

Title	Fairness Reviews	CP-006
Effective date	December 1, 2018	
Replaces	New	
Next review date	February 1, 2019	

1 Overview

Administrative policy for the Fairness Review Branch (FRB), Fair Practices Office (FPO).

2 Rationale

Provides an overview of guiding principles, purpose, and function of the FRB.

3 Scope

Identifies overarching principles to be applied in the continuum of informal and formal fairness reviews regarding system partners.

4 Policy

Fairness reviews conducted by the FRB will examine complaints about either:

- relational fairness by the Workers' Compensation Board (WCB) including adherence to the Code of Conduct, the Appeals Commission for Alberta Worker's Compensation (AC) and the Medical Panels Office (MPO), which is a behavioural fairness review, or
- administrative fairness or processes used to reach decisions, which is a procedural fairness review.

For the purposes of a review, a "complainant" is a worker, a workers' dependent, or an employer. A complainant may have an authorized family or friend assist them in making a complaint.

All reviews conducted by the FRB are neutral and impartial, meaning the Fairness Review Officer (FRO) is neither advocating for the complainant or the system partner, nor intervening in a particular situation, but independently considering whether an unfairness has occurred.

In order for a review to occur, the complainant must submit a complaint in writing. This may be accomplished using the online form or by filling out the consent form provided by the intake team. Relevant supplemental information may be accepted at the time the complaint is received or subsequently requested by the assigned FRO.

Behavioural Fairness Reviews:

Behavioural fairness reviews will focus on concerns related to a breach of the existing Code of Conduct or relational fairness (i.e. how the complainant was treated by system partner staff). In particular, behavioural fairness reviews will consider issues related to:

- Being treated with dignity and respect

- Being treated with fairness and impartiality
- Being provided effective and timely communications
- Being provided full and correct information
- Being provided access to relevant information
- Being assured of privacy and confidentiality.

Certain matters related to human rights concerns and privacy concerns fall outside the scope of the FPO. A complainant may therefore have concurrent active files with the FPO and both the Alberta Human Rights Commission (AHRC) and the Office of the Information and Privacy Commissioner (OIPC).

- Matters related to human rights issues may only be reviewed within the scope of or relating to the WCB Code of Conduct.
- Matters related to discrimination on a protected ground must be referred to the AHRC in a timely manner to assist complainants in meeting the statutory timelines under the *Alberta Human Rights Act*.
- Matters related to breaches of the *Freedom of Information and Protection of Privacy Act* must be referred in a timely manner to the OIPC.

The Commissioner will determine the most efficient method of coordination of these activities with the ARHC and the OIPC.

With all behavioural fairness reviews, complainants will be expected to first escalate their concerns to a supervisor, then a manager within the system partner prior to accessing the FRB.

A behavioural fairness review may be either informal or formal, depending upon the circumstances, and a variety of potential resolutions and outcomes may be possible, up to and including recommendations to the system partner by the Commissioner.

Procedural Fairness Reviews:

Procedural fairness reviews will focus on the processes and procedures leading up to a decision, but not the decision itself. A matter will not be considered for a procedural fairness review until a decision as actually been made and the complainant notified.

Procedural fairness reviews will consider consistency in application of legislation, regulation, policy, and standard operating procedures of the relevant system partner, in particular:

- Timeliness of the decision
- Communication of the decision itself
- Overall decision-making process, which will include:
 - consistent application of legislation and policy
 - Participation rights for the complainant
 - Bias or conflict of interest
 - The exercise of discretionary power
 - The use of information / evidence

Discretion to Decline or Discontinue:

The Commissioner has the ability to refuse to review or discontinue the review of a complaint where it is determined the review is unnecessary, the subject matter is trivial, or the complaint is frivolous, vexatious or not made in good faith. The Commissioner may also refuse to review a complaint where the complainant has been aware of the issue for more than 24 months; in exercising this discretion, the Commissioner may choose, if there is good and sufficient reason, to conduct a review even if the 24 month period has expired.

Where this discretion is exercised, the Commissioner will inform the complainant of the decision and state the reasons for the decision in writing. The Commissioner's decision is final.

If the complainant believes the Commissioner's decision to refuse or discontinue a review is unfair, the complainant has the ability to submit a complaint to the Alberta Ombudsman.

Informal Review:

All fairness reviews, whether behavioural or procedural in nature, will begin at the informal review level. Informal reviews are generally timelier in reaching conclusion and require the engagement of the complainant and system partners to achieve resolution.

The FRO will advise the complainant what an informal review entails and potential next steps, including resolution, discontinuation or advancement to formal review.

An informal review will begin with gathering additional information from the complainant as well as reviewing the relevant legislation, policy or code of conduct, contacting the relevant system partner to discuss the concern and determining if there are any available options for the complainant to pursue in order to resolve the complaint. The FRO will facilitate resolution with the system partner, if possible.

If the complainant or the matter has been identified as complex, or efforts to resolve the matter informally are not successful, then the matter will be escalated by the Manager, FRB to the Commissioner, who will ultimately determine if a formal review is warranted.

Formal Review:

If an informal review is unsuccessful in resolving a matter or the matter is too complex to be addressed in an informal manner, the Commissioner may approve a formal review. A formal review is generally more complex, potentially requiring more interviews, documentation, and a legal opinion and may result in recommendations to a system partner.

Preliminary findings are discussed with the system partner, prior to finalizing the formal review report. At the conclusion of a formal review, the Commissioner may make recommendations to system partners to resolve issues of unfairness and improve administrative processes. The Commissioner provides copies of the final review report, which includes findings and any recommendations, to the complainant, the head of the system partner and the Minister, Alberta Labour.

The Commissioner is not a replacement decision-maker and the completion of a formal review does not necessarily mean a decision will be changed.

Referral by the WCB or AC:

The WCB or AC may refer a matter to the Commissioner for review. The Commissioner may accept the referral and conduct a review if, in the opinion of the Commissioner, the subject matter is of sufficient interest or concern to warrant a review.

Commissioner's Own Motion:

The Commissioner may initiate a review on his or her own motion if, in the opinion of the Commissioner, the subject matter is of sufficient interest or concern to warrant a review.

5 Authority

Sections 3(1)(a-d) of the Fair Practices Office Regulation enable the Commissioner to establish procedures respecting complaints made by a worker, a workers' dependant or an employer regarding administrative or relational unfairness.

6 Related content

1. *Worker's Compensation Act*
2. Fair Practices Office Regulation
3. WCB Code of Rights and Conduct

7 Authorizing signature and date

Title	Fairness Reviews	CP-006
Approved by	Harold Robinson, Fair Practices Commissioner	
Signature	[original signed]	
Date	December 1, 2018	