



Hazardous Materials Information Review Commission Canada

Performance Report

For the period ending
March 31, 2000

Canada

Improved Reporting to Parliament Pilot Document

The Estimates of the Government of Canada are structured in several parts. Beginning with an overview of total government spending in Part I, the documents become increasingly more specific. Part II outlines spending according to departments, agencies and programs and contains the proposed wording of the conditions governing spending which Parliament will be asked to approve.

The *Report on Plans and Priorities* provides additional detail on each department and its programs primarily in terms of more strategically oriented planning and results information with a focus on outcomes.

The *Departmental Performance Report* provides a focus on results-based accountability by reporting on accomplishments achieved against the performance expectations and results commitments as set out in the spring *Report on Plans and Priorities*.

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Available in Canada through your local bookseller or by mail from

Canadian Government Publishing — PWGSC

Ottawa, Canada K1A 0S9

Catalogue No. BT31-4/41-2000

ISBN 0-660-61414-6



Foreword

On April 24, 1997, the House of Commons passed a motion dividing on a pilot basis the *Part III of the Estimates* document for each department or agency into two separate documents: a *Report on Plans and Priorities* tabled in the spring and a *Departmental Performance Report* tabled in the fall.

This initiative is intended to fulfil the government's commitments to improve the expenditure management information provided to Parliament. This involves sharpening the focus on results, increasing the transparency of information and modernizing its preparation.

The Fall Performance Package is comprised of 83 Departmental Performance Reports and the President's annual report, *Managing for Results 2000*.

This *Departmental Performance Report*, covering the period ending March 31, 2000 provides a focus on results-based accountability by reporting on accomplishments achieved against the performance expectations and results commitments as set out in the department's *Report on Plans and Priorities* for 1999-00 tabled in Parliament in the spring of 1999.

Results-based management emphasizes specifying expected program results, developing meaningful indicators to demonstrate performance, perfecting the capacity to generate information and reporting on achievements in a balanced manner. Accounting and managing for results involve sustained work across government.

The government continues to refine its management systems and performance framework. The refinement comes from acquired experience as users make their information needs more precisely known. The performance reports and their use will continue to be monitored to make sure that they respond to Parliament's ongoing and evolving needs.

This report is accessible electronically from the Treasury Board Secretariat Internet site: <http://www.tbs-sct.gc.ca/rma/dpr/dpre.asp>

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Hazardous Materials Information
Review Commission

Conseil de contrôle des renseignements
relatifs aux matières dangereuses



Departmental Performance Report

**For the
period ending
March 31, 2000**

Allan Rock
Minister of Health

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I Messages

Minister's Message

I am pleased to present to the Parliament and the people of Canada, the Performance Report for the Hazardous Materials Information Review Commission.

The Commission, an administrative agency, is a component of the Workplace Hazardous Materials Information System. It exercises a statutory mandate to ensure that a worker's right to information on the safe use, handling and storage of hazardous chemicals is in balance with the right of suppliers and employers to protect industrial trade secrets.

During 1999-2000 the Commission completed its second year of renewal with a tripartite supported strategic plan entitled "*Commission Renewal: Blueprint for Change*" in place. This plan demonstrates the Commission's commitment to renewal and its stakeholders and will direct the future course of its operations.

The Honourable Allan Rock, P.C., M.P.
Minister of Health

President's Message

The past year has seen the coming together, once again, of our industry, labour and federal, provincial, territorial government stakeholders as partners with a common goal - helping the Commission find creative and innovative ways to serve the Canadian worker, the chemical industry and provincial/territorial/federal occupational safety and health programs. In the first such initiative since the Commission was established 12 years ago, we consulted with our tripartite stakeholders. Collectively, we wrote the strategic plan entitled *Commission Renewal: Blueprint for Change*.

The *Blueprint* outlines the steps that will revitalize and modernize this organization. With our stakeholders and Council of Governors - we set out very important guiding values and principles, considered now to be the cornerstones of renewal: **Timeliness - Accessibility - Transparency - Quality - Consistency - Competency - Respect - Fairness**. These principles are not only relevant during renewal, but have become the benchmark against which all Commission activities are and will be measured.

The *Blueprint* received unanimous support from the Commission's tripartite Council of Governors and was endorsed by the Minister of Health in October. We have published the *Blueprint* to demonstrate our commitment to our renewal agenda and sent it to all interested parties.

The next step was the laying of a solid foundation on which to rebuild the Commission. This past fall was devoted to the development of an operational workplan in order to implement the strategic initiatives of the *Blueprint*.

The *Workplan* is the operational foundation that will direct the course of our work for the next few years. We believe that the *Workplan* serves as tangible evidence of our commitment to our stakeholders, and as such, we have widely published the *Workplan*. Many of the *Workplan* action items are well underway and some have already been completed.

Although we are changing the way we operate, what will not change is our role - balancing the right of chemical companies to protect trade secrets with the need of workers to have accurate health and safety information about the hazardous chemicals used in the workplace.

Weldon Newton

II Departmental Performance

Societal Context

The Hazardous Materials Information Review Commission's (HMIRC) departmental objective is to allow suppliers or employers involved with hazardous industrial materials to protect confidential business information concerning their products and at the same time to ensure that workers are provided with accurate safety and health information for these products.

In carrying out our fundamental commitment to the workers' right to know about the hazardous materials they encounter and the industry's right to protect trade secrets, it is the Commission's responsibility to ensure that the material safety data sheets (MSDS) and, in some cases, labels we review disclose accurate health and safety information concerning hazardous chemicals. HMIRC is committed to not only continuing but also enhancing this service.

The Commission's mandate is to ensure that Canadian workers remain informed of and protected from hazardous materials encountered in the workplace, and that employers have the supplier MSDS information they require to carry out their Workplace Hazardous Materials Information System (WHMIS) responsibilities. Simply put, Canadian workers' right to know about safety in the workplace can only be achieved if the data on the MSDSs and labels is accurately conveyed.

The Commission continuously seeks tripartite feedback from its stakeholders, considered to be our key co-deliver partners, who are:

- The Chemical Industry
- The Canadian Worker
- Federal/Provincial/Territorial Governments

The chemical industry has the right to protect legitimate confidential business information. The WHMIS program requires that manufacturers and suppliers provide employers with information on the hazards of materials produced, sold, or used in Canadian workplaces.

Provincial, territorial and federal occupational safety and health legislation requires employers to provide labels, MSDS and worker education and training programs. To ensure national consistency, each provincial, territorial and federal occupational safety and health agency established these requirements using an agreed upon WHMIS "model" occupational safety and health regulation.

