

RIGHT TO INFORMATION AND TRADE SECRETS PROTECTION

A BALANCING ACT



Annual Report 2003-04



Hazardous Materials Information
Review Commission

Conseil de contrôle des renseignements
relatifs aux matières dangereuses

Canada

RIGHT TO INFORMATION AND TRADE SECRETS PROTECTION

A BALANCING ACT

Annual Report 2003-04



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July 31, 2004

The Honourable Ujjal Dosanjh, P.C., M.P.
Minister of Health
House of Commons
Ottawa, Ontario K1A 0A6

Dear Minister:

I am pleased to submit to you the annual report of the Hazardous Materials Information Review Commission, in accordance with subsection 45(1) of the *Hazardous Materials Information Review Act*. The report covers the fiscal year ending March 31, 2004.

Yours sincerely,

Weldon Newton





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PRESIDENT'S MESSAGE

The Hazardous Materials Information Review Commission is a unique, independent, quasi-judicial agency within the Health Portfolio. Its clients and stakeholders represent industry, workers, employers and governments at the federal, provincial and territorial levels. We endeavour to build relationships of trust, respect and understanding with all of them. Our approach is simple and straightforward—Canadian taxpayers' interests are best served by considering and balancing the needs of workers and industry alike, and the only solution is one that protects both.

The Commission emphasizes cooperation, openness and dialogue in carrying out its mandate. It seeks creative and progressive approaches to modernize procedures and programs. It strives to offer a streamlined, efficient and timely service that is cost-effective and does not impose undue financial or administrative burdens on clients and stakeholders. Above all, the Commission endeavours to be fair, consistent and accountable for all it does.

Workplace safety is the ultimate goal of our stakeholders, working together in a complex, multi-jurisdictional environment. We are committed to improving cross-jurisdictional coordination to realize this shared vision and to provide the best results for Canadians.



We endeavour to present Canada as an international model for the protection of chemical companies' trade secrets by showing the benefits of our confidential business information protection mechanism for both industry and the Canadian workers.

The Commission was faced with many challenges in fiscal year 2003–2004. Our backlog of claims was still very high while at the same time we faced a critical shortage of staff and significant financial uncertainty that had the potential of seriously impacting on our ability to deliver on our mandate.

Nevertheless, the Commission succeeded in realizing significant accomplishments, including the reduction of the backlog, considered a high priority for the Commission, as well as introducing important improvements to our internal management practices. We surpassed our estimates for registration of new claims as well as the number of compliance decisions rendered. We revamped the Commission’s Web site, considered our most important communications tool, to make it more user-friendly and allow for the addition of new components as required.

On the international front, the global harmonization standard, a harmonized system for hazard classification and labelling, was endorsed by the World Summit on Sustainable Development in 2002. We endeavour to present Canada as an international model for the protection of chemical companies’ trade secrets by showing the benefits of our confidential business information protection mechanism for both industry and the Canadian workers.

This year’s accomplishments indicated to us that we continue to bring substantial returns on our investments in the Commission’s progressive approach to modernization. I look forward to working with Commission staff, the Council of Governors, and our clients and stakeholders next year to build on these accomplishments.

Weldon Newton



HMIRC AT A GLANCE

Background

The handling and storage of hazardous chemicals in the workplace in Canada is controlled by the Workplace Hazardous Materials Information System (WHMIS), a combination of legislation, regulations and procedures at the federal, provincial and territorial levels of jurisdiction. Established in 1987 through a consensus of labour, industry and government, the goal of WHMIS is to reduce illnesses and injuries resulting from the presence of hazardous materials in the workplace.

WHMIS binds suppliers and employers alike. It requires manufacturers, importers and distributors to disclose information on the hazards of chemicals produced or used in Canadian workplaces. It prescribes cautionary labelling for containers of controlled products as a condition of sale and importation, and requires suppliers of those products to provide material safety data sheets (MSDSs). A product's MSDS must disclose the health and safety risks associated with the product, together with instructions for safe handling, storage, transportation, disposal and first-aid treatment.

Employers must make this information available to employees and put in place worker training and education programs.

