

**FAIR
PRACTICES
COMMISSION**

2020

ANNUAL REPORT



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



Également disponible en français

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The Mission of the Fair Practices Commission

is to facilitate fair, equitable and timely resolutions to 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 for the people it serves.

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Acronyms Used in this Report

ARO	Appeals resolution officer	COPD	Chronic obstructive pulmonary disease	GECA	Government Employees Compensation Act	WFH	Work from home
ASD	Appeals Services Division of the WSIB	CSR	Customer service representative	LOE	Loss of earnings	WSIA	Workplace Safety and Insurance Act
CERB	Canada Emergency Response Benefit	ESDC	Employment and Social Development Canada	NEL	Non-economic loss	WSIAT	Workplace Safety and Insurance Appeals Tribunal
CMS	Chronic mental stress	FOI	Freedom of Information	RTW	Return to work	WSIB	Workplace Safety and Insurance Board

From the Commissioner

2020 was a year of transition for the Commission. Anna Martins, who had been with the Commission since it was created in 2004, retired as Commissioner. I would like to thank Anna for the nearly two decades of exemplary service she has given to the organization and its stakeholders.

I was appointed to a five-year term as Commissioner by the WSIB's Board of Directors on November 1, 2020, having previously served as Anna's deputy. I am honoured by the trust that the Board of Directors has put in me and look forward to helping to improve service at the WSIB.

The impact of the global pandemic has been devastating. Many businesses have been forced to close temporarily and some may never re-open. Over 20,000 people contracted COVID-19 at work in Ontario, some of whom tragically lost their lives. Thank you to all the essential and frontline workers for your continued sacrifices.

In March, the WSIB and the Commission both transitioned to work-from-home (WFH) organizations. The Commission received very few complaints related to service disruptions due to this transition. In fact, the 1,832 issues opened by the Commission in 2020 is the lowest total since 2016 (see the Issues Opened chart on page 21 of this report).

Although the number of issues raised with the Commission dropped in 2020, the WSIB was still called to address more than 300 issues after the Commission's review. You can read examples of these issues in the report that follows.

In one such case (found on page 7 of this report), a complainant alleged that the WSIB was ignoring the implications of dozens of Workplace Safety and Insurance Appeals Tribunal (WSIAT) decisions that

overturned the WSIB's practice of reducing benefits for work-related chronic obstructive pulmonary disease (COPD) based on a worker's history of cigarette smoking. (Note: The WSIB ceased this practice on September 1, 2020, after the Commission raised concerns about the WSIB's review of the WSIAT's decisions and the practice with the WSIB's Board of Directors.)

I'd like to thank the WSIB Chair Elizabeth Witmer and the rest of the WSIB's Board of Directors for their continued support of the Commission and its mandate. The Board's unwavering commitment to the principles of fairness allow the Commission to provide effective oversight of the WSIB and its operations.

And thank you to the staff at WSIB, who take time from their busy schedules to respond to our questions and inquiries. I appreciate the effort you make to respond to the Commission and help to resolve the concerns we raise.

I would also like to thank the people who contacted the Commission in 2020. I encourage anyone who has a complaint about how they've been treated by the WSIB to contact us. We understand that your story may not be easy for you to tell; many of the injured workers who call the Commission are still suffering from their injuries. You have my assurance that we will listen to you. And if we can't help with your complaint, we will explain why and do our best to refer you to the appropriate resources for assistance.

Finally, I'd like to thank the Commission's staff for their hard work and adaptability in 2020. You are the engine that drives the organization, and you deliver great results for the employers, workers and service providers who the Commission serves.

—Tom Barber, Commissioner

An Independent Office

The Fair Practices Commission is an independent office that works to promote and ensure fair practices at the WSIB of Ontario. Our operating budget for 2020 was \$1.092 million.

As the organizational ombudsman for the WSIB, we:

- listen to the concerns raised by injured workers, employers, and service providers
- resolve fairness issues as quickly as possible
- identify recurring fair practice issues and report them to the WSIB with recommendations for improvements.

Three main principles guide our work:

1

Impartiality

We advocate for fair practices and do not take sides in complaints.

2

Confidentiality

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

3

Independence

We serve injured workers, employers and service providers and work independently in the interests of fairness. We report directly to the Board of Directors—the governing body of the WSIB.



The Value of the Commission's Work

1

Building relationships

We listen to the people who contact us and provide options for resolving problems. We assist WSIB staff in understanding the concerns and frustrations of the people it serves. 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.

2

Resolving conflict

Our independence from the WSIB provides an opportunity to take a fresh look at concerns and find creative solutions. Our intervention at an early stage may help to prevent future unfairness as well as the expense and time invested in formal appeals.

3

Preventing problems

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.

