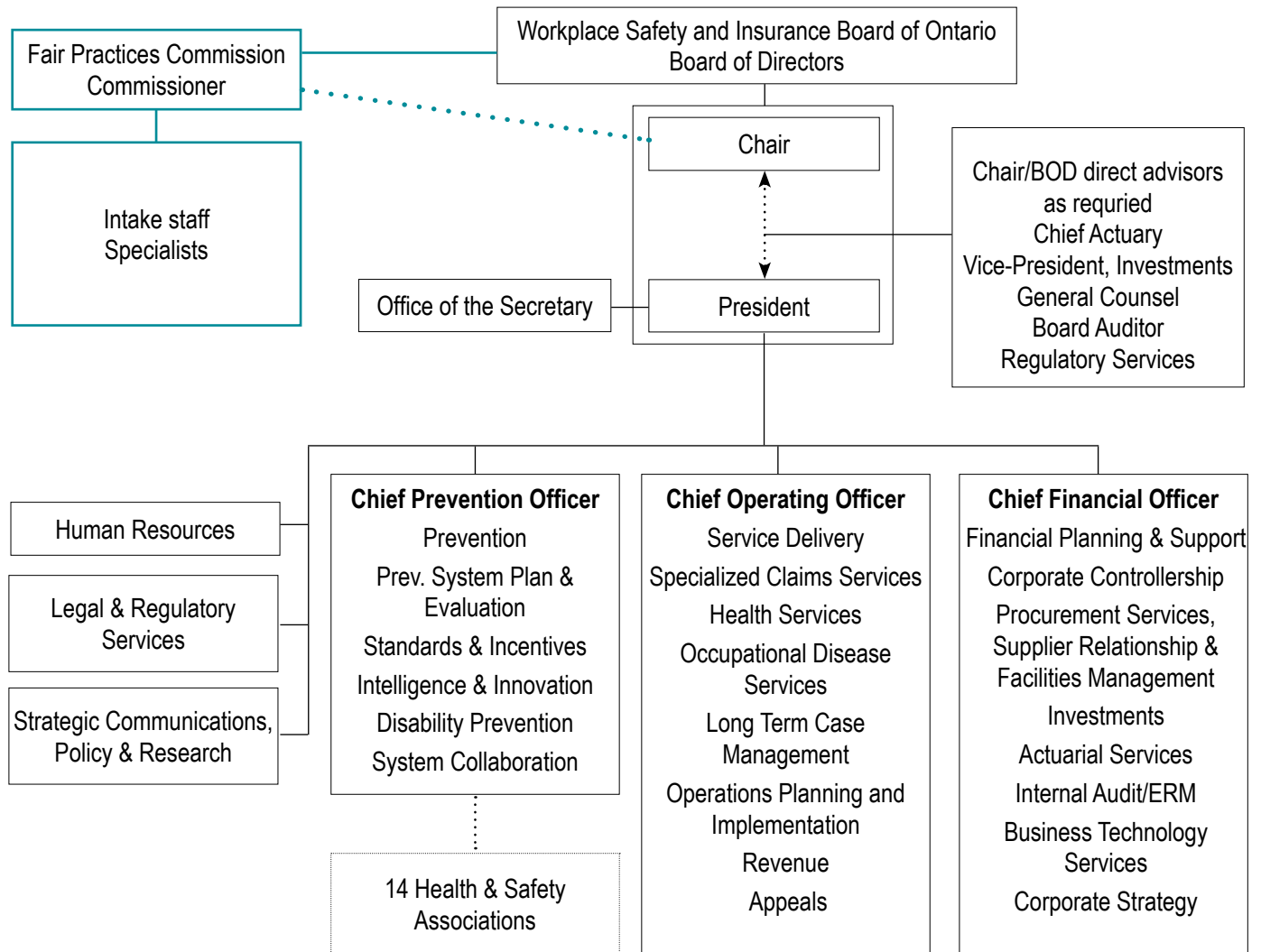
Did the person affected by the decision or action know it would happen? Did the person have input or an opportunity to correct or respond to information? Was information overlooked? Is there a policy or guideline related to the matter? If so, was it applied in a manner consistent with how it was applied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

Outcomes

In resolving fairness issues in individual cases the Commission may suggest that the WSIB

- put it right – take action on a delay or correct an omission or oversight
- give further reasons for a decision
- offer an apology
- develop a protocol or procedure
- review service standards
- consider further staff training.

The Fair Practices Commission and the WSIB



Budget

| | 2009 Budget | 2008 Actual | 2008 Budget |
|-----------------------------|---------------------|-------------|-------------|
| Salaries, permanent | 644,046 | 633,257 | 639,876 |
| Salaries, temporary | 139,780 | 95,184 | 171,429 |
| Total salaries | 783,826 | 728,441 | 811,305 |
| Benefits | 87,079 | 82,266 | 83,957 |
| Total salaries & benefits | 870,905 | 810,707 | 895,262 |
| Equipment & maintenance | 44,384 ¹ | 17,568 | 2,000 |
| Voice & data communications | 36,000 | 29,324 | 33,600 |
| Publication & mailing | 30,200 | 12,036 | 38,200 |
| Occupancy cost | 6,600 ² | - | 6,000 |
| Travel | 75,400 ³ | 46,848 | 69,000 |
| Supplies & services | 47,600 | 16,981 | 54,400 |
| Staff training | 26,000 | 11,013 | 20,800 |
| Specialized services | - | 120 | - |
| Other operating expenses | 30,100 ⁴ | 1,936 | 25,100 |
| Depreciation & amortization | | 19,782 | |
| Total non-salary expenses | 296,284 | 155,608 | 249,100 |
| Total operating expenses | 1,167,189 | 966,315 | 1,144,362 |
| Total capital expenditure | 20,000 | 69,533 | 100,000 |

Notes

1. Equipment maintenance and support for the new case tracking system.
2. Occupancy cost for records retention for 2009.
3. Outreach and training for staff for case tracking system.
4. Contingency for legal fees.