



Hazardous Materials Information Review Commission Canada

Performance Report

For the period ending
March 31, 2001

Canada

Improved Reporting to Parliament Pilot Document

Each year, the government prepares Estimates in support of its request to Parliament for authority to spend public monies. This request is formalized through the tabling of appropriation bills in Parliament.

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*.

The Estimates, along with the Minister of Finance's Budget, reflect the government's annual budget planning and resource allocation priorities. In combination with the subsequent reporting of financial results in the Public Accounts and of accomplishments achieved in Departmental Performance Reports, this material helps Parliament hold the government to account for the allocation and management of funds.

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Foreword

In the spring of 2000 the President of the Treasury Board tabled in Parliament the document “Results for Canadians: A Management Framework for the Government of Canada”. This document sets a clear agenda for improving and modernising management practices in federal departments and agencies.

Four key management commitments form the basis for this vision of how the Government will deliver their services and benefits to Canadians in the new millennium. In this vision, departments and agencies recognise that they exist to serve Canadians and that a “citizen focus” shapes all activities, programs and services. This vision commits the government of Canada to manage its business by the highest public service values. Responsible spending means spending wisely on the things that matter to Canadians. And finally, this vision sets a clear focus on results – the impact and effects of programs.

Departmental performance reports play a key role in the cycle of planning, monitoring, evaluating, and reporting of results through ministers to Parliament and citizens. Earlier this year, departments and agencies were encouraged to prepare their reports following certain principles. Based on these principles, an effective report provides a coherent and balanced picture of performance that is brief and to the point. It focuses on results – benefits to Canadians – not on activities. It sets the department’s performance in context and associates performance with earlier commitments, explaining any changes. Supporting the need for responsible spending, it clearly links resources to results. Finally the report is credible because it substantiates the performance information with appropriate methodologies and relevant data.

In performance reports, departments strive to respond to the ongoing and evolving information needs of parliamentarians and Canadians. The input of parliamentarians and other readers can do much to improve these reports over time. The reader is encouraged to assess the performance of the organization according to the principles outlined above, and provide comments to the department or agency that will help it in the next cycle of planning and reporting.

This report is accessible electronically from the Treasury Board of Canada 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, 2001**

Allan Rock
Minister of Health

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I Message

President's Message

This report covers the third year of the Hazardous Materials Information Review Commission's (HMIRC) renewal initiative. While the first two years of renewal were focused largely on planning the direction in which the Commission would evolve and consulting with our stakeholders, this year we have some strong achievements to report. The framework that will support our new way of doing business has emerged. The strategies we identified in our *Blueprint for Renewal* have either been implemented or are awaiting the necessary regulatory and legislative changes. We expect the necessary proposals to be ready by the fall of 2001.

We have put in place a new culture of service delivery, accountability in our operations, and modern administration. Better relationships, based on frequent and open communication, have begun to form with our stakeholders in industry, labour and government. As an organization, we have increased our visibility and presence, invited our clients to measure our performance against the renewal commitments we have made, become more accessible to stakeholders and have elevated the importance of information sharing. We are dealing with some long-standing industry concerns about fees and other operational issues by streamlining our procedures and proposing a new cost recovery structure to Treasury Board. And we are convinced that the steps we have taken to rethink our operations will only strengthen our ability to follow through on our commitment to workplace safety objectives.

I am proud of the work we have done. Through three years of renewal, the Commission has established itself as a viable organization that has strong support from all the HMIRC stakeholders. The process has brought us renewed vigour, which will stand us in good stead as we deal with the demands of the coming year.

For the last two years, since we began renewal, the number of claims filed with the Commission has significantly increased. While in part this reflects economic trends and conditions in the industry, I think that the new accessibility of the Commission may also be encouraging claimants to come forward. We have added to our operations staff to help us address the backlog of claims, and we plan to reduce and ultimately eliminate the backlog over the next five years.