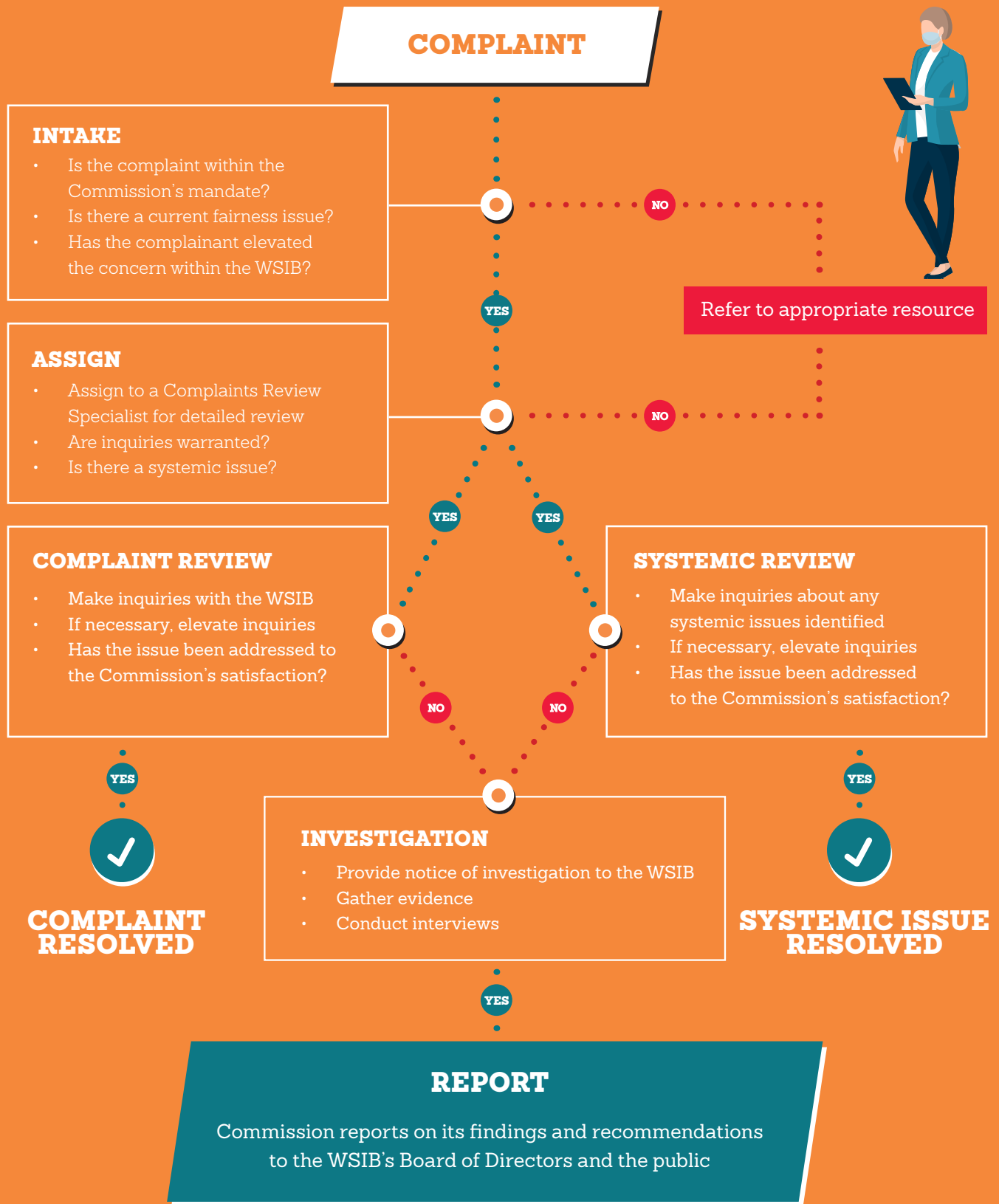
4

Acting as an agent of change

By helping the WSIB understand how to resolve conflict and build better relationships, we foster a culture in which the WSIB is able to adapt and respond to the needs of the people it serves.



The Complaint Process



The Resolution Process

When the Commission receives a complaint or inquiry, we respond according to what's appropriate to the circumstances of each individual.

When a worker, employer or service provider contacts the Commission, we open a file. A complainant will often raise more than one issue; these are all added to the file.

Typically, we encourage each individual to discuss their issue first with the WSIB staff member who is most directly responsible. If that doesn't resolve it, we recommend that they raise the issue with a manager. Then, if the concern is still unresolved, we work to determine whether a current fairness issue is at play.

We analyze each issue raised by workers, employers and/or service providers against four fairness categories, asking:

Behaviour

Was the staff unbiased and objective when reviewing information? Was the staff courteous and professional? Did the WSIB respond fairly and respectfully if someone felt poorly treated? If the WSIB made a mistake, did they acknowledge and correct it?

Communication

Did the WSIB clearly and comprehensively explain the reasons for the decision? Were next steps or options explained? Does the person need more information in order to understand WSIB processes and policies?

Delay

Was there an unreasonable delay in taking action or making a decision? If so, was the affected party informed of the delay and the reasons for it? Were letters answered or calls returned in a timely fashion?

Decision-Making Process

Did the person affected by the decision know it would happen? Did the person have an opportunity to provide input or to correct or respond to the information provided? Did the WSIB consider all relevant information? Is there a policy or guideline that relates to the matter? If so, was it applied in a manner consistent with its application in similar matters?

If we determine that a fairness issue is not involved, we'll explain this to the complainant.

Alternatively, if a fairness issue appears to be at play, we'll contact WSIB management to get their perspective and discuss steps to resolve the issue. If the issue remains unaddressed, we'll approach senior management to discuss options for resolution.

Finally, if we determine that a complaint does not fall within the Commission's mandate, we categorize it as "non-mandate." In such cases, we'll explain our decision to the complainant and refer them to appropriate resources for further assistance.

We then call the complainant with the results.

Systemic Issues for 2020

1 The WSIB's practice of apportioning NEL awards for COPD

In the summer of 2019, the Commission received a complaint from a worker representative about the WSIB's practice of apportioning non-economic loss (NEL) awards for work-related COPD based on a history of cigarette smoking.

The complainant alleged that the WSIB was ignoring the broader implications of more than a dozen decisions of the WSIAT from 2018, stating that "it is now settled, within [WSIAT] case law, and based on medical evidence, that COPD is not a divisible injury and that apportionment for pre-existing cigarette smoking is not generally available."

i. The WSIB's response

The Commission made inquiries with WSIB staff about its review and assessment of the WSIAT's decisions on this issue. The WSIB told the Commission that it needed to do its own analysis of the scientific and medical evidence on COPD before making any changes to its current practice. They further informed the Commission that they were in the process of procuring an expert medical opinion on COPD. In the meantime, WSIB decision-makers continued to apportion NEL awards for COPD based on a history of cigarette smoking.

ii. The Commission's concerns

After carefully considering the WSIB's responses and assessing the available evidence, the Commission raised a number of concerns with the WSIB about its review of this issue. Unfortunately, the WSIB staff responsible for the review of its COPD apportionment practice disagreed with the Commission's assessment.

FLASHBACK

Changing WSIB practice

In the Commission's 2009 Annual Report, we reported on a complaint received from the representative of a large employer. The representative expressed concerns that WSIB decision-makers were following a long-established WSIB practice rather than recent WSIAT decisions on the appropriate interpretation of Section 43 of the *Workplace Safety and Insurance Act (WSIA)*. The Commissioner at the time reviewed the employer's concerns with the WSIB's Chief Operating Officer. As a result, the WSIB adopted a new practice that accords with WSIAT's interpretation of Section 43.