Mandate

Companies also have the right to keep certain proprietary information confidential. Under WHMIS, companies can apply to be exempt from disclosing trade secrets. The Hazardous Materials Information Review Commission (HMIRC) is a small but important public institution responsible for processing trade secret claims within WHMIS. It was created as an independent administrative law agency in 1987 by proclamation of the *Hazardous Materials Information Review Act*. The Commission is accountable to Parliament through the Minister of Health.

The Commission's mandate is as follows:

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

Mission

The Commission's mission is to:

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

Values and Operating Principles

HMIRC's values and operating principles are as follows:

- **fairness**—providing services that consider the needs of workers and industry alike;
- **timeliness**—providing services within reasonable time frames;
- **accessibility and transparency**—providing information and services simply and clearly, with policies and procedures that are understandable to everyone.
- **accountability**—basing regulatory instruments on rigorous cost/benefit analysis, being accountable for programs and the impact of decisions, and providing services that are cost-effective for everyone involved;
- **quality and consistency**—rendering fair, understandable and consistent decisions while ensuring firm enforcement of regulations;
- **competency and respect**—demonstrating professionalism and a high level of skill, knowledge, and scientific and technical competence; and
- **security and confidentiality**—securely storing and handling the trade secrets of claimants.



In order for Canadians to realize the benefits of the Commission’s work, claims for exemption that have been filed by chemical companies need to be registered and processed in a timely fashion. The right of a chemical supplier to withhold confidential business information about a hazardous chemical product that a worker would ordinarily be entitled to under the WHMIS program must be validated by a screening officer. At the same time, and to ensure that withholding such information is balanced with the right of a worker to know about the hazards of the chemical, the screening officer must decide if the material safety data sheet for the product discloses all of the necessary health and safety information. Where it is determined that the material safety data sheet does not comply with the WHMIS requirements, a formal order is issued and the company must carry out the necessary corrections.

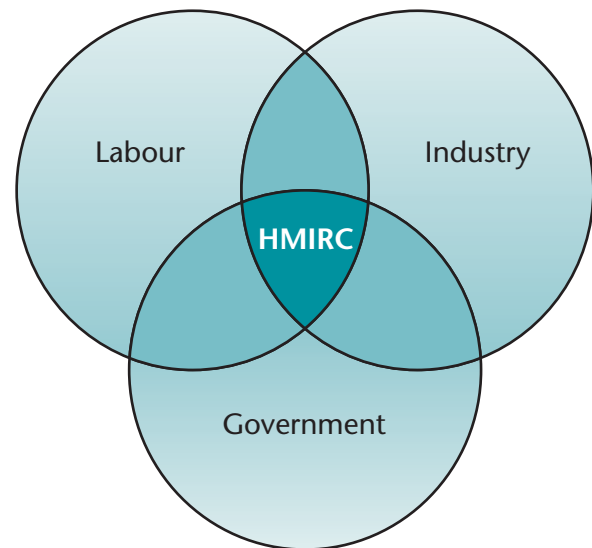
HMIRC—A Model Partnership

The Commission’s adjudicative efforts must result in a fair balance between the right of workers to be informed about hazardous chemicals and the right of suppliers and employers to protect *bona fide* trade secrets. This dual role requires the Commission to be an advocate for worker health and safety on the one hand, and a strategic partner with industry on the other.

The Commission’s stakeholders include:

- Canadian workers;
- the chemical industry—domestic and foreign; and
- federal/provincial/territorial governments (occupational safety and health programs).

HMIRC is a model of industry, labour and government consultation, consensus and cooperation. It is also unique in that its mandate and program accountability are derived from federal, provincial and territorial legislation.





2003-04: THE YEAR IN REVIEW

THE COMMISSION SERVES CLIENTS AND STAKEHOLDERS THROUGH THREE BUSINESS LINES: CLIENT SERVICES, MSDS COMPLIANCE AND DISPUTE RESOLUTION.

Client Services

Client Services carries out a pre-registration check on claims for exemption submitted by suppliers and employers wishing to protect their confidential business information under WHMIS, formally registers claims and issues registry numbers. The registry number minimizes commercial disruptions by allowing a company to import or sell its product with protection of the claimed for confidential business information until such time as the validity of the claim for exemption is determined.

The screening officers then review the claimant's information supporting the claim against regulatory criteria. To afford an affected party an opportunity to make a representations with respect to any claim, a notice of filing is published in Part I of the *Canada Gazette* outlining the basic characteristics of each registered claim. Based on the screening officers' assessment of the information submitted by the claimant

and any representation received from affected parties, screening officers decide whether the claims are valid.

