



# Annual Report 2019-2020

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## Preface

This annual report provides a snapshot of the results for the Fair Practices Office (FPO) for the 2019-20 fiscal year. This report satisfies public accountability requirements for the FPO further to Section 23.3(1)(a) of the *Workers' Compensation Act* (WCA).

During this past fiscal year, the FPO worked to develop and put in place policies, procedures, and appropriately direct human and financial resources to deliver excellent client services to fulfill its mandate.



## The Business of the FPO

Section 23.1(1) of the WCA established the FPO in December 2018. Section 23.1(1) also provides that the FPO consist of the Fair Practices Commissioner, appointed by the Lieutenant Governor in Council, and employees' necessary for the purposes of carrying out the business and affairs of the FPO, appointed through the *Public Service Act*.

The business of the FPO is set out in section 23.2(1) of the WCA and its attendant regulations. The FPO's job is to:

- Review and make recommendations to the Workers' Compensation Board (WCB), the Appeals Commission (AC), or the Medical Panels Office (MPO) relating to any manner under the WCA for the purpose of determining administrative fairness and processes used to reach decisions and relating to a breach of Workers' Compensation Board Code of Rights and Conduct (CoRC);
- Establish programs directed at providing independent advice, assistance and advocacy services to employers and workers and their dependants; and
- Provide other functions and duties as outlined in the Workers' Compensation Regulation including establishing procedures for the conduct of its fairness and appeal work and for the informal resolution of complaints, assistance in navigating the workers' compensation system and other appropriate resources and the preparation of assurance reports for the Minister in respect of the workers' compensation system.

## Message from the Fair Practices Commissioner



“Fair” is the first word workers and employers see when they come to our agency. It is a word that carries the promise of transparency, consistency, timeliness and thoughtfulness not only in the work we do at the Fair Practices Office, but in the way the workers’ compensation system works in general, and specifically for each client.

Being fair starts by saying how we do our work, by setting guidelines that are sensible, accessible and to which we can be held to account. In 2019-20 the FPO developed Commissioner Procedures covering critical areas of work including frameworks for Assurance Reports, Own Motion Reviews, Conflict of Interest, Code of Conduct, Zero Tolerance and Judicial Review. A Commissioner Policy was also developed to ensure that in the limited instances when the FPO denies or withdraws its services to an injured worker or employer, that this discretion is exercised in a transparent manner, relying on reasons set out in the Policy, and with the right of review to the Fair Practices Commissioner and Alberta Ombudsman. Each Commissioner Policy was also blanketed with Operational Procedures; ensuring key functions are performed efficiently and consistently.

These blueprints for action complimented the experience and passion each member of the FPO brought to the job in 2019-20. With this foundation in place, FPO staff and management engaged the public and other workers’ compensation system partners to generate the positive results and learnings set out in the pages that follow. It is also a foundation—this combination of good planning and good people—that enabled the FPO to innovate and pivot to safely and effectively meet the needs of our clients and of our mandate when the COVID 19 Pandemic put us all to the test.

Looking ahead, the FPO is looking forward to the conclusion of the Government of Alberta’s review of our Offices and to the clarity and confidence generated from such a review.

Sincerely,

A handwritten signature in black ink that reads "H. Robinson". The signature is written in a cursive, slightly stylized font.

Harold Robinson, LLB  
Fair Practices Commissioner

## The FPO's 2019-20 Business Plan

The FPO made a business plan for 2019-20, which contains four key projected outcomes:

1. The FPO has the people, resources and procedures required to deliver excellent programs and services;
2. Make the workers' compensation system easier to navigate for injured workers, their dependants, and for employers;
3. Independent FPO appeal advisors continue to offer expert help to employers and injured workers and their dependants with their appeals at no additional cost to them; and
4. Review workers' compensation decision-making processes for fairness and examine behavior of WCB staff to ensure WCB Code of Conduct is maintained.

The FPO dedicated itself to achieving each outcome. The remainder of this report highlights the FPO's achievements, trends and opportunities, and future tasks still before us.

