

Type	Commissioner’s Procedure/Policy	CP-010
Title	Commissioner’s Own Motion Reviews	
Effective date	September 9, 2019	
Replaces	New	
Next review date	September 8, 2022	

1 Purpose

The purpose of this procedure is to provide guidelines for the selection and execution of Commissioner’s own motion reviews.

2 Legislative authority

FPO Regulations [7/180914/C5/16785]

Procedures

3(1) The Commissioner shall establish procedures respecting the following

(c) the conduct of a review on the Commissioner’s own motion under section 23.2(2)(c) of the Act [the *Workers’ Compensation Act*].

Workers Compensation Act [Sched 2, RSA 2017, Chpt 25]

23.2(2) In accordance with the regulations, the Fair Practices Commissioner may review and make recommendations on a matter referred to in subsection (1)(a),

(c) on the Commissioner’s own motion.

23.2(1) The Fair Practices Commissioner shall

(a) subject to subsection (2) review and make recommendations to the Board, the Appeals Commission or the Medical Panels Advisor¹, or any one or more of them, as the Fair Practices Commissioner considers appropriate,

(i) relating to any matter under this Act, for the purposes of determining administrative fairness and processes used to reach decisions, and

(ii) relating to a breach of the [WCB] Code of Rights and Conduct.

3 Context

Own motion reviews are initiated, executed, and delivered at the discretion of the Commissioner.

The power to undertake own motion reviews is an ombudsman-like function. Properly structured and executed, own motion reviews can proactively remedy disparities in administrative fairness within the overall workers’ compensation system and prevent future complaints. Own motion reviews also allow the Commissioner to bring attention to significant matters of public interest.

¹ The system partners.

Own motion reviews do not depend on receiving specific complaints on issue. An own motion review can come from any source and focus on acts of commission and omission, including missed opportunities for improved service delivery and outcomes for marginalized workers or employers. This approach enables the Commissioner to sometimes shine light on issues affecting those less likely to complain.

4 General considerations

4.1 Key principles:

- a. Ensure reviewers are independent/not in conflict or bias.
- b. Clearly articulate who is doing the review, issues/scope of the review, resources and anticipated stages/timelines.
- c. Identify how evidence will be compiled, used, and stored with a particular view to meeting FOIP requirements.
- d. Consider including an independent audit to assess the review process for areas of improvement.
- e. Develop a management framework that:
 - i. provides direction and guidance
 - ii. monitors progress and decision-making
 - iii. reports on and secures approvals/buy in at key stages
 - iv. watches for unplanned expansion of scope (issue creep) and mitigates risks
 - v. promotes timely communications with stakeholders; and
 - vi. provides assurance to stakeholders and the public.

4.2 Choosing a topic:

Choose a topic with care. Consider whether the review is a proportionate and efficient use of resources. Consider the lead-up to a review (i.e. consultations with affected parties) and potential need for follow-up. Keeping the issue relatively narrow—i.e. *big enough to matter, small enough to win*—usually makes it easier and quicker to review. Consider:

- a. Is the Commissioner’s jurisdiction to review clear?
- b. Can a resolution be reached without a review?
- c. Will the review lead to significant recommendations for change?
- d. Has anyone actually complained? Is there a trend?
- e. Are there any apparent systemic implications?
- f. Is there more than one system partner involved?
- g. Has the issue been investigated by another body? Can value be added by the review?
- h. Are a large number of individuals potentially affected?
- i. Is the matter of significant public concern? (Has the matter been debated in the legislature or received significant media attention?)
- j. Does the issue raise human rights considerations?
- k. Are there egregious or compelling circumstances for the review? If so, be timely. Issues are unlikely to disappear and only get worse.

5 Naming a project lead

As a general practice, the Commissioner will consult with the FPO Executive Director and affected FPO branch managers on the formation of an own motion review and in the selection of a project lead, or project leads. The project lead may come from within the FPO or, resources permitting, also be external.

6 Developing a plan for the review

Once a project lead is named, the project lead will develop the review plan that shows:

- a. What is being reviewed and what questions are being addressed.
- b. Methodology for the review, including order of review and methods of gathering evidence and reporting progress to the Commissioner and any others named by the Commissioner.
- c. Reviewers know and abide by legal and ethical standards for compiling and using evidence, dealing with witnesses and documents, including digital documents and pictures.
- d. Methods of identifying and resolving roadblocks.
- e. Methods for managing potential complaints about the review itself.
- f. Resources needed, including number of reviewers, travel, translation, transcription and other related costs.
- g. Communication strategies, including any potential announcement, management of inquires, keeping parties with a legitimate interest informed of progress or challenges, and any potential publications.
- h. Realistic milestones and timelines factoring in how much actual control the reviewer has over evidence and emerging issues, all with a view of roughly estimating when the review will be completed.

7 Announcing the review

Consider the following:

- a. Notification of heads of affected system partners. Include the legal or policy basis for the review, the reasons for the review, its scope and terms of reference.
- b. Requests for information from affected system partner(s) about their structures, liaison persons for the purpose of the review, and how to work together.
- c. Whether it is appropriate or beneficial to announce publicly that the Commissioner is launching a review. Benefits include:
 - i. encouraging people to come forward with information.
 - ii. managing expectations and being careful about announcing timelines.
 - iii. considering whether announcing the review will trigger a large volume of additional complaints on the issue.

8 Issuing findings

8.1 Producing the report:

Prepare a draft outline at the outset. Identify one principle writer for consistency and tone, but with a process for third-party editing. Make the report easy to read. Use plain language principles.

8.2 Crafting recommendations:

Ensure the recommendations are practical, reasonable, effective and fact-based. (See Securing Effective Change at IOI Website.)

8.3 Launching the report:

If the matter is of significant public concern, make it available in print and on the FPO's website. Consider a press release, including wider social-media launch on the same day; recognizing that media has a general interest, and that system partners require more detailed information to augment their expert knowledge.

A media-friendly executive summary is vital. It must briefly highlight key messages, facts and recommendations. If workers and employers consent to sharing their stories, this can help ground the report and make it more relatable to other workers and employers.

9 Authorizing signature and date

Approved by	Harold Robinson, Fair Practices Commissioner
Signature	[original signed]
Date	September 9, 2019