The Commission's work on this issue was interrupted when the Commission was forced to close its physical office due to the COVID-19 pandemic. Given this delay, the Commission opted to bypass its normal escalation process and bring this issue to the attention of the WSIB's Board of Directors. In its summary of this issue for the Board, the Commission highlighted several fairness concerns, including the timeliness and thoroughness of WSIB's review, as well as concerns with the fairness of WSIB's interim decision-making.

iii. The WSIB takes action

Following further discussions of the Commission's concerns with WSIB senior management, the WSIB decided to cease its practice of apportionment of NEL awards for COPD on September 1, 2020.

Systemic Issues for 2020

The WSIB told the Commission that a decision on whether this change in practice would be applied retroactively would be made in early 2021, after it received the results of its scientific review of COPD.

iv. Update

In April 2021, the WSIB announced that it would no longer reduce NEL awards for most people with claims for COPD. The WSIB also announced in April 2021 that it would reconsider all decisions to reduce a NEL award for COPD due to smoking made on or after April 20, 2016, i.e., the date WSIAT released decision number 1884/07. This decision analyzed the “two distinct and factually irreconcilable” streams of WSIAT decisions on the divisibility of COPD and consequently found COPD to be non-divisible.

2 Delay in adjudication of claims for entitlement to secondary disabilities

In 2020, the Commission received several complaints from injured workers who were awaiting adjudication of their entitlement claims for psychotraumatic or chronic pain disabilities.

According to two WSIB policies—*Psychotraumatic Disability* (15-04-02) and *Chronic Pain Disability* (15-04-03)—a worker may be entitled to benefits for a psychotraumatic disability or a chronic pain disability when the disability occurs as a result of a work-related injury.

The WSIB’s target for reviewing these entitlement claims is 28 business

days. However, the Commission noted that in some cases, workers were waiting almost four months for these decisions to be made. WSIB staff told the Commission that the Secondary Entitlement team, which is responsible for reviewing these claims, was overwhelmed and had thus been unable to meet their 28-day target.

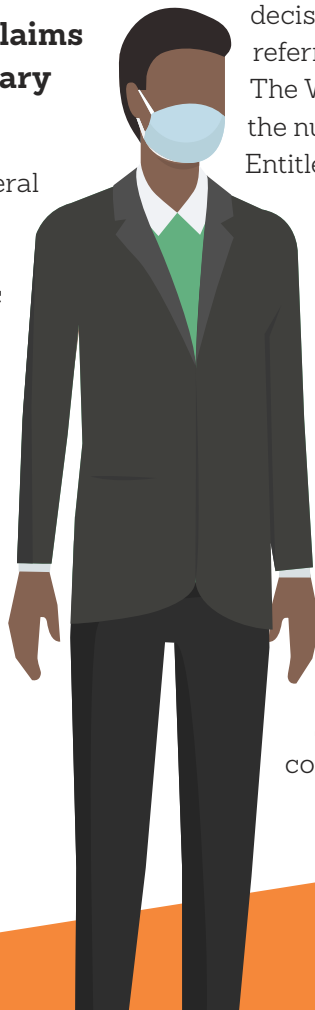
In late 2020, a director told the Commission that it had an inventory of approximately 1,400 claims awaiting review. The WSIB advised that additional case managers had been assigned to adjudicate these claims. The WSIB also ensured that it was prioritizing claims involving financial hardship—where a worker may be entitled to loss of earnings (LOE) benefits.

The WSIB is also developing training to enable non-Secondary Entitlement case managers to make decisions on some matters that are currently referred to the Secondary Entitlement team. The WSIB anticipates that this should reduce the number of referrals that the Secondary Entitlement team receives.

The Commission continues to monitor the WSIB’s progress on addressing delays in this area.

3 Glitch causes correspondence to be misdirected on multiple claims

A worker representative contacted the Commission to complain that the President’s office had not responded to his letters from July or August 2020. In those letters, the representative explained that in some instances he was not receiving certain correspondence, while in other instances, he



was receiving multiple copies of what was essentially the same letter.

The Commission spoke with a WSIB director, who confirmed that WSIB was aware of the issue and was taking steps to investigate it.

Ultimately, the WSIB discovered a system error that was causing its service provider to put physical copies of the same letter from a claim in one envelope rather than separating the letters and mailing them to each workplace party.

A fix was fully implemented on September 21, 2020. At that time, the WSIB determined that the risk for privacy breaches was low, as any misdirected correspondence would have been information the recipient would have been copied on.

4 Delays at Appeals Services Division

A representative complained to the Commission that several client appeals were delayed at the WSIB's Appeals Services Division (ASD).

The Commission spoke with a senior manager in the ASD, who explained that their service commitment is to have 80% of appeals processed within six months. And though in 2019, 90% of appeals had been processed within that timeframe, at the time of our inquiry, the ASD was only processing 75% of appeals at this pace.

The senior manager in the ASD explained to the Commission that it planned to recruit more appeals resolution officers (AROs) in order to address the inventory of claims that were ready for assignment. As an interim measure, the WSIB hired retired AROs on contract and offered overtime to its current AROs in order to reduce this inventory.

As a result, by the end of June 2020, 87% of appeals were being resolved within six months of registration, thereby exceeding the ASD's service commitment.

5 Entitlement decision delays for federal government employees

In October 2020, a retired employee of the federal government complained to the Commission that the WSIB had yet to make a decision on entitlement to his claim for a chronic mental stress injury from February 2019.

Under an agreement with the federal Minister of Labour, the WSIB administers compensation claims for federal employees who are covered under the *Government Employees Compensation Act* (GECA). Before WSIB can adjudicate a federal employee's claim, the agreement requires the WSIB to confirm the employee's employment status with the Employment and Social Development Canada (ESDC), which acts as the Minister's representative. In practice, this means that the ESDC must countersign the *Employer's Report of Injury/Disease* (i.e., WSIB's Form 7) before the WSIB will proceed to reviewing the claim.

Under the *Employers' Initial Accident-Reporting Obligations* policy (15-01-02), the WSIB must receive an employer's complete accident report within seven business days of the employer learning of the reporting obligation. Employers who fail to comply with their reporting obligations may face fines for



Systemic Issues for 2020

late reporting. However, the WSIB has exercised its statutory discretion to excuse federal employers from late filing penalties in consideration of inherent delays created by the ESDC's mandated countersigning process.