Federal, provincial and territorial governments support the Commission's efforts to respond to the interests of both labour and industry. The WHMIS coordinators in each province and territory represent the front line for administration of the WHMIS program, and their expertise and knowledge are clearly linked to the work of the Commission. The Commission has continued to work with Health Canada's WHMIS Section to remain current on issues affecting the consistent application and interpretation of WHMIS legislation.

The WHMIS program is an integrated activity with many partners. The Commission continues to work closely with the agencies responsible for enforcing WHMIS requirements: Health Canada, Human Resources Development Canada, and the various provincial and territorial occupational health and safety agencies as well as with our labour and industry stakeholders, to secure worker safety while supporting industrial innovation by protecting their commercial trade secrets.

HMIRC's Council of Governors reflects the very nature of tripartite partnership with members representing workers, suppliers, and employers, and the federal, provincial and territorial governments.

Renewal

To understand the reasons why the Commission is undergoing a renewal - we must go back to the creation of the Commission in 1987. Industry, labour, the federal, provincial and territorial governments all had a common vision - to implement a national information system designed to protect Canadian workers by providing safety and health information about hazardous workplace materials.

The Commission was created to protect trade secrets based on submissions from chemical companies or employers and to ensure the accuracy of MSDSs. If disputes arose, appeal mechanisms were available. The Commission's traditional approach to its mandate was perceived as rigid and this made it difficult for a truly effective working relationship to be created with industry. This approach did not allow for as much interaction as is now envisaged - communication and sharing of information that will lead to a compliant MSDS.

Over the past decade, the role of government and the interaction between government, industry and labour changed across society. Interfaces and procedures that had once been accepted came to be seen as overly bureaucratic. In addition, the last decade has witnessed the rapid evolution of technology to the point where the Commission's stakeholders now expect to have information easily and readily accessible.

As times changed, industry expressed discontent with the bureaucratic nature of the claims review process and called for changes from the Commission. In 1997, the Commission's Council authorized a consultant to conduct an independent review. The consultant expressed the conclusions in a report to HMIRC's Council of Governors. Council in turn reported their recommendations to the Minister of Health in May 1998.

The Minister requested that the Commission conduct a more widespread renewal consultation with all interested parties and undertake an assessment of the potential impact of the implementation of Council's report on the operations of the Commission.

The time was right for us to take a fresh look at ourselves, to examine where we were and chart our course for the future. We were eager to examine our operating procedures and working relationships. In a few intense months during the fall of 1998, Commission staff took stock of their experience in handling claims over the past 10 years, and developed ideas for renewal that more specifically addressed the issues raised by claimants. Throughout this period of analysis and development there was extensive collaboration between Commission staff and the Council of Governors. Council provided valuable guidance and helped shape the vision. This critical contribution developed the consultation process and the conceptual framework that led to the Commission's draft strategic plan and a new vision for the future.



New Vision for HMIRC

The Commission will:

- **Be a client-oriented agency committed to improving service quality and timeliness at a fair and reasonable cost to those who directly benefit from our work.**
- **Provide regulatory decision-making that is based on sound scientific principles and take pride in being a professional regulatory organization seeking creative and progressive approaches to enhancing workplace safety.**
- **Resolve complaints and disputes, whether under statutory mandate or not, in a manner that is impartial, fair and prompt.**

In early 1999, the Commission began consultations with its stakeholders using the draft strategic plan. HMIRC's goal was to create a strategic plan with the input and support of all stakeholders. The objective of the strategic plan would be the formation of a shared vision that would guide the revitalization of the Commission.

The consultation process provided HMIRC with the opportunity to solicit comments on initiatives in support of the Commission's on-going modernization of its service delivery, regulatory and adjudicative functions.

Three main consultations were undertaken over the winter months with stakeholder groups: labour interests represented by the Canadian Labour Congress' National Occupational Safety & Health Workshop; federal, provincial, territorial governments through the Intergovernmental WHMIS Coordinating Committee; and industry through a full day meeting with HMIRC claimants.

In June, Council unanimously approved the *Commission Renewal: Blueprint for Change*, which now incorporated the stakeholders' comments. The *Blueprint* was presented to the Minister of Health, who in turn provided his endorsement in October.

The *Blueprint* contains action plans under a new three business line structure which will guide the direction of the Commission during the next few years. HMIRC published this document in November, and mailed copies to all stakeholders and interested parties.

The next critical step in the strategic planning process was the creation of an operational workplan to achieve the *Blueprint's* strategic initiatives. The *Workplan* contains the detailed actions that must be undertaken to complete the renewal of the Commission. The Council of Governors approved the *Workplan* in January 2000 and many of the projects are well underway.

Listed below is a summary of the high level strategic initiatives in the *Blueprint* of which the *Workplan* provides more detail on how we will achieve our goals.

- ▶ Endeavour to streamline refiling procedures, simplify fee administration and improve program administration of the Client Services.
- ▶ Seek appropriate authority from Treasury Board to develop a new cost recovery model for special situations, such as test-market and low-volume products and discuss with Treasury Board the application of its policy with a view to possibly eliminating cost recovery associated with MSDS compliance work done in the public interest.
- ▶ Reduce the stringency of the burden of proof of confidentiality by developing a claimant attestation-based approach to claim validity and use a similar approach for refiling of claims at the end of the exemption period.
- ▶ Develop a system for prioritizing the order of MSDS reviews which, if non-compliant with WHMIS requirements, could result in a significant negative impact on worker health and safety.
- ▶ Design a voluntary MSDS Compliance Program to provide claimants with the opportunity to bring their MSDSs into compliance prior to formal review by the Screening Officer.
- ▶ Develop and review the activities of MSDS Compliance and Client Services within an overall policy framework that will include a mechanism for full consultation (e.g. annual tripartite workshops) on program review and modification, program evaluation criteria, service standards for the MSDS and claim reviews.
- ▶ Make every effort to utilize our scientific and toxicological resources to maximize the benefits of our programs to our stakeholders and explore partnerships with other federal/provincial/territorial governments and program partners who have similar objectives and interests in the WHMIS program.

- ▶ Increase our investment in training and development of HMIRC personnel to maintain the skills and expertise necessary to deliver regulatory program services in a manner which meets and satisfies the expectations of our clients/stakeholders.
- ▶ Be more proactive in WHMIS tripartite policy/interpretation analysis and development; communicate the results to claimants and the chemical industry; and liaise with intermediary occupational health and safety providers.
- ▶ Increase the transparency of the decision making process by expanding a pilot project which offers claimants the opportunity to review and comment on health and safety information and advice provided to the Screening Officer.
- ▶ Ensure HMIRC services and expertise are effectively communicated to other regulatory and/or registry-type agencies and to seek out other possible sources of existing toxicological information.
- ▶ Seek feedback from clients to improve program effectiveness and consult other agencies to share innovations and best practices related to the adjudicative/hearing process.
- ▶ Liaise with Health Canada as the Department pursues, through international harmonization discussions, a system where confidential business information exemptions are not permitted for certain hazardous substances.
- ▶ Examine the appeals process to see if it can be simplified and streamlined to ensure that appeals are heard expeditiously and in a cost-effective manner and explore a more active participation by the Screening Officers in the appeals process.
- ▶ Enhance consistency of decisions through a systemic analysis of decisions and orders which have been successfully appealed.
- ▶ Develop a Dispute Resolution Program through tripartite consultations to define stakeholders' needs and establish guidelines outlining the different options of the Dispute Resolution Program while ensuring that a formal recourse mechanism is available.

