

# 2024 Fair Practices Commissioner Annual Report

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Fair Practices Commissioner for WorkSafeBC



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# 01

## Introduction

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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 me as the Fair Practices Commissioner for WorkSafeBC.

My job is to investigate complaints by employers, workers, and dependants of workers regarding alleged unfairness in their dealings with WorkSafeBC. I do that independently.

As the Fair Practices Commissioner, I will:

- Investigate your complaint;
- If I find unfairness in how you were dealt with, make recommendations

to WorkSafeBC to resolve your complaint or, if your complaint indicates a systemic problem, make recommendations to WorkSafeBC about systemic problems with the fairness of policies, practices, or procedures of WorkSafeBC; or

- If I do not find unfairness in how you were dealt with, help you understand your issue with WorkSafeBC.

What I cannot do is change a decision made by WorkSafeBC. Other review and appeal processes apply when you do not think a decision is right.



# 02

## Message from the Fair Practices Commissioner

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This is my second annual report as the first Fair Practices Commissioner for WorkSafeBC, and the first for a full year.

The office of Fair Practices Commissioner was created by an amendment to the Workers Compensation Act on November 24, 2022. Sections 355 to 357 to the Act provide the overall terms of the role, which focus on considering complaints that a worker, dependent, or employer were treated unfairly in their dealings with WorkSafeBC. This differs from questions of whether decisions made by WorkSafeBC officers are correct, as the Act already provided avenues of the review and appeal of the substance of decisions. My role is about fair process, and not whether the complainant thinks the outcome is fair. The difference is sometimes difficult to understand, as we all use the word “fair” to express whether we think an outcome is acceptable. As a result,

many complaints to my office are more about what was decided than how it was decided, yet my role is only about the activity and processes that led to a decision. That said, when replying to a complaint I try to explain as best as I can the context of the complaint and what I can and cannot do.

The sections of the Act that govern my role can be found in Appendix A to this report.

My office is independent of WorkSafeBC. I take that independence seriously, and so too does WorkSafeBC. I am grateful to everyone at WorkSafeBC for not just respecting my role’s independence but embracing it. Everyone associated with WorkSafeBC has honoured the intention of the legislation to create an independent review and has also made my ability to conduct independent investigations easier by always cooperating and assisting with my enquiries.

**Allan Seckel, KC**  
**FAIR PRACTICES COMMISSIONER**



# 03

## The Fair Practices Commissioner Role & Authority

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The scope of my office is “to investigate complaints by employers, workers and dependents 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 my 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. I cannot change what was decided.

Instead, my role is focused on how something was decided, or to ask, “Was the process fair?”. The sort of questions I can pursue include:

Reviewing the decision-making process, including:

- Was a decision made by an impartial and unbiased decision maker?

- Were there any problems with the practices and procedures of WorkSafeBC in relation to the circumstances of the complaint?
- Were there any issues with the behaviour of the people at WorkSafeBC who served the complainant? Was the complainant treated respectfully?
- Was there effective and transparent communication between WorkSafeBC and the complainant?
- Was there undue delay?

I exercise my role completely independently of WorkSafeBC. I have been given full, independent access to information systems and all my enquiries are answered without restriction. I work remotely from the organization and do not maintain office space within the WorkSafeBC buildings. All of these practices ensure that every review is conducted independently and objectively, free from any influence or oversight by WorkSafeBC.

# 04

## The Fair Practices Commissioner Process

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As the Fair Practices Commissioner, I am not the first point of contact for employers, workers, and dependents of workers who believe that the process has been unfair. Ideally, whenever something happens that seems unfair, the person 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 (or as it was called before my office opened, the Fair Practices Office).

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

As Fair Practices Commissioner, my role is to deal with complaints where the person 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 the investigation. I do not accept complaints that have not already been investigated by the Issue Resolution Office. This approach is consistent with other offices with similar roles as mine, such as the Fairness Officer at ICBC.

What this means is that when a person sends a complaint to me, the first question is whether the matter has already been dealt with by the Issue Resolution Office. If it has not, then that office, not mine, deals with the matter, and the person who made the complaint is informed that the Issue Resolution Office will investigate the matter.

# The Fair Practices Commissioner Process

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Once the Issue Resolution Office has concluded its work, the person that made the complaint needs to decide whether their concern has been addressed in that process. If they believe it has not, then they may make a complaint to me as the Fair Practices Commissioner. I will then review the matter and make any additional enquiries I think necessary to understand the issue. Generally, this will not include interviewing the complainant. With my review coming after the Issue Resolution Office review, by this stage all the facts and evidence the complainant wishes to have considered should have been stated and be known through the Issue Resolution Office process or, exceptionally, in the complaint form sent to me.