In this case, the WSIB wrote to the ESDC in March 2019 requesting a countersigned Form 7. According to the agreement between the Minister of Labour and the WSIB, the ESDC is to "use its best efforts" to respond within 72 hours to WSIB requests for information required to process a claim. However, the ESDC did not respond and the WSIB did not follow up.

In June 2019, the WSIB told the worker that it could not adjudicate his claim without the countersigned Form 7 and that his claim would be "held in abeyance" until the countersigned Form 7 was received.

In August 2020, the worker contacted the WSIB again and the WSIB began to take further steps to request the countersigned Form 7. Nevertheless, the adjudication remained stalled. A WSIB manager told the worker that there was nothing they could do to compel his employer to submit the form.

Frustrated, the worker called the Commission in October 2020. He told the Commission that he was battling stage IV cancer and the delay was distressing him.

Upon further investigation by the Commission, a WSIB manager confirmed that the issue of delays with countersigned Form 7s is a well-known and long-standing problem. Further efforts by WSIB staff to have the ESDC provide the countersigned Form 7 for this claim—including efforts by WSIB's Legal Services area—were unsuccessful.

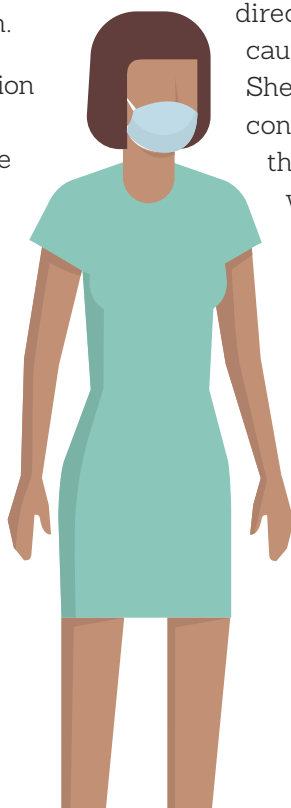
Ultimately, the WSIB sent written notice to the ESDC indicating that it would adjudicate the claim without the countersigned Form 7 if it wasn't received by December 15, 2020. As the countersigned Form 7 had not been received, the WSIB proceeded to adjudicate the worker's claim without it.

*On behalf of the worker and myself,
I thank you for your involvement.
You were a wonderful light and the
FPC is so refreshing."*

—Worker representative

The Commission discussed the potential systemic implications of this complaint with a WSIB executive director. She also acknowledged the historical delays experienced by their staff in receiving information from the ESDC and federal employers. The executive director agreed to gather data about delays caused by lack of a countersigned Form 7. She further clarified that in exceptional cases, considering the merits and justice of a case, the WSIB has discretion to adjudicate claims without a countersigned Form 7. Finally, the executive director committed to looking into the training provided to WSIB staff on how to handle these delays.

The Commission continues to receive updates on the steps that the WSIB is taking to address this issue.



Updates on Systemic Issues

from Previous Annual Reports

1 **The WSIB's review of claim files with notes about disruptive behaviour**

In 2017, the Commission reported problems with the WSIB's process for imposing contact restrictions on injured workers whose behaviour it deemed inappropriate, unacceptable or threatening. (For further information, see page 19 of the Commission's 2017 Annual Report and follow up on page 13 of the 2019 Annual Report.) In response, the WSIB reviewed its approach and took a number of steps, including updating their Threats Protocol and reviewing accommodation issues for injured workers with special needs.

In February 2019, the WSIB completed its review of all claims with contact restrictions. Meanwhile, throughout 2019 and 2020, the WSIB continued to review claims with notes about disruptive behaviour but no contact restrictions.

As of the end of 2020, the WSIB reported to the Commission that it had completed a review of more than 15,000 claim files, with approximately 365 remaining. The WSIB had planned to complete this project by the end of 2020; it now anticipates that staff will be able to complete their review of the remaining claim files by March 31, 2021.

2 **Increasing number of complaints about the WSIB's warning and restriction process**

In the Commission's 2019 Annual Report (see page 9), we reported that we had received an increasing number of complaints from workers who felt unfairly treated by the WSIB's warning and restriction process.

The Commission received 14 complaints about contact restrictions in the fourth quarter of 2019—an increase of 250% compared to the same period in 2018, and the most in any quarter for the last three years. However, this trend did not continue at the same level in 2020; the Commission received only seven complaints about contact restrictions in the first two quarters of 2020.

We'll continue to review complaints on a case-by-case basis from WSIB stakeholders who feel unfairly treated by the WSIB's warning and restriction process.



Impact of COVID-19 on WSIB Services and Related Complaints

The Commission received very few complaints about service disruptions related to the WSIB's transition to a WFH organization. When complaints were received, the WSIB generally took quick action to resolve them.

In one such case, a worker complained to the Commission that the WSIB had ended his LOE benefits without notice or explanation prior to Ontario's COVID-19 lockdown. And though the worker had left several messages for WSIB managers, he had received no response.

The Commission spoke with a WSIB manager in mid-April, who advised that the case manager assigned to the claim had just been set up to WFH and would contact the worker and employer.

After the case manager spoke with the workplace parties, she allowed retroactive and ongoing LOE benefits.

1 The WSIB transitions to a digital access process in order to allow appeals to continue

The WSIB's access process—which allows workplace parties to access claim file information—is an important part of the appeals process. Yet, during the early stages of the WSIB's transition to a WFH organization, the Commission heard from several representatives that the WSIB's access process had been put on hold.

WSIB management informed the Commission that the access process, which traditionally relies extensively on hard copy documents, was on hold while the WSIB sought a digital solution.

At the time of the Commission's inquiry, the WSIB was piloting a process for providing digital access using secure email. Shortly thereafter, the process was rolled out to all stakeholders. The Commission was also told that the WSIB's access team was working closely with the ASD to prioritize access requests for claims with upcoming hearings.

i. The WSIB falls behind on access requests

In September 2020, a worker representative raised concerns about issues with accessing multiple claim files. He attempted to address these concerns with a WSIB manager but received no response.