Performance Results Expectations and Chart of Key Results Commitments

The Commission has moved from the previous one business line approach “*To ensure a balance between industry’s right to protect confidential business information and workers’ right to know about the hazardous materials to which they are exposed and the corresponding preventive health and safety measures*” and has established three new business lines:

Client Services
MSDS Compliance
Dispute Resolution

This change will reinforce the Commission’s focus on its new vision: protecting trade secrets, ensuring MSDS compliance and resolving disputes fairly and promptly - HMIRC’s Chart of Key Results Commitments, as depicted below, reflects this change in operations.

Summary 1999-2000 Performance Accomplishments		
to provide Canadians with:	to be demonstrated by:	achievements reported in:
workers that are knowledgeable about the health and safety hazards of exposure to chemicals found in products associated with claims for exemption;	compliance of MSDSs and labels and, where non-compliance is found, issue formal orders to bring about corrections;	DPR Pages 12 to 14
protection of valid confidential business information concerning suppliers' or employers' hazardous products;	provision of information and assistance by Client Services Officers;	DPR Pages 9 to 11
	issuance of Registry Numbers by the Screening Officers or delegate;	DPR Pages 9 to 12
	Screening Officers grant/deny the claim for exemption;	DPR Pages 9 to 12
a system that resolves disputes in a fair, efficient and cost-effective manner.	convening independent tripartite boards to hear appeals or disputes from claimants and/or affected parties on decisions and orders of the Commission.	DPR Pages 14 to 15

Performance Accomplishments

Presentation of Financial Information

Hazardous Materials Information Review Commission 1999-2000	
Planned Spending	\$ 1,169,000
Total Authorities	\$ 1,964,000
Actuals	\$ 1,869,000

Client Services

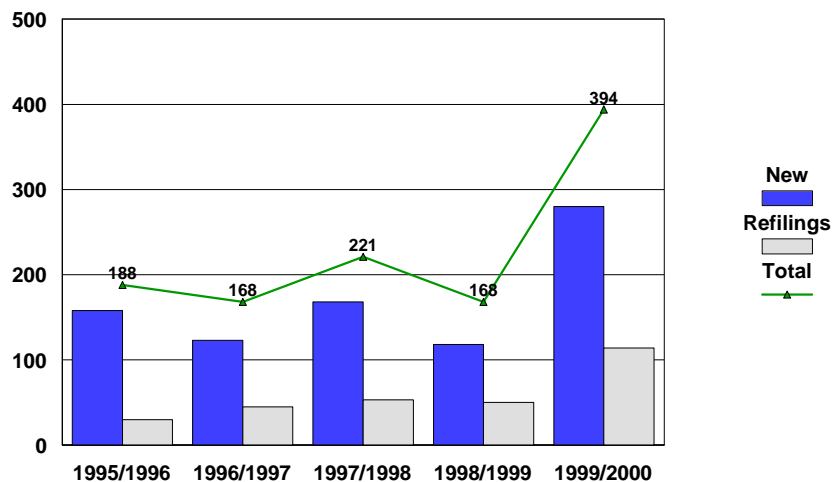
Claims for Exemption

Claims are assessed against regulatory criteria which establish when a trade secret is deemed to exist. A valid trade secret claim permits the supplier to withhold information that would normally be included in the product's MSDS. All claims for which a decision was issued this year met the criteria.

1999 - 2000	
Claims Received	394
Claims Registered	375
Decisions Issued	85
Claims in Process	637

This past fiscal year 1999-2000, the Commission received 394 and registered 375 claims to bring the total to 3,387 claims registered up to March 31, 2000. This represents a 135% increase in claims received from the previous year. We believe this significant increase is, at least in part, attributable to a renewed confidence in the Commission by industry stakeholders. HMIRC is under financial pressure as a result of increasing workload. The number of claims received averaged about 200 annually between 1995-96 and 1998-99. However, this figure doubled in 1999-00 to 394 and a backlog of 637 claims has resulted. The number of new claims received in 2000-01 is expected to be above historical average levels.

Claims Received at HMIRC



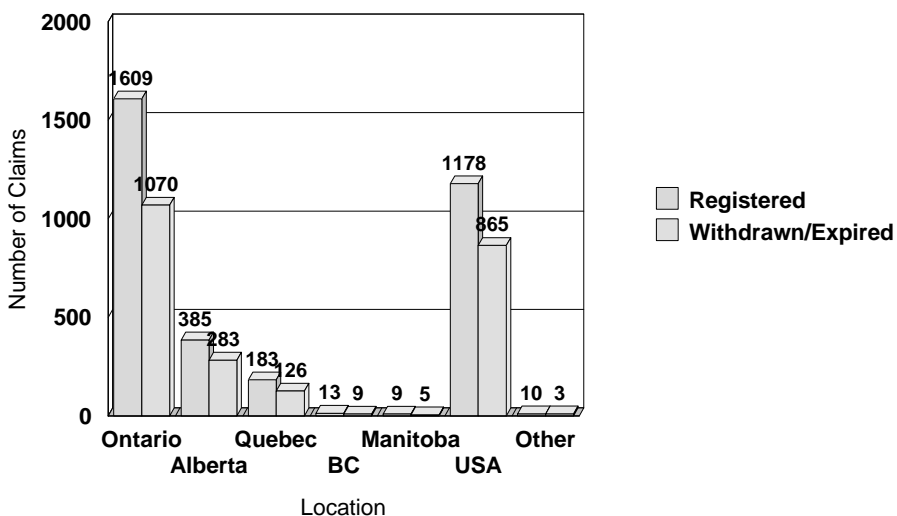
To date, 1,577 of claims received have been withdrawn by claimants, while 784 were allowed by claimants to expire at the end of the three-year exemption period, for a total of 2,361. The remaining claims were not registered due to incomplete supporting information required by regulation and registration was impeded until the deficiencies were rectified by the claimant. Of the claims registered, 69 were registered within 48 hours and 145 within 7 days of their receipt. The remaining 161 claims were registered after 7 days of their receipt as they were submitted with incomplete mandatory information.

