

FAIRNESS REVIEW MANDATE

BoD Resolution 2021/02/11

Date: March 22, 2021

REFERENCE: [Workers' Compensation Act, RSA 2000](#), Sections 9.2, 23.1, and 23.2

Every participant in the workers' compensation system deserves to be treated fairly.

The *Workers' Compensation Act* (WCA) contains provisions to ensure the Workers' Compensation Board (WCB) provides injured workers and employers with service that is respectful, fair and timely. Effective April 1, 2021, new sections of the WCA were enacted requiring the Board of Directors (BOD) to designate an employee of WCB as the Fairness Review Officer, and to define the role and mandate for that position.

The Fairness Review Officer (FRO) oversees the operation of the Fair Process Review Centre (FPRC), an independent office within WCB that conducts thorough, impartial and independent reviews of administrative fairness complaints. The FRO reports functionally to the BOD and administratively to the Chief Executive Officer (CEO). This reporting relationship ensures that the FRO and FPRC are neutral, impartial, and independent of the departments responsible for the processes and interactions they review.

The FRO and FPRC will:

1. Conduct thorough, impartial and independent reviews of administrative fairness complaints.
2. Assess the fairness of administrative process and behavioural conduct of the workers' compensation system and recommend solutions that are fair to both the complainant and the organization with a focus on resolution.
3. Improve the overall system for all stakeholders and clients, by making recommendations to resolve issues of unfairness to WCB management and the BOD.
4. Provide an independent service that is approachable, responsive and free of charge to the workers, employers, dependants, and representatives that rely on, or work within, the workers' compensation system.
5. Promote fairness within the workers' compensation system through outreach and education opportunities.

AUTHORITY

Under the authority of sections 23.1 and 23.2 of the WCA, the Fairness Review Officer reviews and makes recommendations to the WCB:

- (a) relating to any matter under the WCA, for the purpose of determining **administrative fairness and processes used to reach decisions**, and
- (b) relating to a breach of the *Code of Rights and Conduct* (the Code) in which a worker, dependant, or employer is or may be aggrieved.

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MANDATE:

The mandate of the FRO and FPRC is to investigate issues of fairness in service delivery to workers, employers, or dependants (including their authorized representatives) who feel they have been treated unfairly in their interactions with WCB. The role of the FPRC is to complete a thorough and timely investigation and provide findings on the fairness of the interaction and recommended solutions to the FRO. Throughout the fairness review process, the FPRC looks for opportunities to resolve or mediate an issue in order to create an agreed plan of action to move forward.

If the FPRC finds that applicable standards of fairness were not met, the FRO will make recommendations for action to the WCB on a specific claim or account and, if necessary, a systemic level recommendation to the BOD or WCB management. The FRO's recommendation function helps to continually improve administrative processes for all stakeholders of the system.

JURISDICTION AND SCOPE

The FRO is authorized by s.23.2 of the WCA to review and make recommendations regarding administrative fairness concerns (see Appendix 1 for the definition of administrative fairness and examples) related to actions by WCB employees or agents only. The FRO cannot investigate any entity that does not operate under the authority of the BOD.

The FRO and FPRC cannot engage in review or appeal of the merits of claims and employer account decisions. The internal Dispute Resolution and Decision Review Body (DRDRB) and the external Appeals Commission exist to perform these functions. The FRO and FPRC have no authority to review, change or vary a claim or account-related decision. If the FRO or FPRC finds there was an unfair practice that potentially affected a claim/account decision, the FRO will notify appropriate WCB staff so the decision can be reviewed.

Issues of procedural fairness that directly affect claims or assessment decisions can be raised within the context of a DRDRB review or Appeals Commission case. For example, failure to consider relevant evidence or failure to receive notice of a decision affecting a person's rights are issues that may be a part of the review and appeal process.

Once the FRO has concluded a review and communicated any and all resolutions and outcomes, that review is considered complete. Financial remedies are not available as an outcome of the fairness review process. For example, the FRO cannot extend, reinstate, or suspend benefits, or vary an assessment as the result of a fairness review.

Individuals may contact the Alberta Ombudsman, if they remain unsatisfied following their fairness review.

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REPORTING RELATIONSHIP:

The FRO meets regularly with the BOD to ensure the FPRC has the required support to fulfill its mandate. This reporting relationship ensures the independence of the FRO and FPRC from all operational decision makers.