Another important factor in looking ahead is dealing with the issue of unfiled claims and how to detect MSDSs that have not met WHMIS disclosure requirements and have not been filed with the Commission. We have begun to explore ways to strengthen our relationships with our OSH partners in the provinces and territories, to gain a better understanding of the issues and challenges facing OSH agencies and work with them to identify unfiled claims and bring them into the system. This initiative will be one of our priorities in the next year.

Another will be to improve our Web site by adding new information and new e-business functions. We are exploring ways to implement e-payment and e-filing of claims. There will be some challenges here, especially in regard to security issues and monetary conversions, given our international clientele.

We will continue to put effort into steering through the approvals and legislative process another renewal project that was very much driven by stakeholders—our new fee schedule. We know that industry found our old system complex, the fees disproportionate and refillings costly. Our proposal for a new policy is in line with Treasury Board's 1997 Cost Recovery and Charging Policy, which distinguishes between activities for private benefit and public good, and has strong support from our stakeholders for the underlying principles and process.

Another important and longterm project is bringing our new dispute resolution process into effect. Our driving need here is to enhance worker safety by bringing industry into compliance earlier in the claims process. The sooner disputes are resolved, the sooner MSDSs will meet compliance standards, bringing more timely safety to the workplace. The new process, which had stakeholder input and has received approval from the HMIRC Council of Governors, involves increased communication between the Commission and claimants, more front-end information and guidance, new compliance options and a new role for a Commission official in appeal hearings. It is common sense to resolve issues and concerns before we get to the appeal stage. I believe the changes we are proposing will bring greater openness and efficiency, while helping to build relationships of trust, mutual respect and understanding with our stakeholders.

The final step in bringing these changes to fruition is amending the legislation and regulations in order to implement procedural changes. In 1988, the architects of the Commission's statute could not have envisaged the changes that the next 12 years would bring. Through dialogue and consultation, and based on the experience and wisdom accumulated over the years, the Commission now has a better idea of what works in today's world. We have laid the groundwork, and now we are ready for the future.

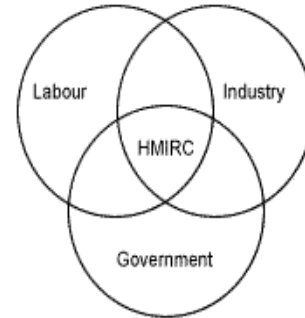
In closing, I think it is appropriate to express my deep appreciation for the hard work, enthusiasm and commitment of the Commission's staff in bringing our renewed organization into being. I would also like to thank all members of our Council of Governors for their encouragement, advice and support. Council support has been critical to our success. I have every faith that we will all continue to work successfully together during another productive year.

Weldon Newton

II Departmental Overview

Agency Context

In Canada, the handling and storage of hazardous chemicals in the workplace is controlled by the Workplace Hazardous Materials Information System (WHMIS), a wide array of legislation, regulations and procedures at various levels of jurisdiction that binds suppliers and employers alike. Established in 1988 through a consensus of labour, industry and government, the goal of WHMIS is to reduce illnesses and injuries resulting from the use of hazardous materials in the workplace.



WHMIS requires manufacturers and suppliers to provide employers with information on the hazards of chemicals produced, sold, or used in Canadian workplaces. It prescribes cautionary labelling for containers of controlled products, as defined in the *Controlled Products Regulations*, as a condition of sale and importation, and requires suppliers of those products to provide material safety data sheets (MSDSs). Information required to be shown on a product's MSDS includes the disclosure of all hazardous ingredients in the product, its toxicological properties, any safety precautions workers need to take when using the product, and treatment required in the case of exposure. Employers pass this information on to employees and institute worker training and education programs.

If a supplier or manufacturer wishes to withhold confidential business information—for example, the identity or concentration of one or more hazardous ingredients in its product—it applies to the Commission for an exemption from the requirement to list such ingredients on the MSDS. We allow suppliers to meet their WHMIS obligations without disclosing critical proprietary information, when the claim for exemption is determined to be valid.

The Hazardous Materials Information Review Commission (HMIRC) was created as an independent agency in 1987 by proclamation of the *Hazardous Materials Information Review Act*. The Commission is accountable to Parliament through the Minister of Health. It is a small but important public sector institution charged with providing the trade secret mechanism within the WHMIS.