Claimants choose to withdraw claims filed for a variety of reasons including:

- the product was never sold in Canada;
- the product is no longer being sold in Canada;
- the confidential business information ingredient(s) has (have) been removed from the product formulation;
- former confidential business information ingredient(s) is (are) now being disclosed on the MSDS; or
- there has been a change in product ownership.

A breakdown by geographical location of total claims registered and withdrawn since 1988 is presented below. Another 192 claims were received during this same period, of which 159 were withdrawn before being registered. The balance is awaiting registration due to incomplete regulatory required information.

Status by Geographical Locations as of March 31, 2000



To afford affected parties an opportunity to make representations to the Commission with respect to claims, a Notice of Filing must be published in Part I of the *Canada Gazette* outlining the basic characteristics of the registered claims. During the 1999-2000 fiscal year, the Commission published 2 such Notices, covering 254 claims for exemption.

The Commission maintains a quality management system, elements of which were established many years ago and are detailed below.

During the past fiscal year, the Commission monitored its activities respecting claims registered and enquiries serviced, against its published service standards. The service standard calls for a Commission response to telephone enquiries normally within 48 hours, and written replies are expected to be handled within a week of receipt. The Commission responded to a total of 85 enquiries in 1999-2000, of which 61 were by telephone and 24 were written.

The Commission launched its first web site in March (www.hmirc-ccrmd.gc.ca). HMIRC is looking to this web site as the conductor of future communications with all stakeholders and interested parties. This is a window to HMIRC which allows openness, transparency, accessibility and speaks to many of the design principles of renewal. The site provides access to all publications, in various formats, available for download or onscreen viewing and posts the most recent news on our renewal initiatives and other noteworthy activities.

A major modernization of our method of recording, registering, tracking and managing claims was completed with the aid of new technology and software making it a more systematic and expeditious system. HMIRC has also updated all claim related publications, such as the Information Bulletins and the Guide for Completing a Claim for Exemption. These documents assist clients in filing a claim for exemption and are available via the Commission's web site.

Cost Recovery

The original HMIRC cost recovery fee schedule, established in 1988, was to operate on a full cost recovery basis. The Commission costs are partly recovered through fees charged for filing claims for exemption and appeals. Up until now, the actual cost recovery level has been around 25-30% of the Commission's total cost. Currently, the level of cost recovery achieved last year was 35%. This is due to a number of factors including; a much lower number of claims than originally forecasted; a significant underestimation of the amount of work to process the claims and render decisions on MSDSs; and the resistance of industry and labour to higher fees than those originally established.

One of the important strategic initiatives within the *Blueprint for Change* that HMIRC is currently working on is to develop a new cost recovery model for special situations, such as test-market and low-volume products and discuss with Treasury Board the application of its policy with a view to possibly eliminating cost recovery associated with MSDS compliance work done in the public interest.

Cost recovery not only entails cost containment but also revenue. The Commission is cooperating with provincial occupational safety and health agencies to increase compliance with the WHMIS trade secret requirements under the *Hazardous Products Act* and, where necessary that unfiled claims are identified and referred to HMIRC.

Claim Validity

During the 1999-2000 fiscal year, the Commission rendered decisions on a total of 85 claims for exemption - all 85 claims were found valid when assessed against the regulatory criteria respecting the confidentiality of the claimed information which ordinarily would have to be disclosed on the relevant MSDS.

MSDS Compliance

Decisions and Orders

Of the 85 claims, 69 of the MSDSs for controlled products associated with these claims were found in non-compliance with the WHMIS requirements. In such cases, formal orders were issued by Screening Officers to bring about necessary corrections.

MSDSs associated with valid claims for exemption do not have to disclose the precise chemical identity and/or per cent concentration of a trade secret hazardous ingredient; however, they must in all other respects fully comply with WHMIS regulatory requirements. Although the MSDSs reviewed by the Commission represent only a small fraction of the total MSDS population, our findings can realistically be taken as an overall indicator of MSDS compliance in general. For this reason, the Commission has, for a number of years, published MSDS violation statistics in its Annual Report so as to communicate a continuing concern that MSDSs as a whole may be falling short of meeting the WHMIS objective of serving to protect the health and safety of workers who must handle, use and store hazardous chemicals in the workplace.

From a health and safety perspective, and depending on the chemical, workers may be exposed to controlled products that contain carcinogens, teratogens, mutagens, corrosives, irritants, poisons, or chemicals posing other threats to health and safety. Under the WHMIS requirements, MSDSs must not only identify such hazards to workers - these documents must also outline the proper protective equipment to be used when handling the products, and give first aid information in case of exposure.

The Commission has seen some indication in recent years that, with respect to the MSDSs that it has reviewed, somewhat fewer violations are being detected. We believe that this is primarily due to the fact that our clients, through continued dealings with the Commission, have become more knowledgeable about the WHMIS requirements. In addition, MSDSs reviewed by the Commission include an increasing number that are associated with refiled claims i.e., the Commission has already reviewed the MSDS once, and ordered any violations corrected at that time.

A statistical breakdown of the violations found in respect of MSDSs reviewed by the Commission is detailed below.

Violation Category	No. of Occurrences							
	99/00	98/99	97/98	96/97	95/96	94/95	Total	%
Toxicological Properties	182	341	384	698	580	609	2,794	33.7
Hazardous Ingredients	164	301	391	716	367	238	2,177	26.3
First Aid Measures	47	72	97	114	63	113	506	6.1
Fire or Explosion Hazard	21	66	49	56	104	140	436	5.2
Hazard Classification	6	38	44	95	42	79	304	3.7
Physical Data	13	28	29	49	48	55	222	2.7
Headings	19	22	31	71	122	113	378	4.6
Preparation Information	3	20	9	14	36	35	117	1.4
Generic Chemical Identity	20	17	39	13	27	56	172	2.1
Product Information	21	15	24	36	49	48	193	2.3
Format/Wording	28	10	41	126	205	390	800	9.7
Preventive Measures	2	4	3	8	5	49	71	0.9
Reactivity Data	6	2	14	17	19	52	110	1.3
Total	532	936	1,155	2,013	1,667	1,977	8,280	100
No. Claims Adjudicated	85	143	150	204	252	196	1,032	
No. Occurrences/Claim	6.3	6.5	7.7	9.9	6.6	10.1	8	

A significant proportion of time continued to be spent on preparatory work related to the issuance of decisions on claims for exemption and compliance of associated MSDSs. Often, a preliminary review of a claim results in the determination that the claimant has not provided all of the supporting documentation as required by the *Hazardous Materials Information Review Regulations*.

In-branch review is a process by which draft Statements of Decision/Order prepared by Screening Officers are peer-reviewed within the Operations Branch against several well-defined criteria. This review continues to be an important step in the decision-making process. These reviews endeavour to promote such attributes as completeness, clarity thus ensuring the Statement of Decision/Order is well reasoned.

