

Annual Report

2023

**Fair Practices
Commissioner
for WorkSafeBC**

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Fair Practices
Commissioner

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Introduction

The role of the Fair Practices Commissioner for WorkSafeBC is to investigate complaints by employers, workers, and dependants of workers regarding alleged unfairness in their dealings with WorkSafeBC. This is conducted independently of WorkSafeBC.

If you make a complaint that you have been unfairly treated in your dealings with WorkSafeBC, the Fair Practices Commissioner will

- review the complaint;
- make recommendations to WorkSafeBC if you have been treated unfairly or if there is a systemic problem with WorkSafeBC's policies, practices, or procedures.

If the Fair Practices Commissioner concludes that you have not been treated unfairly, that conclusion will be explained to you.

What the Fair Practices Commissioner cannot do is change a decision made by WorkSafeBC. Other review and appeal processes apply when you do not think a decision is correct.

If you believe that you have been treated unfairly in your dealings with WorkSafeBC, try to resolve it with a manager and then through the Issue Resolution Office.

If you are still not satisfied with the response, contact the Fair Practices Commissioner for WorkSafeBC.



<https://worksafebcfairpracticescommissioner.com/submit-complaint>

Message from the Fair Practices Commissioner

This is my inaugural annual report as the first Fair Practices Commissioner for WorkSafeBC. The Office of the Fair Practices Commissioner was created by the Legislature's enactment of Bill 41 in the Fall Session of the Assembly on November 24, 2022, amending the Workers Compensation Act by adding Sections 355 to 357 to the Act. A copy of these sections of the Act can be found in an Appendix to this report.

I was appointed effective May 1, 2023. For operational reasons, I started to accept complaints on September 26, 2023. As a result, this first annual report covers activity for slightly more than the last quarter of 2023. For that reason, I expect that subsequent reports will provide more information, as a full year of cases will provide a complete basis for a report.

Based on my experience to date, it appears that the Fair Practices Commissioner website could provide a clearer explanation of the process of making a complaint to my office and the intake form could provide greater guidance in how to submit a complaint. Changes to both will be implemented soon.

In establishing my office, I received the assistance of many people within WorkSafeBC, including the Board Chairs and staff. Their support ensured that I was ready to accept cases when I did. What impressed me more than the technical and logistical assistance they provided, was their commitment to helping me create and maintain an office that was independent of WorkSafeBC so that my review of complaints would be completely impartial. This respect for the intention of the legislation to create an independent review is vital for the functioning of the office and appreciated by me.

Finally, my thanks to Ms. Kavita Kumar, who as my assistant, has helped me on this journey. I could not have done it without her.



Allan Seckel, KC
Fair Practices Commissioner

The Fair Practices Commissioner Role & Authority

The scope of the Office of the Fair Practices Commissioner is “to investigate complaints by employers, workers and dependants of workers regarding alleged unfairness in dealings with the Board.” This authority to investigate complaints about unfairness in dealings with the Board does not include the ability to substitute the Commissioner’s judgment about a decision made by the Board or its employees. In other words, if someone is unhappy with [what](#) was decided, they need to take advantage of any review or appeal process offered by WorkSafeBC and its legislation. The Fair Practices Commissioner cannot change what was decided but is focused on [how](#) something was decided, or to ask, “was the process fair?”.

The Fair Practices Commissioner role is completely independent of WorkSafeBC. The Commissioner has been given full, independent access to information systems and all enquiries are answered without restriction. All reviews are independent, work is conducted remotely from the organization and no office space is maintained within the WorkSafeBC buildings.

The sort of questions that can be pursued include:

- Q Was a decision made by an impartial and unbiased decision maker?
- Q Were there any problems with the practices and procedures of WorkSafeBC in relation to the circumstances of the complaint?
- Q Were there any issues with the behaviour of the people at WorkSafeBC who served the complainant? Was the complainant treated respectfully?
- Q Was there effective and transparent communication between WorkSafeBC and the complainant?
- Q Was there undue delay?

The Fair Practices Commissioner Process

The Fair Practices Commissioner is not the first point of contact for employers, workers and dependants of workers who believe that the process has been unfair. Ideally, whenever something happens that seems unfair, the complainant should deal directly with the WorkSafeBC employee responsible for the matter or perhaps elevate the concern to that employee's manager. That is not always possible or even comfortable, and WorkSafeBC has a long history of providing a neutral place to bring a complaint: the Issue Resolution Office (IRO) (previously known as the Fair Practices Office).

The Issue Resolution Office offers impartial assistance to any complainant or organization who has an issue or complaint with WorkSafeBC, including employers, workers, and dependants of workers. The Office works with complainants to help resolve alleged unfairness in dealings with WorkSafeBC.