### Outcome 1

#### *The FPO has the people, resources and procedures required to deliver excellent programs and services*

As envisioned through Outcome 1, Management's task in 2019-20 was to build supports that enable FPO staff to continue to provide excellent services in a consistent and transparent manner. Key to this effort was the development and passage of 12 different Commissioner Procedures articulating the parameters and standards of the FPO's work. The Procedures cover each aspect of the FPO's business (i.e. appeals, navigation, fairness and assurance services) and also address relational and efficiency matters through the Zero Tolerance Policy and procedures on the Denial and Withdrawal of FPO Services. The Procedures are posted on the FPO's website to guarantee transparency.

Following the passage of Commissioner Procedures detailing what the work of the FPO is and the standards that apply to its work, a series of operational procedures were developed and published detailing *how* the FPO does its work. The goal of these frameworks is to provide certainty and consistency in the FPO's work.

Another goal of the FPO's procedures and policies is to ensure that personal information is dealt with in accordance with Alberta's *Freedom of Information and Protection of Privacy Act*. Information sharing protocols were developed in 2019 to protect personal information, and other frameworks were developed to immediately address any accidental disclosures of personal information should that occur.

Establishing independent working relationships with other system partners in 2019-20 was also key to meeting client needs. Signing off on the *Mandate and Roles Document* with Minister Copping and Deputy Minister McLeod was a key step forward to meeting statutory requirements under the *Alberta Public Agencies Governance Act*. Also of importance, was the execution of the Terms of Reference for the *Council of Worker's Compensation System Partners* in August 2019. The Council platform enables system partners to independently identify and share trends and opportunities that enhance confidence in the workers' compensation system.

The FPO was also keen to identify ways and means to reduce red tape under Alberta's Red Tape Reduction exercise. A number of new efficiencies were identified by FPO staff and managers and included in the Department's inventory of cost and time saving measures.

## ***Red Tape Reduction***

### ***Technology***

- The FPO developed electronic forms for client consent and authorization, which increased accessibility for clients, improved the efficiency of processing service requests, and cut red tape. Clients may now request services through the FPO website. These e-forms are signed electronically and are mobile friendly, allowing easy access to services. Prior to this, clients completed forms then submitted them by email, mail or fax.
- Near the end of the fiscal year, the novel coronavirus pandemic triggered remote work arrangements to protect employee health and safety, while ensuring client service delivery to continue. The use of Government of Alberta (GoA) tablets, Skype for Business (web conferencing), and call-forwarding, helped FPO staff work from home effectively. The FPO's Client Service Coordinators continue to handle client enquiries and requests by phone and email, with faxed and mailed documents handled weekly. Updates on the FPO's and GoA's response to COVID-19 are shared with FPO employees as they become available.



### ***Collaboration***

- The FPO built and maintained collaborative relationships with its system partners, including establishing Service Level Agreements and Information Sharing Agreements with system partners to ensure timely access to information supported Information and Record Management initiatives within the FPO. Seamless processes are in place to ensure continued service delivery, especially now that systems are impacted by the COVID-19 pandemic.
- FPO leadership and staff will continue to hold round tables with system partner representatives through the newly established Council of Workers' Compensation System Partners as necessary to explore service gaps and share best practices and to develop and recommend ways to improve service to our mutual clients.

### ***Early Resolution***

- A total of 1,481 issues were resolved over the fiscal year. Conducting pre-assignment reviews reduces administrative red tape, as cases that can be resolved quickly and removed from the case processing queue. Pre-assignment reviews and early resolution can result in benefits being paid to claimants earlier than if issues were subject to the lengthy appeal process. Thanks to early resolutions, more time can be dedicated to cases with complex issues, requiring additional review and research.

Other important work was undertaken in 2019-20 to support FPO staff in the delivery of its services to employers and injured workers and their dependants, but which are on hold (but poised to go) pending a Ministerial Review of the FPO's functions, include the following:

- Identifying and requesting proposals to acquire a case management system and that will enable the FPO to efficiently and effectively track information relating to its business and to identify and report on trends and opportunities;
- Identifying staffing vacancies, particularly in the Calgary office where the Worker Appeals Advisor Branch (WAAB) is operating at only 54% of its original staff allotment and combining that with an in-depth third-party human resource audit to meet FPO responsibilities, which, in keeping with Alberta's MacKinnon Report, included a jurisdictional scan to determine how similar agencies across Canada—especially British Columbia and Ontario—deliver similar services, their staffing ratios and overall budget; and
- Responding to Alberta Infrastructure's decision to build long-term office spaces for FPO employees currently housed in temporary locations in Edmonton and Calgary.