A pilot project was implemented offering claimants, and any affected party who has made representation pursuant to publication of a Notice of Filing, the opportunity to review and comment on the health and safety information and advice provided to the Screening Officer. This initiative has significantly enhanced the transparency of the MSDS review and decision-making processes and has been well received by claimants.

A complete redesign of the workflow procedures for reviewing and issuing decisions on MSDS compliance was undertaken. This resulted in a more efficient, responsive and effective procedure for reviewing MSDS content.

Enforcement of WHMIS disclosure requirements is a key ongoing factor impacting on the number of claims filed with the Commission. The responsibility for enforcing the reporting requirements of WHMIS lies with the various provincial and territorial occupational health and safety agencies and Human Resources Development Canada. Commission staff continued to respond on an ad hoc basis to government representatives regarding collaborative efforts to identify suppliers who claim proprietary information on MSDSs without filing a claim with the Commission.

The Commission continues to support the efforts of provincial safety and health agencies to enhance the compliance of MSDSs with the trade secret exemption regulatory requirements. This will help to ensure that all suppliers become aware of their obligations in this respect, and that where necessary, claims for exemption are filed with the Commission.

The Commission sought advice from Health Canada officials on policy and interpretation issues associated with the *Hazardous Products Act* and *Controlled Products Regulations*. The Commission continued to participate in the formal ongoing tripartite WHMIS forum (Current Issues Committee) to resolve policy issues, and in addition, on the Intergovernmental WHMIS Coordinating Committee which serves as the forum for intergovernmental consultation on matters related to WHMIS. These two bodies help to ensure that the Commission's decisions on MSDS compliance are as consistent as possible with WHMIS tripartite consensus.

Dispute Resolution

Appeals

During the year in review, no appeals were filed against the decisions and orders of the Screening Officer.

1999 - 2000	
Appeals Filed	0
Appeal Hearings Concluded	0
Appeals Still In Process	1

In 12 years, 16 appeals have been filed and appeal boards have ruled on 51 order items. Seven of the 16 appeals were withdrawn prior to the issuance of a decision by an Appeal Board.

A Memorandum of Understanding was signed by HMIRC and the Dispute Resolution Committee of the Department of Justice in December approving funding in the amount of \$30,000 under the Dispute Resolution Fund. This funding was critical to allowing the Commission to begin developing a Dispute Resolution system that will fulfil our commitment to stakeholders to expedite the resolution of disputes.

Corporate Services

Corporate Services ensures the success of the Commission's three business lines by providing a full range of services including finance, records and facilities management, security, management services, information technology, administration, human resources, communications and strategic planning.

A policy development process entitled: *Policy Making at HMIRC* was approved by Council in January. In the past, the Commission did not have a documented policy development process for issues affecting the application and interpretation of its legislation. This paper reflects the values and principles of our renewal and enhances the transparency of the Commission's policy making. HMIRC's policies will be available to all interested parties via its web site.

An agreement was entered into between HMIRC and the Department of Justice to provide on-site legal services. The "Multi-Client Legal Services Unit" was established with HMIRC as its first client. The Commission provides space and support and the Department of Justice provides shared services on a cost recovery basis to other small agencies/government initiatives, which like the Commission, do not require full-time legal counsel.

A partnership was established with Health Canada in implementing the government-wide Financial Information Strategy of a SAP-based financial management platform. This will provide appropriate standardized interfaces to the Office of the Receiver General and will provide the Commission with the ability to generate accrual accounting based balance sheets and reports in upcoming years.

III Financial Performance Overview

Table 1 - Summary of Voted Appropriations

Financial Requirements by Authority (\$ thousands)				
Vote		Planned Spending	1999-2000 Total Authorities	Actual
10	Operating Expenditures	1,009	1,804	1,684
(S)	Employee benefit plans	160	160	185
Total Department		1,169	1,964	1,869

Note: The difference between the planned spending and the 1999/00 authorities primarily reflects the transfer of resources for the WHMIS Evaluation Section from Health Canada to HMIRC as reflected in Supps A adjustments.

Table 2 - Comparison of Total Planned Spending to Actual Spending

Departmental Planned versus Actual Spending (\$ thousands)			
	1999-2000		
	Planned	Total Authorities	Actual
FTEs	12	22	22
Operating	1,169	(1,964)	1,869
Total Gross Expenditures	1,169	(1,964)	1,869
Less: Respendable Revenues*	-	-	-
Total Net Expenditures	1,169	(1,964)	1,869
Other Revenues and Expenditures	-	-	-
Non-respendable Revenues**	(477)	(477)	(767)
Cost of services provided by other departments***	797	349	336
Net Cost of the Program	1,489	1,836	1,438

* Formerly "Revenues Credited to the Vote"

** Formerly "Revenues Credited to the General Government Revenues (GGR)". The non-respendable revenues represent claim registration fees paid by Canadian and international chemical manufacturers, distributors and employers with respect to the registration and review of claims for exemption under the WHMIS and its related legislation.

*** Note: The planned costs for services as presented in the 99/00 RPP included professional services provided by Health Canada's WHMIS Evaluation Section. Transfer of resources for the WHMIS Evaluation Section from Health Canada to HMIRC was completed in FY 99/00 as reflected in Supps A adjustments.

Table 3 - Historical Comparison of Total Planned Spending to Actual Spending

Historical Comparison of Departmental Planned versus Actual Spending (\$ thousands)					
	Actual 1997-98	Actual 1998-99	1999-2000		
			Planned Spending	Total Authorities	Actual
HMIRC	1,246	1,218	1,169	1,964	1,869
Total	1,246	1,218	1,169	1,964	1,869

Note: The difference between the planned spending and the 1999/00 authorities primarily reflects the transfer of resources for the WHMIS Evaluation Section from Health Canada to HMIRC as reflected in Supps A adjustments.

Table 4 - Non-Respendable Revenues*

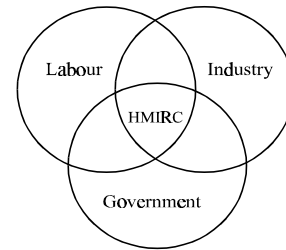
Non-Respendable Revenues (\$ thousands)					
	Actual 1997-98	Actual 1998-99	1999-2000		
			Planned Revenue	Total Authorities	Actual
HMIRC	468	463	477	477	767
Total Non-Respendable Revenues**	468	463	477	477	767

* Formerly "Revenues Credited to the General Government Revenues (GGR)".

** The non-respendable revenues represent claim registration fees paid by Canadian and international chemical manufacturers, distributors and employers with respect to the registration and review of claims for exemption under the WHMIS and its related legislation.