At the time of the Commission's inquiry, the inventory of access requests was approximately 8,000. The WSIB normally processes access requests within 21 days, but the timeline was closer to 10 weeks in the fall of 2020.

The WSIB informed the Commission of the steps it was taking to address the backlog of access requests. This included mobilizing additional staffing resources and continuing to prioritize access requests for claims with upcoming appeal dates.

With respect to the specific claims that the representative brought to the Commission's attention: In some cases, a copy of the claim file was re-sent electronically while in others, the Commission discovered that the claim had not been referred to the WSIB's access area, even though the representative had submitted an Intent to Object form months earlier.

In due time, the Commission worked with WSIB staff and the worker representative to address all of his outstanding issues.

ii. The WSIB improves digital access process

By the end of 2020, the WSIB moved to a file-sharing process for providing digital access to claim files, in lieu of providing documents via email.

As a result, the Commission received positive stakeholder feedback on this new process.

2 The WSIB ensures migrant workers diagnosed with COVID-19 can access its services

The Commission made inquiries on its own initiative into the WSIB's response to reported outbreaks of COVID-19 among Ontario's migrant worker population.

In response, the WSIB confirmed that it had taken several steps: Firstly, it had formed a working group with the Ministry of Labour to address the issue. Secondly, it had assigned a stakeholder manager to work with employers, consulates and community advocates in order to address issues related to claim reporting. Thirdly, the organization had contacted employers with reported COVID-19 outbreaks but no corresponding WSIB claims, to remind them of their reporting obligations. Finally, the WSIB advised that it would continue to monitor for compliance and would follow up with specific employers as necessary.

In one specific case involving a farm that had experienced a large outbreak of COVID-19, the WSIB worked with the employer to arrange for a telephone line that migrant workers could use to speak with Spanish-speaking customer service representatives, file WSIB claims and complete intake processes. Further, the WSIB anticipated repeating this process with other large employers in the sector.

The WSIB also made arrangements to ensure that migrant workers who were unable to work due to COVID-19 would still get paid, by having employers continue to pay the workers and then reimbursing the employers directly.

And subsequently, the WSIB updated its website to provide additional information in Spanish about COVID-19 as well as its programs and services for employers and workers.

3 Employer complains about fee charged for using credit card to pay premiums

Notwithstanding COVID-19 closures and the WSIB's deferral of employer premiums, one employer was still intent on paying her premiums. Since the WSIB had temporarily stopped accepting cheques and the employer's bank was closed, she used WSIB's online payment service and paid the premiums via credit card. However, at the time of payment, she didn't notice a 1.75% processing fee that had been added by the online payment portal.

The Commission reviewed the WSIB's process and noted several warnings about the fee associated with the online payment process. The Commission recommended making the warnings more visible and including a call-out on the final screen with an estimate of the fee.

The WSIB also agreed to have the employer's credit card charges (including the fee) reversed, and accepted a cheque without penalty or interest from the employer.



Individual Case Resolutions

Behaviour

1 Worker complains of being “bullied and abused” by WSIB staff

An injured worker complained to the Commission that she had not received a response to her letter of complaint about her case manager. The letter described two recent telephone calls during which she felt “bullied and abused” by her case manager. The worker told the Commission that she barely ate or slept for three days following each call.

At the Commission’s prompting, the worker escalated her concerns by leaving a voicemail message for a manager. Yet again, she received no response.

The Commission contacted the manager, who stated that she hadn’t received the voicemail message, nor had the injured worker’s letter been brought to her attention.

Following the Commission’s prompting, the manager listened to the recorded telephone calls, reviewed the worker’s letter, and found that the worker had been dealt with in an inappropriate manner. The manager apologized to the worker and assigned a new case manager. Plus, the manager further advised that she would use this complaint as a coaching opportunity for staff improvement.



Communication

1 Worker upset by unjustified review of benefits

A worker representative complained to the Commission that the WSIB had reviewed his client’s benefits after the worker’s final benefit review, without sufficient basis.

Section 44 of the WSIA states that the WSIB cannot review a worker’s benefit payments more than 72 months after the date of injury, except in limited circumstances (e.g., if the worker suffers a significant deterioration in his or her condition that results in a redetermination of the degree of the worker’s permanent impairment).

I appreciate you taking the time to speak with me on Christmas Eve and helping me.”

—Worker

In this case, the worker did not suffer a significant deterioration in his condition; instead, an ARO allowed an increase to the worker’s degree of impairment after the worker appealed the WSIB’s initial decision. The representative told the WSIB that the worker was terribly upset by the uncertainty caused by the review of his benefits.

The worker's representative escalated the matter by writing to a WSIB director. Nevertheless, he received no response. Upon further inquiry, the director told the Commission that the letter hadn't been brought to his attention.

As a result of the Commission's inquiry, the director consulted with the WSIB's Legal and Policy teams. It was subsequently determined that the worker's benefits should not have been reviewed. The director committed to training the staff responsible for the claim on legislative requirements for post-72-month reviews of benefits. He also reminded his team that letters addressed to his attention should be flagged for him.

The WSIB apologized to the worker's representative and removed the letter regarding the review of the worker's benefits from the claim file.

2 Payment explanation puts worker at ease

An injured worker called the Commission because he didn't understand how the WSIB had calculated his benefits following the implementation of an appeals decision. Specifically, the worker had received 19 cheques—totalling \$88,000—without any explanation. Yet, he believed that he was owed an additional \$15,000.

When the worker asked for clarification, he received a 29-page package of mostly memos. However, he said he simply could not “follow the math.” He followed up and spoke with several WSIB staff members, but no one could provide a satisfactory explanation, thus leaving the worker frustrated.

Following Commission inquiries, the WSIB sent the worker a succinct, nine-page payment explanation that he understood and which put him at ease.

Ultimately, there was no shortfall in payments to the worker. In fact, the WSIB discovered that there had been an overpayment of \$14,000. However, since this had been an administrative error, the WSIB marked the overpayment “non-recoverable.”

*Thank you very much.
You hold people accountable and
you've given me hope.”*

—Worker

3 No response to worker inquiries about LOE benefits

An injured worker contacted the Commission because the WSIB had not responded to his correspondence about LOE benefits. The worker's employer laid him off at the end of March because it could no longer offer modified duties.