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

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. The Commission's 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 the Commission balances the tension inherent in providing a service of commercial value to industry on the one hand, and being an advocate for worker health and safety on the other. This dual-challenge continues to define HMIRC's 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. (See Annex A – Departmental Organization.)

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 decision 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, 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.

Renewal

To understand the reasons why the Commission underwent 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 1998, we began to revitalize Commission operations by improving service delivery, increasing the transparency and accountability of our operations, and modernizing our administration. In many ways, this organization renewal process brought us back to our roots. The Commission began as the product of collaboration and agreement among government, labour and industry. In this same spirit of cooperation, we sought input from our clients and our partners in WHMIS to draft a strategic plan, *Commission Renewal: Blueprint for Change*, and its companion document, the *Workplan*, which outlined what we were going to do to realize our vision.

Cooperation, openness and dialogue with partners and stakeholders have remained strong elements in the implementation of our renewal initiative. Planned activities are proceeding on schedule, with many of the *Blueprint's* 29 action items already completed, while we steer others through the regulatory and statutory approval process. The major objective of our organizational renewal was to improve client service—by lessening the financial and paper burden on claimants—for example, while continuing to protect worker health and safety. Throughout its renewal, the Commission has sought out creative and progressive approaches. We have been successful in inaugurating productive exchanges of ideas with clients and stakeholders, and their feedback has been useful as we develop improvements in procedures and programs. We have created a new service-oriented organizational culture, and developed new procedural and administrative tools that benefit both our clients and ourselves.

The Commission has now completed its first full year of operations after reorganizing its services into three new business lines: Client Services, MSDS Compliance, and Dispute Resolution. Our new structure will contribute to more timely, cost-effective service delivery. Our Web site, launched in 2000, helps speed service delivery while enhancing openness and accountability. In the past year, we have redesigned our cost recovery policy with a focus on fairness and consistency, and will now prepare proposals for regulatory amendments to the fee structure itself. We have also developed new MSDS screening and dispute resolution procedures, which will bring greater openness and efficiency to our operations while helping to build relationships of trust, respect and understanding with our clients. The sooner disputes are resolved, the sooner MSDSs will meet compliance standards, bringing more timely safety to the workplace.

III Performance Accomplishments

Client Services

Strategic Outcome

Provide Canadians with protection of valid confidential business information concerning suppliers' or employers' hazardous products.

To be demonstrated by:

- Client Services providing information and assistance to suppliers or employers.
- Screening officers or delegate issuing registry numbers.
- Screening officers granting/denying the claim for exemption.

Context

Client Services assists suppliers and employers in protecting their confidential business information, while still meeting their disclosure obligations under the WHMIS. We formally register claims for exemption, issue registry numbers, and ensure the security of claim-related information. Screening officers rule on claim validity pursuant to the *Hazardous Materials Information Review Act*. In addition, Client Services provides general advice and guidance to claimants and monitors levels of client satisfaction. Client Services collaborates closely with MSDS Compliance, both in its ongoing work and on special projects, such as the revised screening process.

Ongoing Services

Client Services staff provide front-end assistance and information about the claims process and the role of the Commission to claimants, whether they are suppliers, producers, distributors or employers.

During the past fiscal year, the Commission monitored its activities respecting claims registered and enquiries serviced, against its 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 2000–2001, of which 61 were by telephone and 24 were written, all within the established service standards.

Once a claim is submitted, Client Services carries out a pre-registration check. The claim is then registered, and a registry number is issued within seven days of receipt, if the supporting documentation is complete. When there is an express request from a claimant, the Commission can and has registered claims within a few hours of receipt. Claim registration allows the company to import or sell their product while the various decision-making processes are carried out at the Commission.

This past fiscal year 2000–2001, the Commission received and registered 305 claims to bring the total to 3,692 claims registered up to March 31, 2001, reflecting a yearly rate which is again well above historical average levels. The Commission believes this significant increase is, at least in part, attributable to a renewed confidence in the Commission by industry stakeholders.