IV Departmental Overview

The Commission was created as an independent agency in 1987 by proclamation of the *Hazardous Materials Information Review Act*. We are a small but important public sector institution charged with providing the trade secret mechanism within WHMIS. WHMIS is a national system contributing to the reduction of illness and injury caused by using hazardous materials in the workplace. WHMIS delivers information using three key elements: MSDSs, labels and worker education programs.



HMIRC makes decisions on the compliance of MSDSs and labels within WHMIS' regulatory and legislative requirements. As a direct result of our work, national and international chemical companies have been afforded the ability to protect their industrial intellectual property assets. At the same time, our efforts to review MSDSs and labels and to disclose accurate health and safety information about hazardous chemicals, have directly contributed to a reduction in the risk of workplace-related illness and injury.

As a vital independent agency committed to workplace safety, HMIRC plays a pivotal role in providing a mechanism whereby trade secret formulations can be maintained by industry while ensuring that full hazard disclosure can be afforded to workers in the workplace. To achieve the Commission's mandate, our adjudicative efforts must result in a fair balance between the right of workers to be informed about the hazards of the chemicals to which they are exposed and the right of suppliers and employers to protect their bonafide trade secret information. Success in this dual-role framework requires that we balance the tension inherent in being a strategic partner with industry on the one hand, and an advocate for worker health & safety on the other. This dual-challenge continues to define our essential role in Canadian society.

The Commission's clientele consists of a number of WHMIS stakeholders: suppliers and employers in the chemical industry who wish to protect their trade secrets from being disclosed on MSDSs or labels; employers who rely on supplier MSDS information to prepare their own workplace MSDSs and training programs; and labour representing all workers who are exposed to these products.

Our Mandate

Under the authority of the *Hazardous Materials Information Review Act* and the provincial and territorial occupational health and safety acts, the Commission is an administrative agency charged with carrying out a multi-faceted mandate:

- to formally register claims for trade secret exemptions, and issue Registry Numbers;
- to issue decisions on the validity of claims for exemption using prescribed regulatory criteria;

- to make decisions on the compliance of MSDSs and labels within the WHMIS requirements as set out in the *Hazardous Products Act* and *Controlled Products Regulations* and various provincial and territorial occupational health and safety acts; and
- to convene independent, tripartite boards to hear appeals from claimants or affected parties on decisions and orders issued by the Commission.

Our Mission

As a vital and independent agency, accountable to Parliament through the Minister of Health, the mission of HMIRC is to:

- ensure a balance between industry's right to protect confidential business information and the right of employers and workers to know about the hazardous materials they deal with in the workplace;
- provide a trade secret mechanism within WHMIS;
- resolve complaints and disputes impartially, fairly and promptly through statutory or alternate means.

Our Objectives

We aim to ensure that:

- our work is highly visible and widely recognized;
- our employees exhibit a business attitude through a strategic and client-oriented approach;
- our activities achieve maximum worker health and safety benefits while minimizing impact and cost to industry standards and practices;
- feedback from our clients and stakeholders is incorporated into improving our processes and programs;
- established service standards are consistently achieved when handling client complaints;
- disputes are resolved effectively by offering viable options and an appeal mechanism is available to respond to client needs;
- a comprehensive policy framework, driven by input from stakeholders, guides the operations of the Commission's core programs; and
- cost recovery, consistent with Treasury Board policy, is achieved for decisions rendered on the validity of claims for trade secret exemptions, and cost recovery associated with MSDS compliance decisions rendered in the public interest, is eliminated.

Values and Operating Principles

HMIRC has shaped a new vision and principles with the strategic plan *Blueprint for Change*. All future Commission work will be benchmarked against these new standards and must address these principles:

FAIRNESS: in our ability to provide service and perform statutory functions.

TIMELINESS: in our ability to provide services within established and reasonable time frames.

ACCESSIBILITY and TRANSPARENCY: in our ability to provide information and services simply and clearly and with policies and procedures that are understandable to everyone.

ACCOUNTABILITY: in our ability to base regulatory instruments on rigorous cost/benefit analysis and to be accountable for programs and impact of decisions, while providing services in a manner that is cost-effective for everyone involved.

QUALITY and CONSISTENCY: in our ability to render accurate, relevant, dependable, understandable, predictable and error-free decisions while ensuring enforcement of firm and consistent regulations in the decision-making process.

COMPETENCY and RESPECT: in our ability to provide services based on a high level of skill, knowledge, scientific and technical competence, and to demonstrate respect and professionalism to everyone who comes into contact with the Commission.

SECURITY and CONFIDENTIALITY: in our ability to store and handle the trade secrets of our claimants and to balance confidentiality with openness and transparency in our day-to-day duties.

Departmental Organization

Council of Governors

The Commission is governed by a Council of Governors, consisting of members representing workers, suppliers, and employers, and the federal, provincial and territorial governments. Each governor is appointed by the Governor in Council to hold office for up to a three-year term. The Council is headed by a Chairperson chosen by the governors for a term of one year.

The Council is responsible for making various recommendations to the Minister of Health, including changes to the regulations respecting the Commission's fee structure; to procedures for reviewing claims for exemption; and to appeal procedures.

President and CEO

The President and CEO is appointed by the Governor in Council, and has the authority and responsibility to supervise and direct the organization's work on a day-to-day basis. The President is accountable to the Council of Governors and the Minister of Health. The President's Office acts as Secretariat to the Council of Governors.