In this position, the role of the Fair Practices Commissioner is to deal with complaints where the complainant is not satisfied with the resolution of the complaint by the Issue Resolution Office, including any explanation they may have been given by the Issue Resolution Office after their investigation. Complaints will not be accepted unless they have undergone investigation by the Issue Resolution Office first. This approach is consistent with other offices with similar roles, such as the Fairness Officer at ICBC.

In the event that a complaint is sent directly to the Fair Practices Commissioner prior to the Issue Resolution Office's investigation, then the complainant who made the complaint is informed that the Issue Resolution Office must investigate the matter first.

Once the Issue Resolution Office has concluded its work, the complainant that made the complaint may decide whether their concern has been addressed in that process or if they require further investigation by the Fair Practices Commissioner. Once the complaint is received by the Fair Practices Commissioner, a further review and any additional enquiries deemed prudent will be

A Note on Time Limits and Transitions

Except in exceptional circumstances, a complaint to the Fair Practices Commissioner (FPC) must be brought within six (6) months of the date when the Issue Resolution Office concluded its review.

Q How far in the past can a complaint be reviewed by the Fair Practices Commissioner?

A *Complaints will be accepted if the Issue Resolution Office process concluded between November 24, 2022 (date Bill 41 enacted) and September 26, 2023 (FPC began accepting complaints). These complaints will be accepted until March 26, 2024 (when the 6-month time limit concludes).*

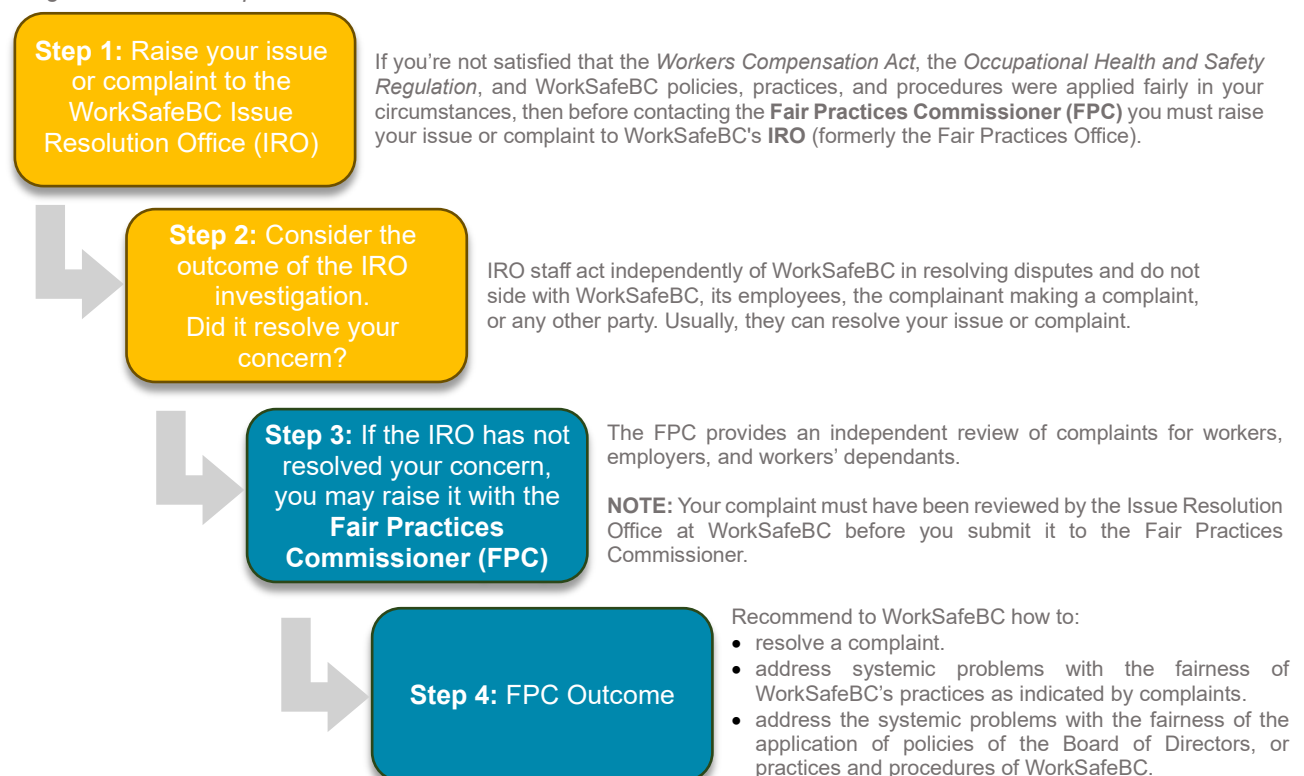
conducted to understand the issue in its entirety. Generally, this will not include interviewing the complainant. All of the facts and evidence the complainant wishes to have considered should have been stated and recorded through the Issue Resolution Office process or, exceptionally, in the complaint form sent to the Fair Practices Commissioner.