Due to this renewed confidence, the Commission is experiencing an increase in workload. The number of claims received averaged about 200 annually between 1995–1996 and 1998–1999. However, this figure doubled in 1999–2000 to 394 and with the number of claims registered this year, a backlog of 725 claims has resulted.

Of the 305 claims registered, 82 were registered within 48 hours and 154 within 7 days of receipt. The remaining 69 claims required significant further consultation with the claimant before registry numbers could be issued. Problems which delayed registration included documentation discrepancies between MSDS information and formulation information, missing mandatory information, delayed receipt of fees, and MSDS software conversion inadequacies which arose when companies amalgamated systems.

(See Annex B – MSDS Violations and Claims Statistics)

The claimant may decide to withdraw their claims at various stages of the registration and review process.

Reasons for Withdrawal of Claims

- 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.

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 2000–2001 fiscal year, the Commission published 3 such Notices, covering 376 claims for exemption.

Based on their assessment of the information submitted by the claimant, screening officers then issue a decision to grant or deny the validity of the claim for protection of confidential business information.

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 confidential business information that would normally be included in the product's MSDS. All 155 claims for which a decision was issued this fiscal year met the criteria.

Resources

Client Services		
	\$ (thousands)	Full Time Equivalent
Planned Spending	572	8
<i>Total Authorities</i>	509	8
Actuals	707	8

Accomplishments

The *Blueprint* and *Workplan* laid out objectives for Client Services in a number of areas, including outreach to develop partnerships; ongoing initiatives to inform clients, stakeholders and partners; procedures to reduce the burden of proof for confidentiality claims; and an improved and modernized administrative process.

Consultation with Stakeholders and Outreach Efforts

In accordance with the *Blueprint* objective of establishing a mechanism for full consultation on program review and modification, we organized the Commission's first-ever workshop for stakeholders in Ottawa on June 15, 2000. The event, dubbed "Dialogue 2000," was designed to inform stakeholders more fully about regulatory requirements and thereby improve the quality of claim submissions. The agenda included an update on the renewal program, a guided tour of our new Web site, and presentations by staff on a variety of topics related to the Commission's operations. For each topic, presenters explained the current process, outlined proposed changes, and answered questions from participants. All of the 25 representatives of industry and governments in attendance gave the workshop high marks for quality, relevance and usefulness in the written evaluations submitted at the end of the day-long event. We plan to hold more workshops as one of the means by which we can continue to keep in close touch with our stakeholders and WHMIS partners.

Early in 2001 we initiated the Commission's first client service questionnaire. The returns show high levels of claimant satisfaction, with a number of supportive write-in comments.

In the past year, we have also given some priority to exploring partnership and educational opportunities with organizations that have similar interests and objectives related to the WHMIS. These range from the possible distribution of toxicity profile summaries, which have been prepared for certain chemical substances, to an overall strategic outreach effort to communicate our mandate and services more widely to interested parties, including the U.S. chemical industry. We are also working with provincial/territorial occupational safety and health (OSH) agencies to develop operational relationships. In the course of their regular workplace inspections, the OSH agencies may be able to assist in identifying unfiled claims

for products already being sold; we are also gauging the OSH agency demand for various WHMIS-related services we might be able to provide in return.

On the international scene, we have worked to support the Canadian delegation involved in international discussions on the global harmonization of requirements for communicating chemical hazards.

New Cost Recovery Policy

One important objective of the Commission's strategic renewal initiative was to update our cost recovery structure to bring it into line with the Treasury Board of Canada's current Cost Recovery and Charging Policy.

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. The level of cost recovery achieved in 2000–2001 was 35%. Historically, the cost recovery level achieved has been around 25–30% of the Commission's total cost. 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.

A key feature of current Cost Recovery and Charging Policy is the distinction it draws between public and private good. A private good is one that primarily benefits an identifiable individual or organization, whereas a public good accrues to Canadians in general. Federal departments and agencies may charge for services that confer a private—but not a public—good. In particular, there should not be a charge for services that provide Canadians with information about dangers to health, public safety or protection of the environment. Departments must work with their clients to determine an appropriate division between public and private benefits.