It should be noted that claimants may withdraw a claim at any stage of the registration or review process.

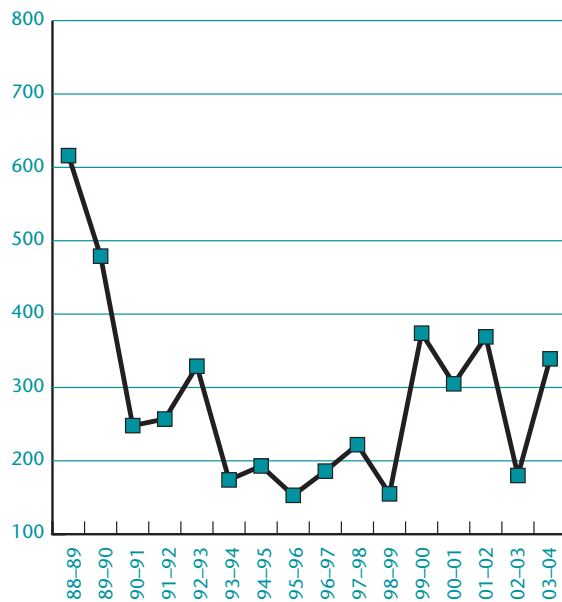
CLAIMS REGISTRATION

At this time, the Commission deals with over 100 separate companies, and most have numerous products for which they wish to claim exemptions.

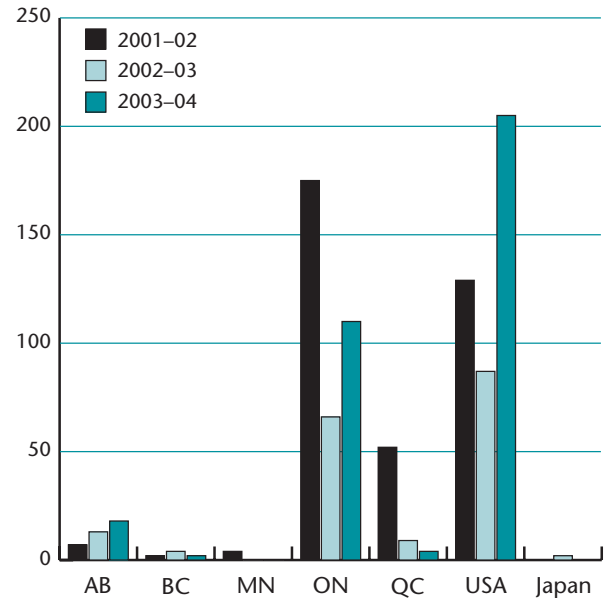
During the past year, Client Services registered 339 new and refiled claims. A larger percentage of claims (60%) was received from the United States last year. In order to monitor this situation more closely, we are tracking geographic origin on a year-to-year basis, going back to 2001-02 as a starting point.



Claims registered by year



Geographic origin of claims by year of registration



Reaching out

As a relatively small agency, the Commission lacks the resources to undertake extensive educational and advertising campaigns. Accordingly, its communications strategic plan focuses on an up-to-date and relevant Web site as the primary vehicle for its communications program. In 2003, the Commission revamped its Web site to make it more user-friendly and more flexible. The site recorded close to 34,000 visitors—of whom over 20,000 were new—who viewed almost 90,000 pages and downloaded more than 8,000 megabytes of information. This is fairly extensive use for a small agency with a relatively specialized client base—an indicator of the site’s general usefulness. Informal feedback from clients who contacted the Commission after visiting the new site has also been positive.

PROVIDING INFORMATION AND GUIDANCE

HMIRC staff received during the year, some 150 enquiries about our services and how to apply for a claim for exemption. In all cases, staff met HMIRC’s service standards, which require a response to telephone enquiries within 48 hours and to written enquiries within a week. In addition, staff held one-on-one meetings with claimants, upon request, to address specific questions pertaining to the claim registration and review processes; these meetings were well received.