The FRO reports to the BOD at least annually on the details of the FRO and FPRC's operations (volume of inquiries, resolutions, status of recommendations, etc.) as well as recommendations for improvements in the system.

Systemic recommendations (ones that require policy or legislative changes) will be brought forward to WCB management and be responded to and actioned within an agreed upon time period. This report will be supplemented with regular meetings with the BOD to review any emerging issues or opportunities.

It is the expectation of the BOD that any systemic recommendations that can be acted upon by WCB management, be actioned proactively and within an agreed upon time period. Actions undertaken by WCB management will be reviewed to ensure the original systemic issues identified in the recommendations have been mitigated appropriately.

ROLES AND EXPECTATIONS

All referrals to the FRO or the FPRC should be made in a timely manner and in good faith with a view toward resolution. In order to facilitate resolution, fairness reviews should be initiated within 60 days of the process or behaviour that led to the concern. If a fairness review is requested outside of the 60-day window, the FRO may consider extending the time period, provided there is a reasonable explanation for the delay. The FPRC does not conduct fairness reviews more than one year after the interaction or the decision that led to the fairness concern.

Following the conclusion of an investigation by the FPRC, an explanation of the resolution, including any outcomes, will be provided.

As advocates of fairness, the FRO and FPRC do not take sides when resolving issues. The FRO and FPRC's roles are to review and investigate problems or concerns in an unbiased, timely and impartial manner. The FRO and FPRC will make every effort to recommend solutions that are fair to all parties, with a focus on resolution. Services are provided free of charge to workers, employers, and dependants.

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The FRO will:

- uphold WCB's *Code of Rights and Conduct*,
- base their own conduct on that same code,
- develop and update annually a charter setting out the goals of the office,
- at minimum report annually on the activities of the FPRC to the BOD and stakeholders,
- have direct and unrestricted access to and meet regularly with the BOD to ensure independence,
- communicate to WCB management and/or the BOD the impact of any resource limitations,
- ensure staff within the FPRC collectively possess the knowledge, skills, and other competencies needed to meet the requirements of the fairness review mandate,
- ensure staff are provided with an environment, tools, training and support to ensure independence in decision making, and
- liaise with the Ombudsman's Office at minimum annually to ensure continuity of process.

FPRC staff will:

- uphold WCB's *Code of Rights and Conduct*,
- base their own conduct on that same code,
- treat all parties to an inquiry with dignity and respect,
- approach issues with an open mind and be approachable and responsive,
- exhibit professional objectivity in gathering, investigating, and communicating information about the issues being reviewed,
- make balanced assessments of all available and relevant facts and circumstances,
- ensure they consider the legitimate concerns and interests of all individuals affected by the matter under consideration, and
- protect the privacy of their clients and disclose information only with appropriate consent.

All participants in the resolution process (e.g. worker, employer, dependant, WCB employees, FPRC staff) will be invited to fully participate, as appropriate, and engage in the fairness review process in a timely and respectful manner and contribute to a shared resolution outcome.

All parties work together to move forward and restore trust in the working relationship between the affected person(s) and WCB. To expedite the resolution process, the FPRC has access to internal WCB resources and access to claim or account information.

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Appendix 1: Definition of Administrative Fairness

Administrative fairness is assessed within two main categories, procedural and behavioural:

Procedural Fairness

Procedural fairness looks at ***how decisions are made***, including whether:

- timely decisions were made and implemented without delay
- effective and timely communication was provided, including being given enough information, notice of a decision, and clear reasons for a decision
- full, correct, and relevant information was always provided
- access to information was provided as appropriate/required
- decisions were made without bias and with consistency and impartiality
- the appropriate forum and opportunity to be heard were provided to express opinions and views

Behavioural Fairness

Behavioural fairness looks at ***how a person was treated***, including whether WCB staff followed the *Code of Rights and Conduct*, meaning:

- the person was treated with dignity and respect
- the decision maker treated the individual with fairness and impartiality
- the person was able to participate in decisions affecting them
- privacy and confidentiality were protected and respected
- the person felt listened to and heard
- what could and could not be done was clearly outlined
- if a mistake was made, the problem was addressed quickly with an appropriate apology