Once I have investigated the matter, I respond to the complainant. I do this in writing. If my investigation causes me to conclude that the person has not been dealt with fairly, I explain

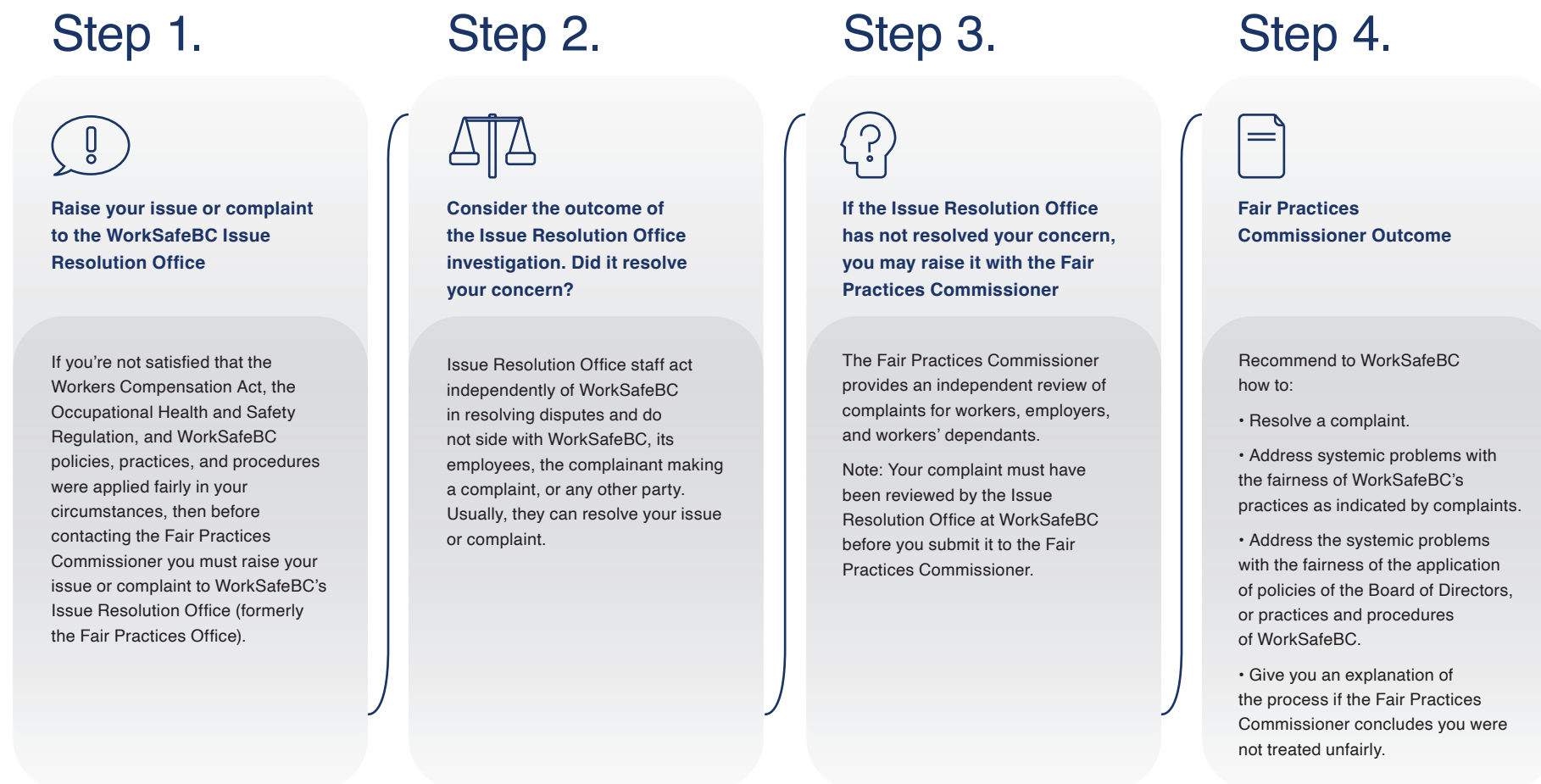
why I have reached that conclusion. In doing so, I generally must explain that I cannot change the outcome of their case as I can only consider the process. I note that many complainants are often primarily dissatisfied with the decision itself.

When I do find unfairness, however, then, in addition to writing to the complainant, I will also recommend to WorkSafeBC a way to resolve a complaint. If the individual complaint exposes a larger problem, I will recommend to WorkSafeBC 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. Please see Figure 1 on page 8 for the full complaint process.