HMIRC has a regular presence at trade shows, exhibitions and conferences, which offers the opportunity for face-to-face meetings with current and potential claimants and many other interested parties. At the spring 2003 meeting of the Society for Chemical Hazard Communication, for example, Commission

staff used poster session format to inform participants of the most common technical violations encountered on MSDs reviewed by the Commission. Feedback from industry was incorporated into the revised assessment tool distributed in conjunction with the new voluntary compliance program.

The Commission plans to explore opportunities for joint initiatives with WHMIS partners and other stakeholders; for example, the Commission is gauging interest in holding an industry-labour-government workshop on claims processing.

CLIENT SURVEYS

Client Services conducted three types of surveys during the year: a routine survey of claimants' satisfaction with HMIRC's registration services, a survey for visitors to HMIRC booths at trade shows and conferences, and a more in-depth survey dealing with all of the Commission's services. On average, claimants rated their satisfaction with registration services at close to 8.5 out of 10—confirmation that the Commission's client-oriented approach, which includes practices such as regular follow-ups and advance warning of claim expiry dates, is working.

Global harmonization

In 1992 the United Nations Conference on Environment and Development—the Earth Summit—adopted an international mandate to develop a globally harmonized system for hazard classification and labelling (GHS). Canada fully supported this endeavour and took a leadership role in the ensuing multi-lateral discussions. The United Nations (through a committee of experts and the International Labour Organisation), the European Union, and the Organisation for Economic Co-operation and Development are all moving toward implementing a globally harmonized system, which was endorsed by the World Summit on Sustainable Development in 2002. Eventual implementation of the system will affect the Commission because of changes that will be necessary in order to bring the WHMIS requirements into line with the new global standards.

We endeavour to present Canada as an international model for the protection of chemical companies' trade secrets by showing the benefits of our confidential business information protection mechanism for both industry and the Canadian workers.

Implementing the GHS is a multi-nation, multi-jurisdictional effort that encompasses a wide array of interests. Participating in the implementation of the GHS and understanding its impact on HMIRC's legislated mandate continue to be high priorities.

In 2003-04, the Commission initiated the data collection of international legislation, United Nations and GHS committees and working groups documents as well as information stemming from organizations dealing with trade secrets, hazard communication and workplace health and safety issues. The Commission also attended seminars and workshops which provided the opportunity to discuss the possible impact of the GHS with potential United States and European Community partners.

The Commission continued to monitor and keep abreast of the progress being made in the areas of trade secret and its related issues. GHS related information/developments were shared with Commission staff in order to enhance awareness and allow for better preparation for the upcoming 2008 implementation of the new standards.



MSDS Compliance

MSDS Compliance helps to ensure that workers are informed of the hazards of exposure to chemicals found in products associated with claims for exemption. The Commission reviews the related MSDSs 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*, the *Controlled Products Regulations* and provincial and territorial occupational health and safety legislation. In each case, scientific evaluators review the 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 the Act and Regulations.

At the conclusion of the MSDS review process, a formal Statement of Decisions and Order is forwarded to the claimant. If the MSDS does not meet requirements, the screening officer also issues a formal order for its revision and follows up to ensure compliance. No order is issued if the MSDS is found to be in compliance. Since the Commission first began this activity in 1990–91, some 95% of the MSDSs reviewed have been found non-compliant with the WHMIS requirements.

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.

MSDS VIOLATIONS AND CLAIMS STATISTICS

The Commission rendered 225 decisions in 2003–04—the second highest level it has ever achieved.

Since 1997–98, the average number of deficiencies that we identified in the MSDSs has ranged from 6.3 to 11.9 per claim—a variability over which we have no control, but which affects the number of claims we can process in a year.

VOLUNTARY COMPLIANCE

In its continued efforts to improve and streamline processes to better serve clients, the Commission is proposing amendments to the *Hazardous Materials Information Review Act* to allow screening officers to enter into Compliance Measures Agreements with claimants, whereby claimants undertake to voluntarily bring MSDSs into compliance before being compelled to do so by an order.