Over the past year, we reviewed our cost recovery policy, examining the records of more than 1,000 claims to determine grouping characteristics, fee profiles and related factors. After conferring with clients, we drafted a proposed new fee schedule that would meet our goals. We propose to charge user fees for services rendered through our Client Services (which generally provide a private benefit to industry), while eliminating fees for services related to MSDS Compliance (which are performed in the public interest).

The revised fee schedule will protect program integrity, minimize the costs charged to clients, and make cost recovery practices more consistent, fair, transparent, and simpler to administer.

Claimants Favour New Fee Schedule

A draft of the proposed new fee schedule, sent to current claimants for their comments, received favourable reviews:

In favour of the proposed fee restructuring; much simpler to use, understand; and is fair to all users.

Fully endorse new schedule; would result in cost savings; makes the process of claims much easier.

...Major benefit to all stakeholders.

Proposals for Legislative Amendments

We are working on proposals which could result in legislative amendments. These proposals include reducing the amount of information required in support of a claim, making it easier for claimants to demonstrate that certain information pertaining to their products is, in fact, a legitimate trade secret that should remain confidential.

In addition, we are exploring a framework that would permit filing of claims related to controlled products that are to be test-marketed in Canada. The Council of Governors has mandated a tripartite working group to develop a proposal for consideration. This addition to our services may require a legislative amendment.

Modernizing Our Tools

Over the past year, work was completed on a more modern, efficient and user-friendly software program for the system that records, registers, tracks and manages claims.

MSDS Compliance

Strategic Outcome

Provide Canadians with workers that are knowledgeable about the health and safety hazards of exposure to chemicals found in products associated with claims for exemption.

To be demonstrated by:

Ensuring compliance of MSDSs and labels and, where non-compliance is found, issue formal orders to bring about corrections.

Context

MSDS Compliance is the Commission's "scientific arm". It helps ensure that workers know about the hazards of exposure to chemicals found in products associated with claims for exemption. The Commission reviews the related material safety data sheets and, in some

cases, labels, to make certain that they provide appropriate health and safety information and guidance to comply with WHMIS requirements, based on the *Hazardous Products Act*, the *Canada Labour Code*, and provincial and territorial occupational health and safety legislation. In each case, scientific evaluators review the most recent scientific information relevant to each of the products and/or its ingredients, and their known health and safety hazards. They provide advice to screening officers, who decide whether the MSDS complies with regulations.

At the conclusion of the MSDS review process, a formal Statement Decision is forwarded to the claimant. If the MSDS does not meet requirements, the screening officer issues a formal order for its revision and follows up to ensure compliance. All orders specify the period during which various changes must be made if the product is to continue to be sold in Canada. Since the Commission first began this activity in 1990–1991, some 95% of the material safety data sheets reviewed have been found non-compliant with the WHMIS requirements.

A Notice is published in *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.

Resources

MSDS Compliance		
	\$ (thousands)	Full Time Equivalent
Planned Spending	1,930	24
<i>Total Authorities</i>	1,668	24
Actuals	1,275	24

Accomplishments

The *Blueprint* and *Workplan* laid out objectives for MSDS Compliance in a number of areas, including stakeholder consultation, streamlined and improved claim review procedures, service standards and staff development. Significant progress has been made in all areas.

Improving the Screening Process

We are nearing completion on the design of a voluntary MSDS pre-assessment program for claimants, to speed up the screening process, reduce the number of orders issued by screening officers, and potentially also the number of appeals. Immediately after registration of a claim and before the formal review begins, we will examine the claimant’s MSDS for obvious technical violations and advise the claimant on how the MSDS might be improved with minimum effort.

In addition, the screening process now incorporates a step in which claimants and affected parties have an opportunity to review and comment on the health and safety advice prepared by our scientific evaluators. After reviewing our information, the claimant may seek clarification and provide additional information. We are starting to develop proposals which could lead to changes to the legislation allowing claimants to enter into compliance measures agreements, as an alternative to a formal order, with the hope of implementing the program during the coming year.