## **A NOTE ON TIME LIMITS AND TRANSITIONS**

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

Figure 1:  
Issue/Complaint Process





# 05

## Case Statistics

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Since opening my office, 189 people have submitted 191 complaints to me, either through the Fair Practices Commissioner website or by mail. In 2024, 130 new complaints were received.

Four of the 130 new complaints were cases that had been concluded by the Issue Resolution Office before November 24, 2022, and so arose from events before my office was created and were too late to be considered by me.

Of the remaining 126 cases, twenty-one (21) were cases that had already been investigated by the Issue Resolution Office and therefore belonged in my process as the Fair Practices Commissioner. This means that complaints to my office resulted in 107 new cases for the Issue Resolution Office. This is in addition to the

volume of cases that are submitted directly to the Issue Resolution Office. When you consider the overall volume of cases that the Issue Resolution Office handles, it appears, to their credit, that they resolve most complaints.

Most complaints brought to me are by workers who are advocating on their own behalf. Of the 21 complaints concluded in 2024, 18 were from workers and one of those 18 was brought on behalf of the worker by a representative (a family member). Two cases were on behalf of employers and one complaint came from a dependent of a worker. The final case was brought by a person who asserted an interest in a decision, but was not a worker, dependent, or employer.

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006

Cases carried  
forward from 2023

021

Qualifying cases received

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130

Total complaints  
received in 2024

021

Cases concluded in 2024

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004

Complaints  
submitted too late

004

Cases carried  
forward to 2025

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107

Complaints that had not  
previously been investigated  
by the Issue Resolution Office

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# 06

## Case Topics

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One of the challenges with many of the complaints I receive is that they are often vague on specifics. This is not surprising as typically complaints are made by the workers themselves, and they are understandably often motivated by a sense of unfairness rather than an analysis of the categories of unfairness that may be familiar to someone with knowledge of the law or practice of procedural fairness.

During the year, I attempted to improve the specificity of complaints by launching a new intake form designed to guide the complainant to providing a clear complaint. This effort, while it improved the clarity of complaints, failed to achieve the desired specificity. That said, the fact that the Issue Resolution Office has already considered the complaint does help considerably in understanding what is at issue.

My goal is to be able to respond to a complaint empathically with an answer that explains the

situation in the context of the complainant's entire history. To achieve that goal often requires me to review the entire claim file. Many of the complaints I reviewed are either from workers with a long history of dealings with WorkSafeBC or from people that have been fierce advocates on their own behalf. The result is that their files can be voluminous. One case required me to review over 20,000 pages of records to ensure I fully understood the complaint. Files of more than 5,000 pages are not uncommon. The time it takes for my review is obviously impacted by the time it takes to review that much material.

With the lack of specificity in the complaints, it is difficult to provide a quantitative analysis on the topics of complaints. Further, few complaints raise only one specific issue; most are multi-factored, making meaningful statistics on claim topics elusive.



## Case Topics

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I can, however, provide some insight into case topics on a quantitative basis.

The most frequent category of complaint is delay. Nobody likes to wait. My observation is that as a matter of operational policy, WorkSafeBC understands this and seeks to be timely. Nevertheless, decisions can take longer than expected by either the worker or WorkSafeBC. What I am looking for in these cases is not just whether time has passed, but also whether there was delay that was unfair. And for delay to be unfair, it must either be deliberate or have caused some prejudice to the person waiting. In 2024, I did not find any cases where delay was either deliberate or prejudicial, though there were cases where waiting was understandably annoying.

Another category of complaint is alleged bias by a decision maker. Typically, this is coupled with a complaint about the decision itself. It is not surprising that someone that dislikes a decision may suggest that the person making it was biased against them. But we all can err even without a bias, which is why WorkSafeBC's processes include reviews and appeals of the outcome of decisions. In these cases, I try to determine a pattern of decision making to see not whether an error was made, but whether there was a change in the pattern that might indicate that something outside the merits of the case was causing decisions to turn against a worker. This can be time consuming, but I hope that when I show the pattern to the complainant, they can appreciate that no bias exists. In the

cases I reviewed this year, I uncovered no evidence of actual bias, nor any cases where someone could reasonably apprehend a bias even if no actual bias existed.

But perhaps the most frequent underlying complaint is that the person is unhappy with the result of a decision. These cases are outside of my role and must be resolved either with a review by the Review Division or, if still unhappy after a review, an appeal to the Workers' Compensation Appeal Tribunal. In my letters, I explain this to the complainants as clearly as I can, though it is already a standard part of the communication of any decision by WorkSafeBC.