MSDS Violations, 1997-98 to 2003-04

Violation Category	2003-04	2002-03	2001-02	2000-01	1999-00	1998-99	1997-98	Total	%
Toxicological properties	594	884	104	308	182	341	384	2,797	32.2
Hazardous ingredients	402	368	104	452	164	301	391	2,182	25.1
First aid measures	361	221	66	116	47	72	97	980	11.3
Fire or explosion hazard	112	186	55	109	21	66	49	598	6.9
Hazard classification	71	22	13	9	6	38	44	203	2.3
Physical data	91	49	9	99	13	28	29	318	3.7
Headings	6	13	10	157	19	22	31	258	3.0
Preparation information	132	21	8	35	3	20	9	228	2.6
Generic chemical identity	27	9	6	17	20	17	39	135	1.5
Product information	17	5	2	81	21	15	24	165	1.9
Format/wording	151	248	18	44	28	10	41	540	6.2
Preventive measures	17	9	12	3	2	4	3	50	0.6
Reactivity data	47	124	25	20	6	2	14	238	2.7
Total	2,028	2,159	432	1,450	532	936	1,155	8,692	100
Number of claims	225	181	69	155	85	143	150	1,008	
Average number of occurrences/claims	9	11.9	6.3	9.4	6.3	6.5	7.7	8.6	



MSDS PRE-ASSESSMENT

A checklist of frequently encountered MSDS violations of a technical nature is being developed as a tool claimants can use to voluntarily identify and correct such problems before submitting the MSDS to the Commission. The overall goal of this initiative is to improve the quality of the MSDS at the earliest possible opportunity.

COLLABORATION

WHMIS spans many jurisdictions and the Commission works closely with its many partners in government, industry and labour. It maintains close ties with Health Canada's WHMIS Division, which coordinates the WHMIS program and strives to ensure that it is applied consistently in all jurisdictions. In 2003–04, the Commission was involved in policy analysis and development through participation in meetings of the Intergovernmental WHMIS Coordinating Committee (IWCC) and the Current Issues Committee (CIC). IWCC consists of federal, provincial and territorial representatives from occupational safety and health regulatory agencies, and its primary objective is to enhance the uniformity of WHMIS inspection, enforcement and policy interpretation across the country. CIC is a tripartite committee consisting of representatives from industry and labour, as well as from federal, provincial and territorial governments. HMIRC also increased opportunities for joint initiatives and working relationships with the Canadian Centre for Occupational Health and Safety (CCOHS) and Transport Canada to share and distribute material pertaining to WHMIS.

WORKLOAD MANAGEMENT

Efforts to predict the volume of claims that will be received in any given period have eluded success. The number of claims has varied widely from year to year, and from month to month. An unexpected surge of claims beginning in 1999–2000 contributed to the current backlog of 786 claims assigned a registry number but not yet assessed. The Commission was successful in obtaining new funds to reduce the backlog.

The Commission has been challenged in its efforts to recruit scientific/toxicological staff. Such personnel have been identified as a shortage group both within the public service and the private sector. Last year's claim processing performance, as well as our estimates of a ramp-up to full output capacity by 2005–06, reflect our recent and hard-fought successes in being able to staff up to almost full complement in the Operations Branch.

TRAINING

The Commission improved its training program for newly hired evaluators so that they better understand how MSDSs are prepared. It also launched an initiative to identify and catalogue toxicological items, first aid treatment and/or regulatory issues specific to a product and/or client. This information will be used as part of a collaborative framework for staff and claimants aimed at providing advice tailored to claimants.

Claim Workload Estimates, 2003-04 to 2008-09

	2003-04		2004-05	2005-06	2006-07	2007-08	2008-09
	Estimate	Actual	Estimate				
Carry forward	833	833	786	691	556	441	386
PLUS							
New claims	235	283	245	245	245	245	245
Refillings	75	56	35	90	100	150	200
Subtotal	310	339	280	335	345	395	445
MINUS							
Withdrawals	100	161	75	70	60	50	50
Claims processed	200	225	300	400	400	400	400
Subtotal	300	386	375	470	460	450	450
EQUALS							
*Balance	843	786	691	556	441	386	381

* Indicates the number of claims remaining to be adjudicated.

Dispute Resolution

Dispute Resolution provides all parties to a claim for exemption with a range of options, including facilitated discussion, for dealing with any issues that may arise throughout the decision making process 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 more expeditious and effective in satisfying all parties, and is less costly than an appeal. The Commission ensures an impartial, unbiased decision making process.

An appeal may relate to the compliance of an 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.

The appeal period is 45 days from the date that the screening officer's decision on a claim is published in the *Canada Gazette*; the length of the appeal process varies with the complexity of the case.

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.

The final outcome of the appeals process is a decision by an independent, tripartite 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*.