Another factor affecting the speed of the screening process is the availability of complete information about a controlled product's formulation. Although this information is essential to MSDS review, in some cases obtaining it from a claimant after the claim has been registered is difficult and time-consuming. We are taking steps to ensure that claimants are more aware of the importance of providing this information in a timely manner.

Decisions and Orders

From a health and safety perspective, workers may be exposed to controlled products that contain carcinogens, teratogens, mutagens, corrosives or poisons. Under the WHMIS requirements, MSDSs must not only identify such hazards to workers, but they 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, fewer violations are being detected. Of the 155 claims, 133 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. We believe that through continued dealings with our clients, they have become more knowledgeable about the WHMIS requirements. In addition, MSDSs reviewed by the Commission include an increasing number of refiled claims i.e., the Commission has already reviewed the MSDS once, and ordered any violations corrected at that time.

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.

Dispute Resolution

Strategic Outcome

Provide Canadians a system that resolves disputes in a fair, efficient and cost-effective manner.

To be demonstrated by:

Convening independent tripartite boards to hear appeals or disputes from claimants and/or affected parties on decisions and orders of the Commission.

Context

Dispute Resolution provides all parties involved in a claim with a range of options, including facilitated discussion, for dealing with any issues that may arise from decisions and orders of the Commission. It supplements and works in conjunction with the appeals process by identifying and resolving problems and complaints, where possible, before an appeal becomes necessary. The less formal dispute resolution process is frequently more expeditious and effective in satisfying all parties, and is less costly than an appeal. The Commission ensures an impartial, unbiased decision making process that encourages consensus agreements.

When necessary, the Commission convenes independent tripartite boards to address appeals or disputes from claimants or affected parties as early and effectively as possible. These appeal boards are made up of representatives from the Commission's tripartite clientele of WHMIS stakeholders: industry (suppliers and employers in the chemical industry who wish to protect their trade secrets, and employers who rely on supplier MSDS information to prepare their own workplace MSDSs and training programs); labour, representing the workers who are exposed to these products; and the federal, provincial and territorial governments.

An appeal may relate to the compliance of a MSDS, the rejection of a claim, or to a request that confidential business information be disclosed in confidence to an affected party for occupational safety and health reasons. Claimants have 45 days to launch an appeal from the date that the Commission's decision on a claim is published in the *Canada Gazette*; the length of the appeal process varies with the complexity of the case. The Commission plans to identify some benchmarks for timing as part of its review of the dispute resolution process.

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.

Historically, one percent of claims decisions has resulted in an appeal. There have been 16 to date, nine of which were completed and seven withdrawn by the claimant before the appeal board issued its final decision. One appeal was heard during the past year.

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*.

Resources

Dispute Resolution		
	\$ (thousands)	Full Time Equivalent
Planned Spending	368	2
<i>Total Authorities</i>	386	2
Actuals	249	2

Accomplishments

New Dispute Resolution Framework

The major renewal commitment for Dispute Resolution was to redesign the Commission's approach to handling disputes with its clients. Throughout the spring and summer of 2000, we worked with our partners and stakeholders to analyze our practices and to develop ideas for a comprehensive dispute resolution process. As well as improving the appeal process—the end stage of disagreements—we decided also to examine the screening process, since it is here that differences of opinion may arise respecting the compliance of the MSDS associated with a claim for exemption.

In October 2000, the Commission's Council of Governors approved the resulting conceptual framework for resolving disputes, which simplifies our screening and appeal processes, making them more transparent, cost-effective, fair and participatory—in short, more client-oriented. We have already started to implement the general approach where possible, and are preparing proposals for the administrative and legislative proposals, guidelines and training programs needed to put the new concepts fully into practice.