While much of 2019-20 was dedicated to developing procedures and policies and other frameworks for the FPO to do its work, the FPO fully leveraged its existing resources and collective know-how in 2019-20 to meet client needs. In this regard, more than 2,600 client enquiries were addressed, nearly 2,000 case files were opened, and 1,196 files closed through early resolution. These results were achieved because FPO staff and managers are experienced, independent, and deeply committed to delivering excellent services to every client.

## Outcome 2

### *Make the workers' compensation system easier to navigate for employers and injured workers and their dependants*

Relevant information and timely assistance are key to navigating the workers' compensation system.

The FPO developed a comprehensive toolkit in 2019-20 to inform Albertans about the workers' compensation system and about the FPO's services. Integral to the toolkit are FPO fact sheets/postcards, slide presentations, frequently asked questions documents for each branch, and tips to resolve issues with system partners. The FPO also worked with Alberta Education to develop a two-minute video captioning and capturing FPO services.

A robust outreach and stakeholder engagement strategy was developed and implemented. In the 2019-20 fiscal year, the FPO conducted 42 stakeholder engagement sessions, reaching over 400 attendees from a wide range of key stakeholder groups including employers and business associations, Indigenous groups<sup>1</sup>, industry associations, and union groups with a broad cumulative membership in excess of 50,000 members. Awareness of FPO services continues to grow with demand for programs and services expected to increase in the coming years.

42 engagement sessions  
Over 400 attendees with a  
membership in excess of 50,000

The FPO's Navigation/Operations Branch handled nearly 2,700 client enquiries, close to 2,000 of which resulted in the opening of a client case file after a branch referral. The Navigation Branch also handled over 200 external referrals to various government services and community-based agencies to help support clients' basic needs (e.g. alternate income sources, housing, food, medical and employment or disability related services) as clients awaited a WCB decision, or the outcome of an appeal.

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<sup>1</sup> Including the Metis Nation of Alberta, the Metis Settlements General Council and Rupertsland Institute.

The Navigation Branch's intake work is demanding in that callers often arrive at the Navigation Branch in a state of panic, anger, frustration and urgency. In short, the Navigation Branch is often the first group to hear the story from someone whose WCB claim has been denied and who may subsequently not know how they are going to pay rent or afford groceries. It therefore takes someone who is both independent and highly skilled to manage the intake process and calmly provide needed assurance to callers that they have been heard and respected and that they are not alone while awaiting the outcome of an appeal, a WCB decision or where WCB benefits and entitlements ended.

The Navigation Branch established baseline targets for client satisfaction, including performance measures and service standards to measure client satisfaction. These measures are monitored and reported on monthly to the FPO's Executive Director and Navigation Branch Manager work to continually improve services.

The Navigation Branch also developed client satisfaction surveys to assess client satisfaction of the FPO's overall services. The surveys will be rolled out in 2020-21 with a view to recording client priorities and new areas for improvement.

In order to promote efficiency, assurance reviews and business operations were folded into the Navigation Branch. With this change, the Navigation Branch will not only identify relevant services and next steps for clients, but also issue assurance reports on service providers within the workers' compensation system, taking into account trends and opportunities meant to improve confidence in the workers' compensation system.

***"The client representative was diligent and supportive in dealing with me, she was very helpful. I appreciate her patience and how she listened to my concerns and offered solutions. I am pleased with FPO services." – Intake Client***

### Outcome 3

***Independent FPO appeal advisors continue to offer expert help to employers and injured workers and their dependants with their appeals at no additional cost to them***

The Alberta workers' compensation system enjoys a very high satisfaction rate amongst those who have been injured on the job. Approximately 91%<sup>2</sup> of all injury claims before the WCB are fully addressed within two weeks of the injury. However, an additional strength of the Alberta workers' compensation system is that it has a robust and transparent system of checks and balances (i.e. an appeal system) available for those whose matters are not immediately resolved in a manner suiting the employer or injured worker or their dependants.