Although the worker successfully applied for the Canada Emergency Response Benefit (CERB), a lawyer advised him that he should also be following up with the WSIB about his entitlement to further LOE benefits. The worker wrote to the WSIB twice and left a voicemail for a manager but received no response.

After the Commission contacted the WSIB, the case manager immediately contacted the worker and the employer to gather details about the layoff. The next day, the case manager retroactively allowed approximately four months of LOE benefits.

Individual Case Resolutions (continued)

4 Worker's contact restriction changed after he apologizes for his conduct

An injured worker contacted the Commission to complain that his restrictions from phoning WSIB staff or going to WSIB offices adversely affected his ability to access various health care benefits.

The worker's contact restriction had been in place for several years and in 2019, the worker's MPP office submitted a hand-written letter of apology from the worker and a request for removal of the contact restriction. However, the worker received no response.

Following inquiries, the WSIB's Security area told the Commission that they hadn't received the letter of apology. The security manager reviewed the request and decided that the worker would be allowed to phone the WSIB again, though he still wouldn't be permitted to visit a WSIB office in person.

Delay

1 Claim stuck in bureaucratic delay between two teams

A worker representative contacted the Commission about a delay in rating a NEL award. An ARO decision from February 2019 had directed the WSIB to make decisions on permanent impairments for additional areas of injury. Almost a year later, the worker was still waiting for a NEL rating on one last condition.

After the representative escalated her concerns, a NEL manager advised that the last impairment

had to be rated separately from the others and would be completed once the case manager made the appropriate referral back to the Permanent Impairment team. Yet, the representative was concerned that the review would be placed at the bottom of the queue.

I wish I knew about you guys earlier.”
—Worker

The Commission noted that the claim had no dedicated case owner. As a result, no one had made the necessary referral back to the Permanent Impairment team.

Following an inquiry by the Commission, a NEL manager alerted a claims manager of the need for a referral and agreed to rate the worker's permanent impairment on a priority basis upon receipt of the referral.

A week after the Commission's initial inquiry, the WSIB rated the worker's NEL award and the representative received a decision letter shortly thereafter.

2 Expedited appeal for worker experiencing financial hardship

A worker complained to the Commission about a delay in having her appeal heard.

In April 2020, the worker's representative requested an expedited appeal because the worker was experiencing dire financial hardship. When the

worker followed up in early May, WSIB staff assured her that a decision would be issued by mid-May. However, in June, a WSIB manager told the worker's representative that his request for an expedited appeal had not been brought to the attention of the claim's case manager.

Following Commission inquiries, the claim was forwarded to the ASD and assigned as a priority.

In mid-June 2020, an ARO ruled in the worker's favour. As a result, the worker received \$50,000 in retroactive LOE benefits, along with ongoing entitlement to LOE benefits.

3 Lengthy delay in determining entitlement to LOE benefits

An injured worker complained that he hadn't received LOE benefits, even though he had been unable to return to work due to his injuries and the COVID-19 pandemic. He told the Commission that he had written to the WSIB many times and had tried to speak with his case manager and her manager, but no one had responded to him.

Following Commission inquiries, the WSIB reviewed the worker's claim and determined that the worker should have received LOE benefits from February to September of 2020, as his employer had been unable to offer modified duties during that time. However, because the employer had continued to pay the worker while he was off work, the employer received \$20,000. The worker then asked his employer to reinstate the sick and vacation credits he had used during this period.

A WSIB director apologized to the worker for the lengthy delay.

4 Delay in adjudicating claim for CMS

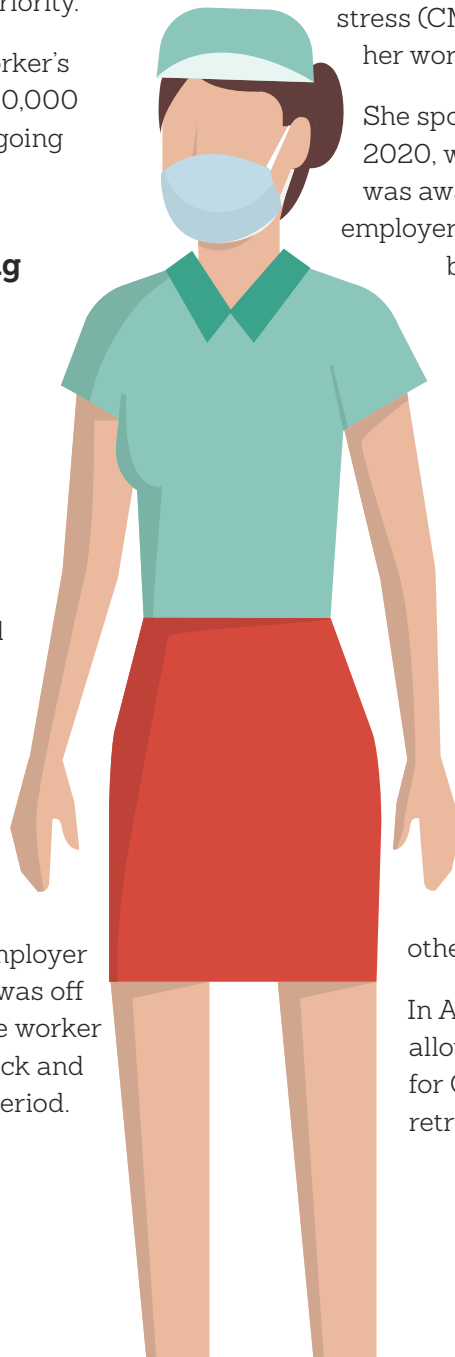
An injured worker complained to the Commission that the WSIB hadn't made a decision on entitlement for her December 2019 claim for chronic mental stress (CMS) related to harassment in her workplace.

She spoke with a manager in February 2020, who told her that the WSIB was awaiting information from the employer and promised her a decision by the end of May.

Upon reviewing the file, the Commission noted that the claim was referred to the WSIB's Investigations Unit in May. However, the worker had not been informed of this.

Following a Commission inquiry, the case manager contacted the worker to explain the rationale for engaging the Investigations Unit. The investigator also took immediate steps to gather further statements from the worker and other witnesses.