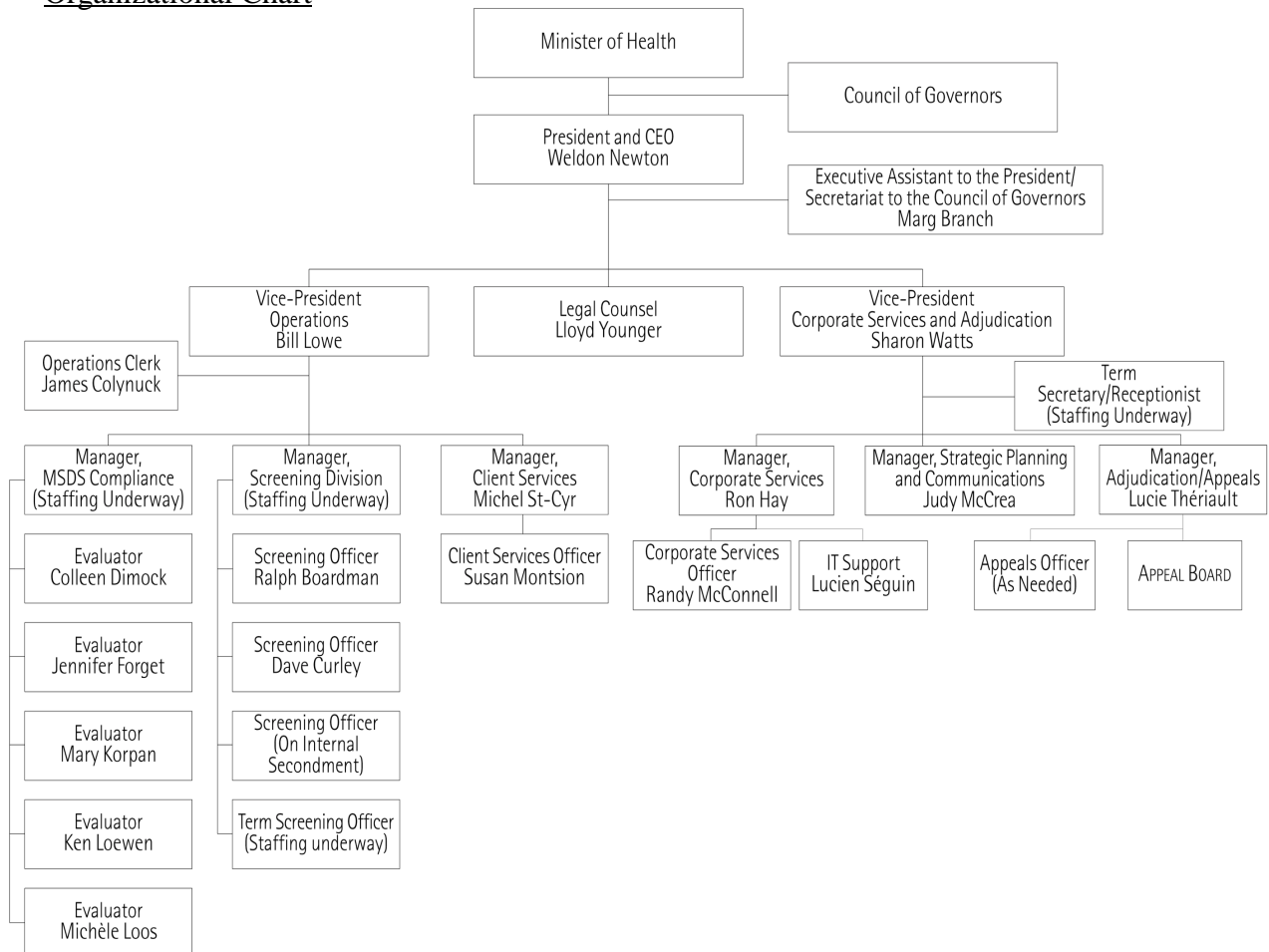
Operations Branch

The Vice-President, Operations Branch, who is also the Chief Screening Officer, has the authority and responsibility to supervise and direct the work within the MSDS Compliance and the Client Services business lines.

Corporate Services and Adjudication Branch

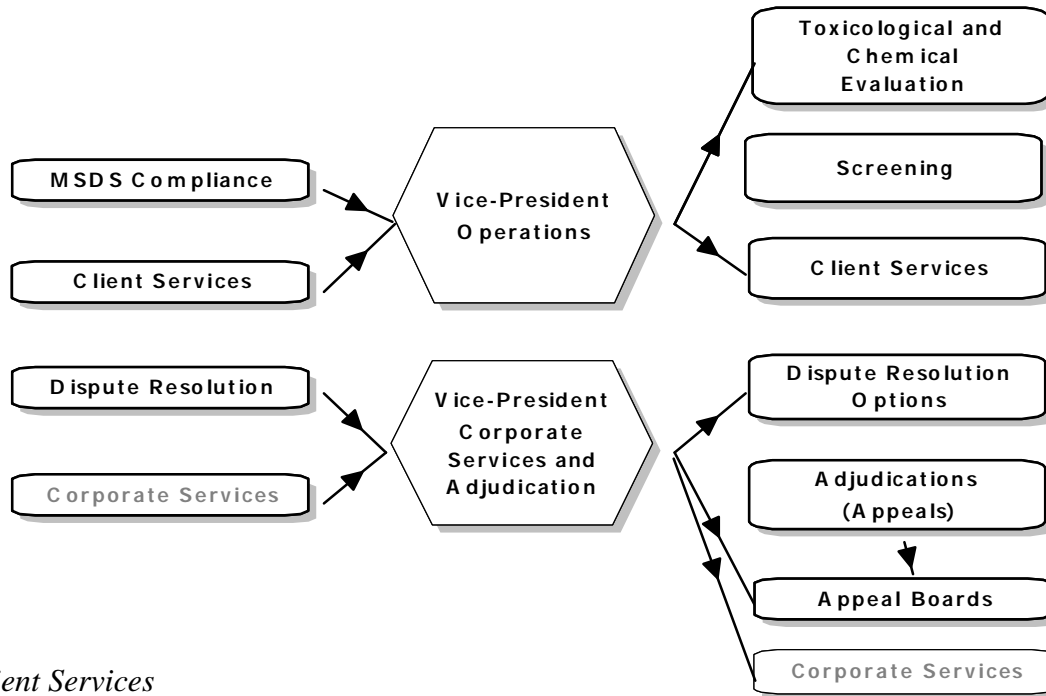
The Vice-President, Corporate Services and Adjudication Branch, who is also the Chief Appeals Officer, has the authority and responsibility to supervise and direct the work within the Dispute Resolution business line and Corporate Services.

Organizational Chart



Business Lines

The Commission has adopted a business outlook on its operations and this approach became the building blocks for the creation of our strategic plan *Commission Renewal: Blueprint for Change*. In order to reinforce the Commission's focus on its new vision: protecting trade secrets, ensuring MSDS compliance and resolving disputes fairly and promptly - we have established three new business lines: Client Services, MSDS Compliance and Dispute Resolution. HMIRC's three core business lines are supported by a strong Corporate Services capacity to ensure that our business activities operate effectively and efficiently.



Client Services

The aim of Client Services is to assist suppliers or employers in protecting their products' confidential business information while allowing them to meet their disclosure obligations under the WHMIS.

Client Services involves the formal registration of claims for exemption, the issuance of Registry Numbers, and the security of claim-related information. Service to clients begins when the Commission is contacted by a company wanting to make a claim and needing to know what the process involves.

Client Services is designed to ensure that:

- Professionalism, cost-effectiveness, timeliness and responsiveness define our claim registration service.
- A firm understanding of business/government relations guides our service delivery.
- Fairness and justice reflect our processes.
- Openness and accountability encourage client feedback.
- Prompt and courteous service define our complaint management process.

Client Services assists companies in protecting confidential business information while at the same time meeting their WHMIS obligations. Information is provided that can help companies present complete and accurate MSDSs with their claims. Our web site helps share this information with industry and labour. Once the application is accepted as complete, we issue the company a Registration Number for the claim in no more than seven days.