**571 claims with 794 issues were presented at the Dispute Resolution and Decision Review Body (DRDRB) and AC hearings**

This is where the FPO's independent Appeal Advisors come in.

With 1,991 client case files opened across the FPO in the 2019-20 fiscal year, the majority of clients sought advisory and or representation services from WAAB, while employers sought the services of the Employer Appeals Advisor Branch (EAAB).

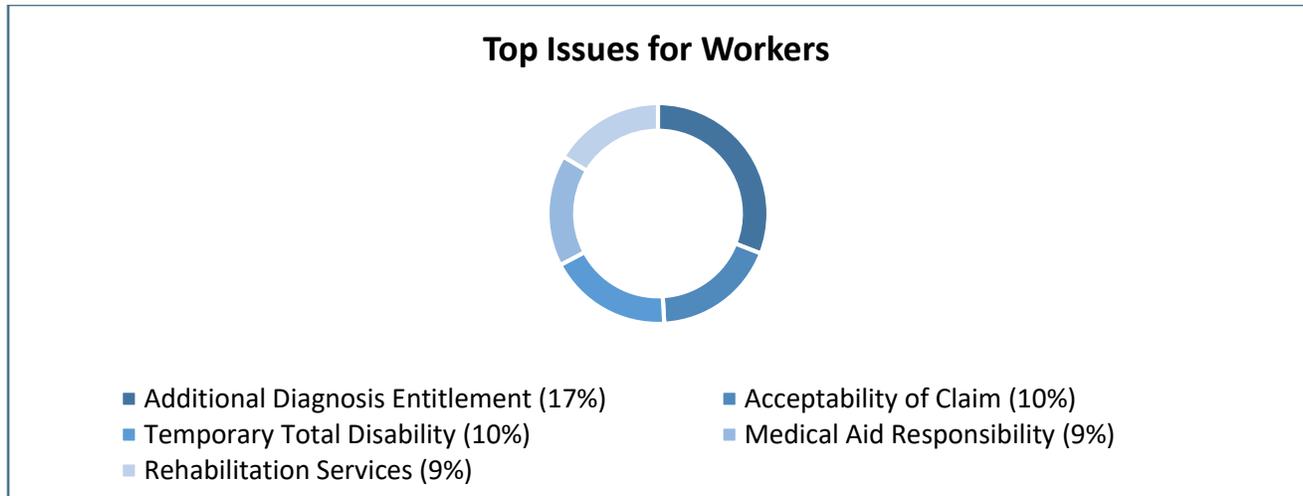
With a mandate to facilitate early resolution whenever possible, FPO Appeal Advisors use their years of expertise (16 years, on average) to resolve matters at their inception by picking up the phone and talking with case managers about issues or facts that may have been overlooked and that may suggest a new outcome.

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<sup>2</sup> WCB-Alberta 2019 Annual Report

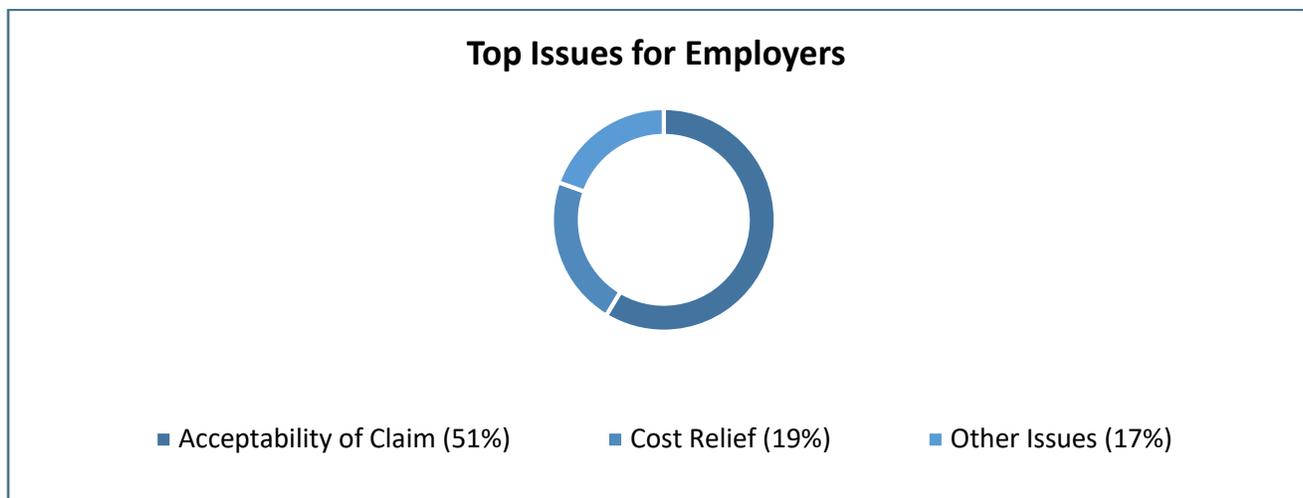
For the 2019-20 fiscal year, FPO Appeal Advisors applied early resolution principles and approaches to resolve 1,196 cases. This approach allows benefits to be paid sooner, decisions and appeal outcomes arrived at sooner, and cases can be closed earlier in the process, significantly reducing the overall costs within the WCB process.