In August, the case manager allowed the worker's claim for CMS and paid LOE benefits retroactive to the date of her layoff.



Individual Case Resolutions (continued)

Decision-Making Process

1 Entitlement decision overturned following further review

A worker representative complained to the Commission that the WSIB hadn't provided him with a meaningful response to concerns he had raised about an entitlement decision for his client's arm injury.

The WSIB had denied entitlement because it determined that the worker's diagnosis was incompatible with the mechanism of injury. Following the initial denial, the representative made a detailed submission to a WSIB manager, outlining flaws in the adjudication process. However, he complained that the reconsideration decision dismissed his concerns without explanation.

*Thank you very much for your help.
I called the manager and benefits
are on the way."*

—Worker

The Commission raised the representative's concerns with the manager. Following her review, the manager referred the claim to a medical consultant for an opinion on the compatibility of the diagnosis with the mechanism of injury.

Approximately one week later, following receipt of the medical opinion, the denial was overturned and the worker was allowed entitlement for his arm injury.

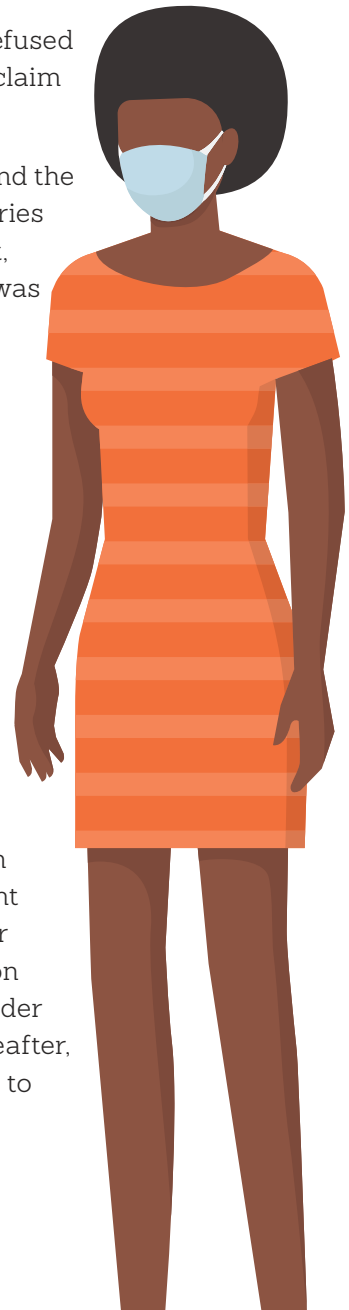
2 The WSIB makes entitlement decision on previously unaddressed area of injury

A worker representative told the Commission that the WSIB had refused to issue a decision on her client's claim for a shoulder condition.

The worker was injured in 2012 and the WSIB allowed entitlement for injuries to the worker's back and knee. Yet, though the injury to his shoulder was reported to the WSIB, the WSIB's decision letter didn't mention it.

The worker representative contacted a WSIB manager, who told her that a decision would be made within two weeks. Instead, the prior decision was mailed a second time and the shoulder condition remained unaddressed. Meanwhile, the manager hadn't returned the representative's follow-up telephone calls.

The Commission contacted a manager, who reviewed the claim file and agreed that an entitlement decision for the worker's shoulder condition was required. A decision denying entitlement for the shoulder condition was made shortly thereafter, which allowed the representative to proceed to the appeals process.



3 Implementation of WSIAT decision incomplete

A worker representative complained to the Commission that the WSIB's implementation of a WSIAT decision was incomplete.

In June 2019, the WSIAT found that the worker was entitled to full LOE benefits for a period of approximately a year and a half, along with benefits for ongoing headaches and a psychotraumatic disability.

In November 2019, the representative provided the WSIB with the information needed to implement the WSIAT's decision. The WSIB implemented the decision seven months later and paid the worker LOE benefits. However, the implementation didn't address the worker's headaches or her entitlement to a psychotraumatic disability.

I really appreciate your time and efforts. It's been a big help. It's awesome."

—Worker

The worker's representative quickly filed an Intent to Object to the WSIB's implementation decision, together with a letter requesting implementation of the rest of the WSIAT decision. He received no response, so he wrote to a WSIB director in September 2020 and then contacted the Commission in November.

Commission inquiries led to action on the claim: The WSIB sought additional medical information

and referred the claim to its Permanent Impairment team for a NEL assessment, as well as to its Psychotraumatic and Chronic Pain Disability team.

In February 2021, the worker received a NEL award. At the time of writing this report, the worker's claim was still being reviewed by the WSIB's Psychotraumatic and Chronic Pain Disability team.

4 New medical information overlooked during reconsideration

A worker representative raised an issue with the Commission involving a recent reconsideration decision that had disregarded relevant medical information.



A WSIB eligibility adjudicator denied the worker's claim for entitlement to a shoulder injury. New medical information was subsequently provided to the WSIB, so the representative asked for a reconsideration of the decision. The decision was upheld, however, on the basis that no new information had been received.

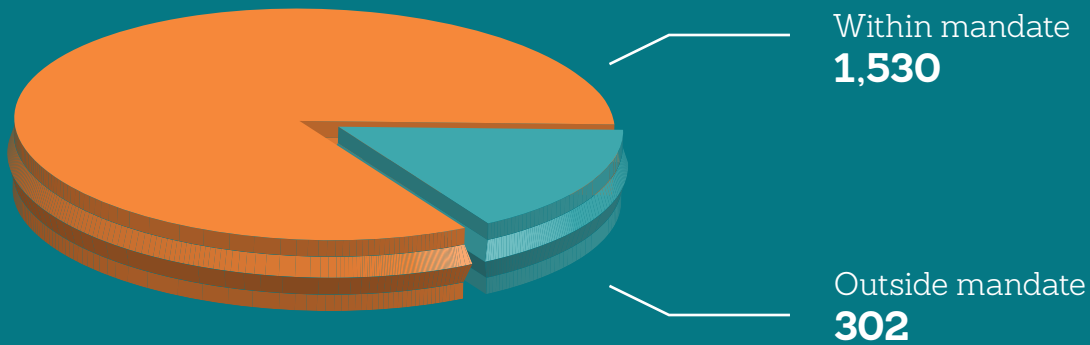
The representative called a WSIB manager to discuss his concerns, but didn't receive a return call.