Once the investigation has been conducted, the complainant will be contacted in writing. If the results of the investigation has concluded that the complainant has been dealt with unfairly, a detailed explanation of this conclusion will be provided. The Fair Practices Commissioner cannot change the outcome of the complainant's case, only the process is considered, which can lead to dissatisfaction with the decision itself.

When the results of the investigation are deemed unfair, in addition to writing to the complainant, the Fair Practices Commissioner will also recommend to WorkSafeBC a way to resolve a complaint. If the individual complaint exposes a larger problem, recommendations will be made to WorkSafeBC on how to address systemic problems with the fairness of WorkSafeBC's practices as indicated by complaints; or how to address the systemic problems with the fairness of the application of policies of the Board of Directors; or the practices and procedures of WorkSafeBC. To date, none of the nine (9) complaints received so far have involved any such systemic issues.

Not satisfied with the service you've received?
If you feel you have been treated unfairly by a WorkSafeBC officer and you are not satisfied after making a complaint to the officer's supervisor or manager, then follow the steps below. (Figure 1)

Figure 1: Issue/Complaint Process



Cases so far

Since the Office of the Fair Practices Commissioner was created, 60 people have submitted complaints, either on the Fair Practices Commissioner website or by mail.

Of these 60 complaints, 57 were made on behalf of workers and three (3) on behalf of employers.

Three (3) of the 60 complaints were cases that had been concluded by the Issue Resolution Office before November 24, 2022, and were, therefore, too old to be accepted based on the time limit rule.

Of the remaining 57 cases, nine (9) were cases that had already been investigated by the Issue Resolution Office and were eligible for further review and investigation by the Fair Practices Commissioner. Ultimately complaints submitted to the Office of the Fair Practices Commissioner resulted in 48 new cases for the Issue Resolution Office.

Of the nine (9) cases eligible for further review and investigation by the Fair Practices Commissioner, three (3) have been concluded. Many of the nine (9) were received in December and could not be completed by year end.

In future years, with larger caseloads, the expectation is to provide anonymized examples of cases by category in future reports. However, with the small number of concluded cases, it is not possible to provide case examples without risking the privacy of the complainants.

Summary	
Total Complaints Received	60
Complaints Old and Out of Time	3
Complaints that had not previously been investigated by the Issue Resolution Office	48
Qualifying Cases Received	9
Cases Concluded	3

60 Complaints received

9 Qualified for the Fair Practices Commissioner Process

Appendix A

Excerpt from the *Workers Compensation Act*

Division 7 – Fair Practices Commissioner

Definitions

355 In this Division:

"fair practices commissioner" means an officer of the Board who is appointed as the fair practices commissioner under section 356 (1);

"personal information" has the same meaning as in the [Freedom of Information and Protection of Privacy Act](#).

Fair practices commissioner

- 356** (1) The board of directors must appoint an officer as the fair practices commissioner to advise the Board on matters of fairness.
- (2) The fair practices commissioner is to be appointed for a term of 3 years and may be reappointed for additional 3-year terms.
- (3) The [Labour Relations Code](#) does not apply to the fair practices commissioner.
- (4) The fair practices commissioner may do the following:
- (a) investigate complaints by employers, workers and dependants of workers regarding alleged unfairness in their dealings with the Board;
 - (b) make recommendations to the Board to
 - (i) resolve complaints referred to in paragraph (a), or
 - (ii) address systemic problems with the fairness of the Board's dealings as indicated by such complaints;
 - (c) make recommendations to the Board about systemic problems with the fairness of
 - (i) the application of policies of the board of directors, or
 - (ii) practices and procedures of the Board;
 - (d) undertake any other activity prescribed by regulation of the Lieutenant Governor in Council.
- (5) Despite subsection (4), the fair practices commissioner may not comment on or make recommendations respecting the following:
- (a) the merits of a Board decision under the OHS provisions or the compensation provisions, or the merits of a decision of a review officer or the appeal tribunal;
 - (b) a matter that is the subject of a proceeding or a decision of a court or tribunal, as defined in section 1 of the [Judicial Review Procedure Act](#);
 - (c) the setting or revision of a policy of the board of directors under section 319 [*policies of the board of directors*];
 - (d) the carrying out of a matter for which the board of directors is responsible under section 320 [*general responsibilities of the board of directors*];
 - (e) any other matter prescribed by regulation of the Lieutenant Governor in Council.
- (6) The Lieutenant Governor in Council may make regulations respecting any matter contemplated by this section.

Annual report of fair practices commissioner

- 357** (1) On or before April 30 of each year, the fair practices commissioner must
- (a) prepare a report that includes the information required by the board of directors, other than personal information, in relation to the preceding calendar year, and
 - (b) provide a copy of the report to the board of directors.
- (2) After receiving the report under subsection (1), the board of directors must promptly
- (a) provide a copy of the report to the minister, and
 - (b) publish the report on a publicly accessible website.