The top issues of appeal that account for over 50% of all workers issues identified are additional diagnosis entitlement, acceptability of claim, temporary total disability, medical aid responsibility and rehabilitation services.



***“Thank you for everything that you have done for me...the FPO’s efforts have indeed changed my life...I could not be happier...” – WAAB Client***

For EAAB, acceptability of claim accounts for over 50% of all employer issues identified.



***“...we...got some resolution to our issues...the service you provide to employers is absolutely crucial...especially with the complexities of the WCB...” – EAAB Client***

When the appeal process could not be avoided, FPO Appeal Advisors were up to the task, appealing 571 claims involving 794 issues, resulting in the variation of the decision on 266 issues.

Critical to this work is the fact that FPO Appeal Advisors do not charge their clients any money or commission for their services. Whatever gains are achieved for the employer or injured worker and their dependants is theirs to keep, 100%. This provides certainty to the parties involved in the appeal process and also provides certainty to the GoA in that the costs of Appeal Advisors—along with all other costs associated with the FPO—is foreseeable and fully reimbursed through the Accident Fund.

The work of Appeal Advisors is complex. It often involves wading through hundreds and sometimes thousands of pages of expert reports and other correspondence, identifying key issues in dispute, the applicable law and policies, summarizing it all for the client, and then creating and presenting a coherent narrative and argument(s) on appeal. Though most of the FPO's Appeal Advisors are not lawyers, (although some are<sup>3</sup>), it takes a lawyer's eye and something akin to a lawyer's training to do the job well, including identifying questions of merit and standing before a matter is fully taken on by the FPO and extended advisory services put on offer.

Assessing appeals for merit and standing<sup>4</sup> is an important part of the job because it provides some assurance to the Minister, to system partners, and Albertans in general that the FPO is bringing forward only those matters where merit exists and the party has standing. Commissioner Policy CP-009 was formalized in the fall of 2019 and it set out the parameters and reasons for denying FPO services, while WAAB Operational Policy OP-WAAB-005 details the ways and means of assessing whether an arguable case can be made and how to determine if a party has standing in an appeal.

Identifying merit and standing also helped both branches of Appeal Advisors—employer and workers—manage caseloads. Using technology and the improved ability to meet clients “online”, has also helped to alleviate the over-concentration of cases in Calgary. This is particularly important as between the provincial hiring freeze and provincial review of the FPO mandate and services; Calgary continues to operate with only 54% of the Worker Appeal Advisors envisioned when it was established at the end of 2018, and without any Employer Appeal Advisors at all. In sum, though the FPO continues to innovate Appeal Advisors' caseloads, this continued to climb in 2019-20, causing additional stress on advisors and sometimes leading to frustration amongst our client group.<sup>5</sup>

## Outcome 4

### *Review workers' compensation decision-making processes for fairness and examine behavior of WCB staff to ensure WCB Code of Conduct is maintained*

The Fairness Review Branch (FRB) and Fair Practices Commissioner provide an ombudsman-like function to ensure decisions within the workers' compensation system are made in a fair manner (administrative fairness) and that workers and employers are treated with dignity and respect. Acting in an ombudsman-like fashion means facilitating progress, not dwelling on the lack of it, and included working positively with workers' compensation agencies to address over 100 fairness-related issues in 2019-2020.