Screening Officers have the statutory responsibility to decide whether claims are valid, and for determining whether MSDSs or labels submitted with the claims comply with the WHMIS legislation.

The decision on claim validity is reached by reviewing supporting information from the claimant against the criteria prescribed in the *Hazardous Materials Information Review Regulations*.

MSDS Compliance

The aim of MSDS Compliance is to regulate, in the public interest, the maximum health and safety benefits in the workplace.

Screening Officers review claim related MSDSs and, in some cases, labels pursuant to the *Hazardous Products Act*, the *Canada Labour Code*, and provincial and territorial occupational health and safety legislation, and decide whether they are within the WHMIS regulatory requirements. Such decisions take into account health and safety advice prepared by scientific Evaluators in the MSDS Compliance Division.

MSDS Compliance is designed to ensure that:

- While respecting the confidentiality provisions of the legislation, openness, accessibility and transparency guide our actions to regulate in the public interest.
- Fairness is the cornerstone of our decision-making process.
- A firm dedication to ensuring workplace health and safety, and sound scientific principles, judgement and information guide the decisions we render.
- Stakeholder satisfaction drives our process for complaint management.
- High standards direct our annual program performance review.

When work begins on a file, the first step is to build a collection of scientific information relevant to each of the product's ingredients. The Evaluator will be alert for new information or information of which the company might not have been aware, trying to ensure that the MSDS reflects the current state of knowledge about the hazards that may be associated with a product.

Evaluators assess this information and prepare an advice document for the Screening Officers on the health and safety hazards posed by the product which have not been adequately disclosed on the MSDS. The Screening Officers offer claimants, and any affected party who has made representation to the Screening Officer following publication of the Notice of Filing in the *Canada Gazette*, an opportunity to review and comment on the health and safety information and advice provided by the Evaluators. In the case of the latter, sharing an advice document with an affected party must respect the legislative provisions which protect the confidentiality of information received from a claimant.

At the conclusion of the claim and MSDS review process, a formal Statement of Decision is forwarded to the claimant. Should a claim be ruled invalid, an order is issued to the claimant to disclose the confidential business information which was the subject of the claim. Where the MSDS or label does not meet the WHMIS requirements, the Screening Officer orders that changes be made to bring about compliance. All orders specify the period during which various changes must be made if the product is to continue to be sold in Canada.

A Notice is published in the *Canada Gazette* to make public the decisions and orders issued by the Screening Officer, and to initiate the time during which the claimant and affected parties may appeal the decisions or orders. If no appeal is filed, the claimant must provide a copy of the amended MSDS to the Screening Officer, who reviews it to ensure compliance with the order.

Dispute Resolution

The aim of Dispute Resolution is to provide all parties with a range of options for discussion on issues arising from decisions and orders of the Commission in order to prevent disputes from arising and where they do arise, to address them as early and effectively as possible.

The Commission is in the process of designing and developing, through tripartite consultation, a Dispute Resolution system which will supplement and work in conjunction with the current appeals process.

The appeals process includes the convening of independent tripartite boards to hear appeals from claimants or affected parties. An appeal may relate to the compliance of an MSDS, the rejection of a claim or to request disclosure in confidence, for reasons of health and safety in a workplace, of information in respect of which a claim for exemption is made. For each appeal filed, a Notice of Appeal is published in the *Canada Gazette* to provide affected parties with an opportunity to make representations to the Appeal Board.

An Appeal Board is comprised of a Chairperson appointed by the Chief Appeals Officer, and two members appointed by the Chairperson: one representing suppliers and/or employers, and the other, workers. Board members are selected from lists of potential nominees established in accordance with the *Hazardous Materials Information Review Act*.

The final outcome of the appeals process is a decision by the Appeal Board to dismiss the appeal and confirm the decisions or orders of the Screening Officer; or to allow the appeal and either vary or rescind the decisions or orders being appealed. A Notice of Decision, including the purport and reasons, is published in the *Canada Gazette*.

Dispute Resolution is designed to ensure that:

- Clarity and straightforwardness reflect our service and information delivery.
- Expeditious resolution of cases, transparency of activities, and informality direct our complaint and dispute resolution processes.
- Effective procedures and methods facilitate the identification and resolution of complaints.
- Our unbiased approach to the decision-making process ensures impartial service to all parties.
- Flexibility and fairness are reflected in our dispute resolution options.
- Durable outcomes ensure better compliance, fewer disputes and improved relations for all parties involved in case settlements.
- All parties will be encouraged to seek consensus agreements in resolving their disputes.

Corporate Services

The Corporate Services Division has been mandated with a very important role: ensuring the success of the three core business lines. Corporate Services provides a full range of services to the Commission including finance, records and facilities management, security, management services, information technology, administration, human resources, communications and strategic planning.

Corporate Services is designed to ensure that:

- We understand the needs of both our internal clients and our external clients and provide a professional and responsive support service to those clients in a prompt and timely fashion.
- We provide the Commission with the optimum tools and equipment to enable it to achieve its mission in an effective and efficient manner.
- We have a clear understanding of our clients' business lines and we provide our clients with an updated and comprehensive understanding and knowledge of our services and capabilities.
- We seek and respond to client feedback.
- We are committed to supporting the career development and professional aspirations of all the Commission's staff.
- We expect crisis and are able to effectively manage it.
- We provide a secure environment for claimants' trade secrets through effective and efficient policy and procedures which minimize disruption on the staff.
- We provide strong support and guidance in all aspects of communications.
- We maintain and nurture the corporate identity.

V Other Information

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Legislation Administered and Associated Regulations

The following documents are the various laws and regulations concerning the Commission and links are provided from the HMIRC's web site. Hard copies may be found in public libraries or purchased from booksellers that carry or distribute government documents, or ordered from the Canadian Government Publishing, Ottawa, Ontario K1A 0S9, Tel: (819) 956-4800.

Hazardous Materials Information Review Act
Hazardous Materials Information Review Regulations
Hazardous Materials Information Review Act Appeal Board Procedures Regulations
Hazardous Products Act
Controlled Products Regulations
Canada Labour Code - Part II
Canada Occupational Safety and Health Regulations
Provincial and Territorial Occupational Safety and Health Acts and Regulations

List of Commission Publications

The following publications are statutory reports and other publications. They are available from the Commission's web site in various format for downloading or on-screen viewing. Hard copies may also be requested from the Commission at the address listed above.

Annual Reports, 1988 to 2000
Commission Renewal: Blueprint for Change (strategic plan)
Workplan (operational workplan from the strategic plan)
Information Bulletins 1, 2, 3 & 4
Form 1 - Claim for Exemption
Guide to Completing a Claim for Exemption Form
Guidelines for Toxicological Summary Requirements
Statement of Appeal - Form 1

Please visit our web site - www.hmirc-ccrmd.gc.ca

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