# 07

## Advice to WorkSafeBC

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Four cases this year prompted me to provide advice to WorkSafeBC. Privacy prevents me from reporting on the specifics of these cases, but I can disclose the subject matter of the advice and the response from WorkSafeBC.

The most case-specific advice was to suggest to WorkSafeBC that a worker be provided with a new clinical professional after reporting that their relationship with that provider had broken down. I would not normally intervene in such a case. Complainants frequently ask for new personnel on their files, but in the absence of unfairness that is directly the result of some improper behaviour or motive on the part of an officer or service provider (something I have yet to see), I have not intervened in the assignment of cases either internally within WorkSafeBC or with respect to service providers outside of WorkSafeBC. This was an extraordinary case related to special circumstances of the worker.

After this suggestion, it was reported to me that a new provider was found for the worker.

More general advice resulted from three other cases. The first advice related to the implementation of Review Division decisions. While often the review decision results in a general referral of the matter back to WorkSafeBC, I observed that at times these decisions are very specific on the next steps to be taken by WorkSafeBC. A worker who has succeeded in such a review would rightly expect that the directions of the review officer would be followed and that it is unfair to ignore the specified direction. My advice to WorkSafeBC was that it adopt a practice whereby directions of the Review Division are followed meticulously, in fairness to the person that sought the review and obtained the decision that provides the directions. A description of how the direction was followed should be included in any letter

## Advice to WorkSafeBC

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that implements a Review Division decision and its directions. And where following the directions is not possible, that should be explained in the letter implementing the decision.

In response, WorkSafeBC has reviewed the process of implementing review and appeal decisions and has committed to reinforcing the expectation for implementing a Review Division referral through broad-based training opportunities and one-on-one feedback with officers. Detailed procedures for managing refer-back decisions are provided in procedure manuals and training materials and WorkSafeBC is currently updating these resources to incorporate the guidance outlined in my advice. A communication plan is being developed to support the rollout of these revisions with the expectation that all updates

and communication efforts will be completed by July 1, 2025.

Finally, I gave advice to WorkSafeBC on the collection of video evidence. This advice stemmed from cases where WorkSafeBC was informed that an incident being investigated had been captured by an employer's video system, but by the time WorkSafeBC took steps to view the videos, they had been overwritten. In each case, the worker asserted that the video would corroborate their account of the event.

It struck me that it has become common knowledge that video systems are being installed in many places. Employers, shopkeepers, homeowners, and others are all employing video. It may not be everywhere, but it is in many places. It is also becoming common knowledge that most video systems do not

keep everything captured on a drive or other media for all time. Many systems are on a loop of some sort and are overwritten in due course. While I suspect that it is not possible to know or have a practice that responds to a myriad of different periods within which video recordings are overwritten, the knowledge that they are overwritten within relatively short time points to the need for a policy or practice that makes requests for video evidence to be made as a matter of routine early in every case while it may be more likely that the video still exists.

Accordingly, my advice to WorkSafeBC was that it create a policy or direction to all officers that undertake investigations of any sort, on the preservation, acquisition, and review of video evidence. As Fair Practices Commissioner, I am not equipped to recommend a specific



## Advice to WorkSafeBC

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policy that would be workable across the range of matters within WorkSafeBC's jurisdiction. However, I recommended that the work to create such a policy or direction should consider at least the following:

- Making it routine to enquire if there is video evidence.
- The need for speed in acquiring video evidence considering the probability that the evidence will be overwritten in short order.
- Whether WorkSafeBC would benefit from a requirement that video evidence be proactively produced wherever it is relevant to a WorkSafeBC matter.

- A requirement that WorkSafeBC officers review video evidence independently and not rely on third-party descriptions of the video evidence whether that description comes from an employer, worker, or any other party.
- How video evidence is preserved and who is entitled to review it.
- Privacy considerations, particularly if the video evidence includes recording of any person not directly involved in a matter.

In response, WorkSafeBC is developing a procedure to guide officers in managing video evidence. This will establish expectations

for handling video evidence when it exists, including clear guidelines on when and how to obtain video footage, how to review and preserve it, and how to ensure the privacy of individuals captured in the video. Officers will also receive direction on verifying the accuracy of video evidence and promptly requesting that the party holding the footage preserves it until it is collected. Once finalized, WorkSafeBC will develop and implement a communication strategy to ensure officers are well-informed of the new requirements. Both the procedure and the communication will be completed by July 1, 2025.

# 08

## Appendix A

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### 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.

## Appendix A

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(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 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.