**Nearly 300 fairness issues were identified, and over 100 fairness instances or breaches were found.**

During the 2019-20 fiscal year, the FRB identified 286 fairness issues resulting in findings of just over 100 fairness instances (67 procedural fairness issues and 36 perceived breaches of the CoRC). Of these, specific remedies were proposed by the FRB in a third of the cases and more than 90 percent of all remedies proposed were implemented by system partners.

Themes to note include:

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<sup>3</sup> The FPO currently has three non-practicing lawyers in its ranks of Appeal Advisors.

<sup>4</sup> Merit depends on whether there is an “arguable case” and standing depends on whether a party is “connected” to the matter, whether appeal deadlines have been met. Further considerations concerning jurisdiction (i.e. the decision-maker's authority over the matter) also come into play.

<sup>5</sup> The FPO conducted an in-house study of caseload volume and determined that a caseload of 28 to 36 cases (average of 32) is reasonable per worker appeals advisor. The average caseload per worker advisor in Calgary is 50. The average caseload per worker advisor in Edmonton is 27. The average caseload per employer advisor is 31.

- The need for improved documentation practices related to interactions with complainants and when internal consultations occur with supervisors, management or other types of consultants, which result in claim decisions.
- The need to address process and policy gaps to ensure transparency and accountability.
- Consistency in interpretation and application of the WCA.
- A trend of claimants who may be perceived as difficult or challenging, having a different experience due to this perception, or flagging on their claims.

Overall Fairness Complaints		
	Received	Resolved
WCB	87	84
Appeals Commission	10	10
Medical Panels Office	2	2

Of the three workers' compensation system partners, data reflects that most complaints are about the WCB (which is not surprising given the volume of cases dealt with by WCB). The WCB has been receptive to the findings and observations, as well as the remedies proposed by the FRB. Of these, the most common procedural errors are related to:

1. **Delays** – in making decisions and/or issuing written decisions, implementing AC decisions in payments or services;
2. **Informational challenges** – not providing detailed breakdowns of payments, lack of documentation to support decision making, medical information not considered in decision-making; and
3. **Entitlement issues** – benefits not identified by case manager (client needed to request), failure to provide benefit as promised, promised benefit was not appropriate or did not explain the need for higher level approval, error in benefit amount or payment issued in error.

Where breaches of the CoRC were observed, they related to:

1. lack of effective and timely communication with claimants;
2. lack of full and complete information provided to complainants; and
3. failure to treat complainants with dignity and respect.

Examples of specific remedies identified by the FRB include:

- further medical investigation (Independent Medical Examination);
- letters - apology or explanation from WCB supervisor/manager;
- change of case manager and/or supervisor;
- correct form sent to complainant;
- phone call to the client by WCB supervisor or manager;
- review of client's security restriction; and
- removal of outdated internal directive from WCB policy database.

With respect to the AC, complaints were limited in number. The AC has been responsive to findings and observations made for potential system improvement. The most common findings were:

1. delays between the appeal hearing and the issuance of the appeal decision;
2. lack of contact with appellants between the hearing and issuing the written decision; and

3. lack of reasons provided to the appellant for delays in issuing a written decision.

One fairness review related to delays in issuing a written decision, resulting in the FRB finding a policy gap related to the AC's responsibility to ensure a decision was issued within the 6-8 week timeframe after hearings. The AC subsequently implemented an internal policy in this regard.

Not surprisingly, the most common remedy recommended by the FRB is a request for an acknowledgement of and apology for the delay in issuing the written decision.

On a closing and slightly different note, WAAB and EAAB routinely receive complaints about AC decisions, or reconsideration requests. However, requests for reconsideration of AC decisions do not fall within FRB's mandate, unless the matter involves procedural unfairness.