The Commission made inquiries with a WSIB manager, who advised that the reconsideration denial appeared to have been based solely on the objection form, while the new medical information may have been overlooked.

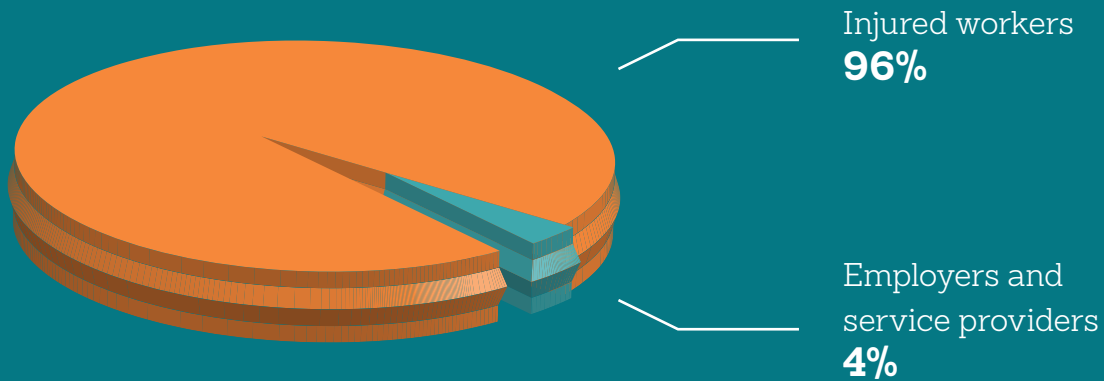
Following further review and a second reconsideration, the worker received entitlement to his shoulder injury.

By the Numbers

Complaints to the Commission in 2020

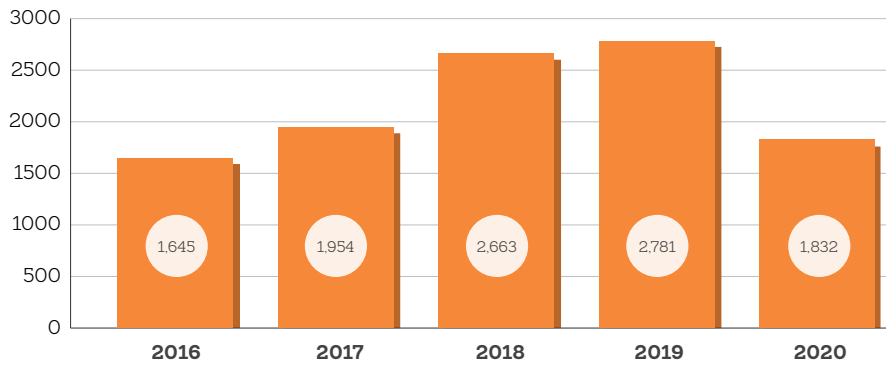


Who Contacted the Commission in 2020



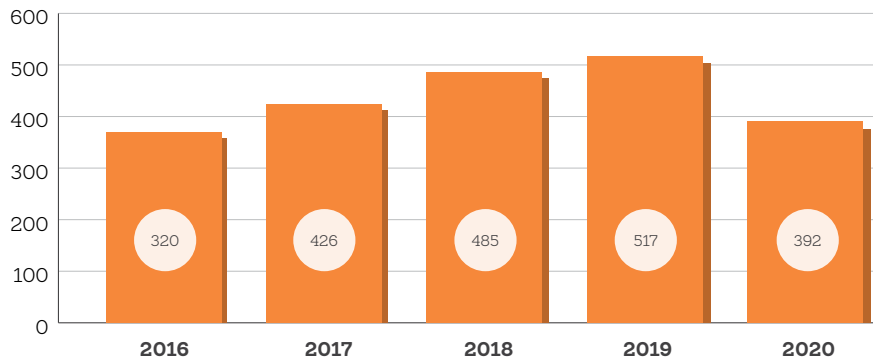
Five-Year Summary

Issues Opened



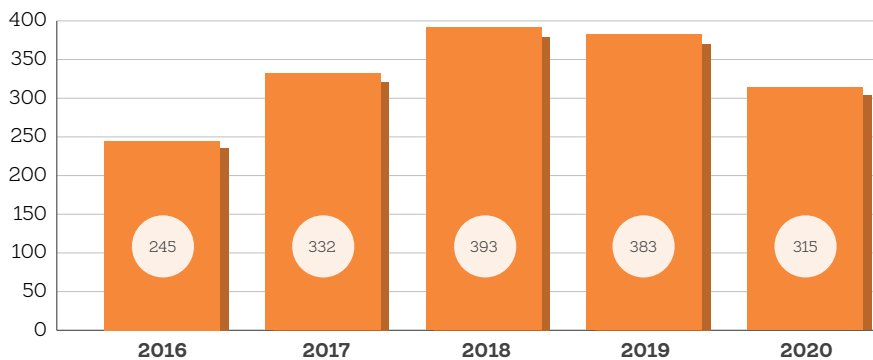
The Commission received **1,832** issues in 2020, compared to **2,781** in 2019. Most of the issues in 2020 were about **delays (680)** and the **decision-making process (450)**.

Inquiries Made by Specialists



Specialists conduct an inquiry 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 continued to decrease in 2020. Most of the issues were about **delays (203)** and the **decision-making process (54)**.

By the Numbers

Issues Opened by Fairness Category

Year	2016	2017	2018	2019	2020
Behaviour	68	92	190	176	78
Communication	317	364	485	579	322
Delay	467	684	1,040	969	680
Decision-Making Process	556	542	548	694	450
Non-Mandate	232	272	400	363	302

Top 5 Ranking of Complaints by Subject

Subject Area	2016	2017	2018	2019	2020
Benefits	736	957	1,406	1,620	906
Health Care	195	251	356	277	214
Return to Work	40	114	110	183	175
Appeals	122	95	89	131	93
Non-Economic Loss	49	55	115	109	54

5



Average # of days for the Commission to resolve complaints





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