The new dispute resolution process focuses as much on preventing disputes from arising as on resolving disputes through an effective appeal procedure. It includes tools for identifying problems early in the claims process, and for resolving them fairly, quickly and cost-effectively. The keys are openness and communication. The remodelled screening and appeal processes both involve more frequent contacts with claimants and appellants, through phone calls and conferences—particularly in early stages—to brief them on policies, roles and procedures, to answer questions, and to create opportunities for interaction that promotes understanding and trust. Both processes emphasize the need to share information, to encourage client participation and to identify problems early, before they become serious. The Commission will work to provide all parties with options for resolving a dispute in a non-adversarial, collaborative and informal manner.

IV Other Information

For more information please contact:

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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 2001
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 S www.hmirc-ccrmd.gc.ca

V Annexes

Annex A – 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.

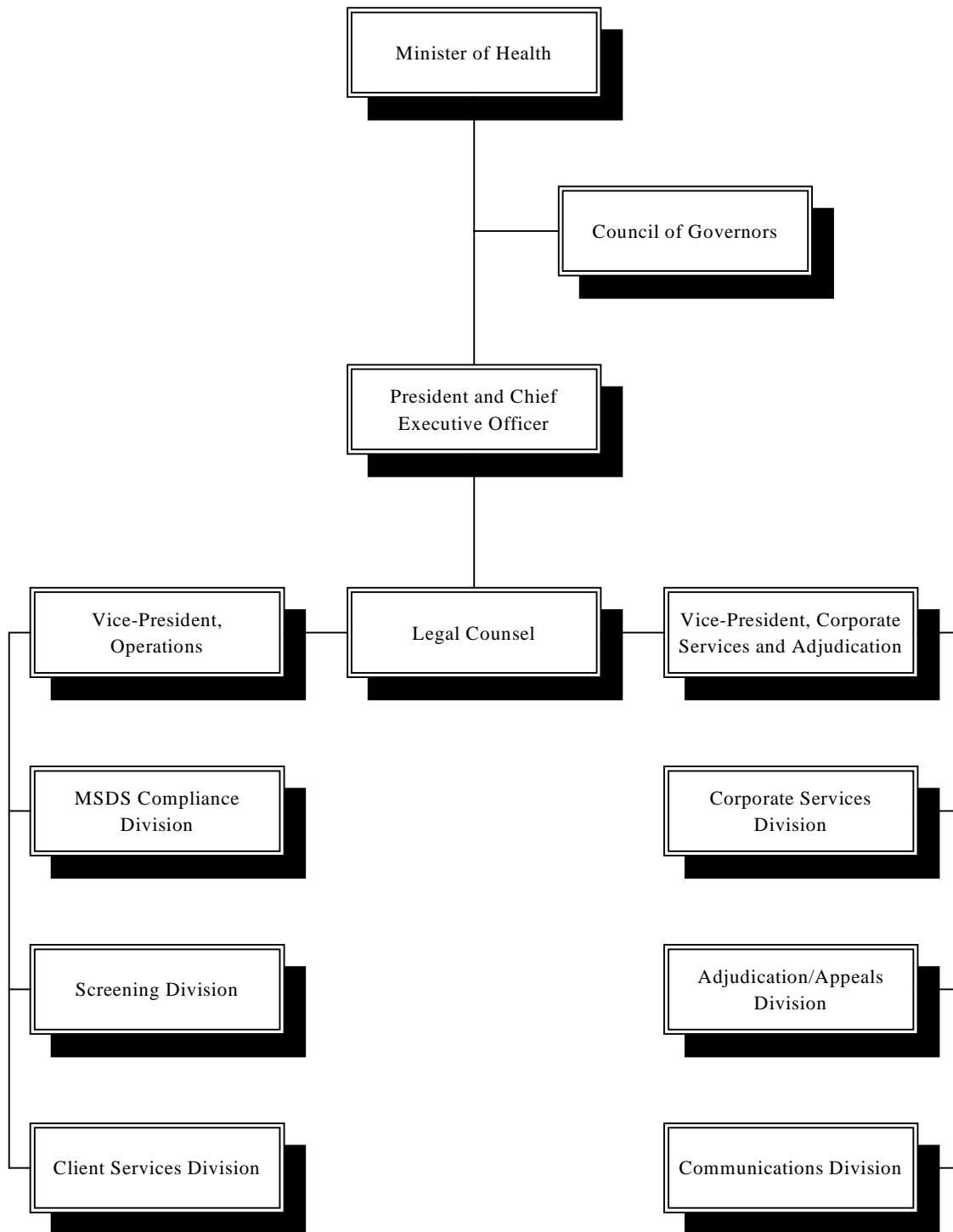
Operations Branch

The Vice-President, Operations Branch, has the authority and responsibility to supervise and direct the work within MSDS Compliance and Client Services.