Of the three workers' compensation system partners, the MPO is the one that the FRB received the fewest complaints about. Early in the fiscal year, the FPO heard concerns about the number and qualifications of physicians on the IME roster, mostly anecdotally in cases where the primary complaint was not about the MPO. The FRB received a minimal number of complaints about the MPO. Aside from this, the FRB received complaints about the types of questions asked by the medical panel.

No remedies were recommended in these cases, as there were no findings of procedural or administrative errors.

In terms of accessing information, the FRB does not have direct access to the case management databases of any of the workers' compensation system partners. Any file information for a given time period related to the complaint under review must be requested from the system partner. Over the 2019-20 fiscal year, to ensure the integrity of information, the process with the WCB has changed from only specific documents being received to a release of the complete claim file for a specified period of time, via the WCB Access to Information department. This has sometimes resulted in lengthy waiting periods for information upon the initial request; however, the FRB recognizes that the process minimizes the need to make multiple requests for information and ensures that all relevant documentation is ultimately available for review.

## Looking Ahead

For the next fiscal year, the FPO will remain flexible in its approach to operations and service delivery. Such agility will allow the FPO and its staff to effectively and efficiently respond to internal and external changes, such as those resulting from the COVID-19 pandemic and significant budgetary constraints across the GoA.

Other opportunities the FPO may explore in the new fiscal year are:

- **A Case Management System (CMS)** has been proposed for a re-design or purchase to systematically capture and report on client case file management across branches, and automate data roll-up. The project was postponed in the fall due to budget considerations, and the workers' compensation system review currently underway.
- **Maximizing technology** with the implementation of a new CMS. This will allow clients to add documents electronically to their FPO case files and view the progress of service requests.
- **Succession planning** to support developing targeted training and mentoring for employees, will be considered to build capacity in advance of retirements or voluntary terminations.
- **Remote/alternate work arrangements due to COVID-19** will be reviewed to protect employee health and safety, while maintaining service and staff productivity. As a result, this could delay the planned FPO office move to an open workspace in the fall.
- **The FPO will continue to enhance awareness of its services** through engagement events and resources

(fact sheets, video clips, and web content).

- **Delivery of system assurance reports** outlining systemic issues identified within the workers' compensation system and the remedies recommended.

## Operations

### ***Human Resources***

As of March 31, 2020, the FPO was 76% staffed, with 42 of 54 allocated full-time equivalents filled. There are 32 employees in the Edmonton office, and 10 in the Calgary office.

### ***Resource Investment***

The FPO's administrative budget was \$6.28 million for the fiscal year ending March 31, 2020, with additional funds are set aside for a new case management system and for costs related to the office relocation.

Costs related to the case management system and office move were deferred to the 2020-21 fiscal year budget as both projects started later than anticipated and were incomplete at the end of the fiscal year.

## Overview of Branches

### ***System Navigation***

This team is the first point of contact and hub of the FPO. Supporting employers, injured workers and their dependants in navigating the workers' compensation system is the branch's central function.

The branch advances FPO's interest through stakeholder engagement and coordination, managing stakeholder relationships with the FPO and other system partners. It provides effective project management and oversight, engages in system evaluation to collect data, track trends, conduct issue analysis to make recommendations for system improvement.

### ***Worker Appeals Advisor Branch (WAAB)***

WAAB offers injured workers and their dependants expert, timely, fair and independent advisory and dispute resolution services at no cost to them. WAAB helps workers and their dependants through WCB appeals processes by providing education and information, advice, and representation at the DRDRB and the AC.

### ***Employer Appeals Advisor Branch (EAAB)***

EAAB offers independent advisory services at no additional cost to employers. This branch helps employers through the WCB appeals processes by providing education and information, advice, and representation at the DRDRB and the AC. EAAB assists employers with a claim or an account related matter, with the primary focus on pre-appeal resolution. EAAB and its staff work independently from WAAB staff.

### ***Fairness Review Branch (FRB)***

FRB provides an ombudsman-style review function specific to the workers' compensation system. Its complaint review process is impartial and evidence-based. It works with the respective system partner(s) to learn from findings of unfairness and implement an appropriate remedy to issues of behavioural or procedural unfairness, as well as breaches of the CoRC.



## FAIR PRACTICES OFFICE

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