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 Dispute Resolution and Corporate Services.

The Commission's Structure



Annex B – MSDS Violations and Claims Statistics

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

Violation	Number of Occurrences								%
	00/01	99/00	98/99	97/98	96/97	95/96	94/95	Total	
Toxicological Properties	308	182	341	384	698	580	609	3,102	31.9
Hazardous Ingredients	452	164	301	391	716	367	238	2,629	27.0
First Aid Measures	116	47	72	97	114	63	113	622	6.4
Fire or Explosion Hazard	109	21	66	49	56	104	140	545	5.6
Hazard Classification	9	6	38	44	95	42	79	313	3.2
Physical Data	99	13	28	29	49	48	55	321	3.3
Headings	157	19	22	31	71	122	113	535	5.5
Preparation Information	35	3	20	9	14	36	35	152	1.6
Generic Chemical Identity	17	20	17	39	13	27	56	189	1.9
Product Information	81	21	15	24	36	49	48	274	2.8
Format/Wording	44	28	10	41	126	205	390	844	8.7
Preventive Measures	3	2	4	3	8	5	49	74	0.8
Reactivity Data	20	6	2	14	17	19	52	130	1.3
Total	1,450	532	936	1,155	2,013	1,667	1,977	9,730	100.0
No. Claims Adjudicated	155	85	143	150	204	252	196	1,185	
No. Occurrences/Claims	9.4	6.3	6.5	7.7	9.9	6.6	10.1	8.2	

Annex C – Presentation and Financial Information

Table 1 – Summary of Voted Appropriations

Financial Requirements by Authority (\$ thousands)			
Vote	2000–2001		
	Planned Spending	Total Authorities	Actual
10 Operating Expenditures	2,268	2,268	1,935
(S) Employee benefit plans	296	296	296
Total Commission	2,564	2,564	2,230

Table 2 – Comparison of Total Planned Spending to Actual Spending

Commission Planned versus Actual Spending (\$ thousands)			
	2000–2001		
	Planned Spending	Total Authorities	Actual
Full Time Equivalents	34	34	24
Operating	2,564	2,564	2,230
Total Gross Expenditures	2,564	2,564	2,230
Less: Responsible Revenues			
Total Net Expenditures	2,564	2,564	2,230
Other Revenues and Expenditures			
Non-responsible Revenues*	733	733	733
Cost of services provided by other departments	279	279	279
Net Cost of the Program	2,110	2,110	1,776

* The non-responsible revenues represent claim registration fees paid by Canadian and international chemical manufacturers, distributors and employees with respect to the registration and review of claims for exemption under the WHMIS and its related legislation. The difference between the 1999–2000 actual spending and the 2000–2001 total authorities reflects approved funding through Program Integrity Initiative.

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

Historical Comparison of Total Planned Spending to Actual Spending (\$ thousands)					
	Actual 1998-1999	Actual 1999-2000	2000-2001		
			Planned Revenue	Total Authorities	Actual
HMRC	1,218	1,869	2,564	2,564	2,230
Total	1,218	1,869	2,564	2,564	2,230

Note: The difference between the 1998–1999 and the 1999–2000 actual spending primarily reflects the transfer of resources for the WHMIS Evaluation Section from Health Canada to HMIRC in Supps A adjustments.

Table 4 – Non-Respendable Revenues

Non-Respendable Revenues (\$ thousands)					
	Actual 1998-1999	Actual 1999-2000	2000-2001		
			Planned Revenue	Total Authorities	Actual
HMRC	463	767	733	733	733
Total Non-Respendable Revenues*	463	767	733	733	733

* 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.