Our responsive and more client-focused dispute prevention measures have been successful and, as a result, no appeals have been filed in the last five fiscal years.

To further streamline the screening process, the Commission has completed a review of policies and procedures that identified improvements that will help prevent or reduce conflicts. We also have made enhancements to our Web site to better inform users.

The Commission has taken some important steps to streamline the appeal process and to support appeal board members. It has:

- developed an outline for guidelines to assist appeal board members during procedural conferences;
- drafted a procedural manual for board members;
- outlined some key needs and training options to assist appeal board members; and
- completed a review that defined the organizational processes and identified the performance measures to support the dispute resolution/prevention process.

HMIRC has also continued work to develop guidelines and a training plan to support the dispute resolution process.

Corporate Services

Corporate Services supports the activities of all three business lines. It is responsible for strategic planning, internal and external communications, information technology and human resources. It provides administrative support; manages records, finances and facilities; and oversees the comprehensive security program that safeguards trade secret information on the Commission's premises. It also manages major projects that cut across business lines; for instance, it shepherded the statutory and regulatory changes that emerged from organizational renewal through the approvals process.

MODERN COMPTROLLERSHIP

Based on a capacity assessment conducted in 2002, the Commission selected areas that would best improve its management practices and provide best value for money. In 2002–03, the Commission focused on effective decision making, sound management of resources, integrated information systems, appropriate controls and tools to support managers. In 2003–04, the Commission:

- developed a project action plan and timeline;
- completed a review of the budget and expenditure cycle to analyse control frameworks, identify gaps and implement corrective measures;

- reviewed the structure of the Corporate Services and Adjudication Branch to identify duplication and clarify roles and responsibilities;
- completed a project to ensure that HMIRC’s holdings comply with the new Multi-Institutional Disposition Authorities (MIDA) and concluded a Memorandum of Understanding with the National Archives for retention and disposal of records;
- initiated development of a Results-based Management Accountability Framework (RMAF) and a Risk-based Audit Framework (RBAF); and
- in partnership with Consulting Audit Canada, developed a training module on risk management, which was delivered to all managers at a workshop, and created a Risk Management Control Framework. HMIRC was a partner in developing the Risk Management Control Framework for small agencies.

Development of the HMIRC action plan against the Management Accountability Framework was another challenging but fruitful initiative. This plan, developed in partnership with Health Canada, has strengthened the Commission’s working relationship with its portfolio department and partners.

HUMAN RESOURCES

Staffing activities during 2003–04 included the arrival of a scientific support officer, a team leader evaluator as well as an evaluator, two screening officers, and a director of corporate services. New staff are undergoing HMIRC’s comprehensive training program, and are expected to be fully trained and operating to their full potential by 2005–06.

The Commission continued its commitment to provide university students with practical real world work experience through its student intern program. Three students rotated through this position last year. Two former students found full time work at the Commission during 2003–04.



APPENDIX I: FINANCIAL STATEMENTS

Revenue (in thousands of dollars)

Revenue from claims for exemption	479
Revenue from appeals	0
Total revenue	479

Expenditures (in thousands of dollars)

Salaries and wages	2,261
Operating costs	980
Minor capital costs	96
Total expenditures	3,337

Human Resources

Full-time equivalent staff

Office of the President	2
Operations Branch	21
Corporate Services and Adjudication Branch	12
Total	35

APPENDIX 2: GOVERNANCE

The Commission's governance and management framework is considered unique. HMIRC was created through a tripartite consultative process requiring consensus as a condition for the participation of labour, industry and different levels of government. This approach has passed the test of time, and HMIRC continues to build on the consultative processes and synergies that exist within and between the Commission, Human Resources and Skills Development Canada's Labour Program, provincial/territorial ministries of labour, provincial/territorial occupational safety and health programs, industry associations and the Canadian Labour Congress.

The **Council of Governors** constitutes the key element of HMIRC's governance structure, acts as an advisory body, and provides strategic advice and guidance. The Council consists of 18 members: two represent workers, one represents suppliers and one represents employers, while one represents the federal government, and one member represents each of the 13 provinces and territories. Each governor is appointed by the Governor in Council for up to three years. 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 regulations related to the Commission's fee structure and changes

to procedures for reviewing claims and to appeal procedures.

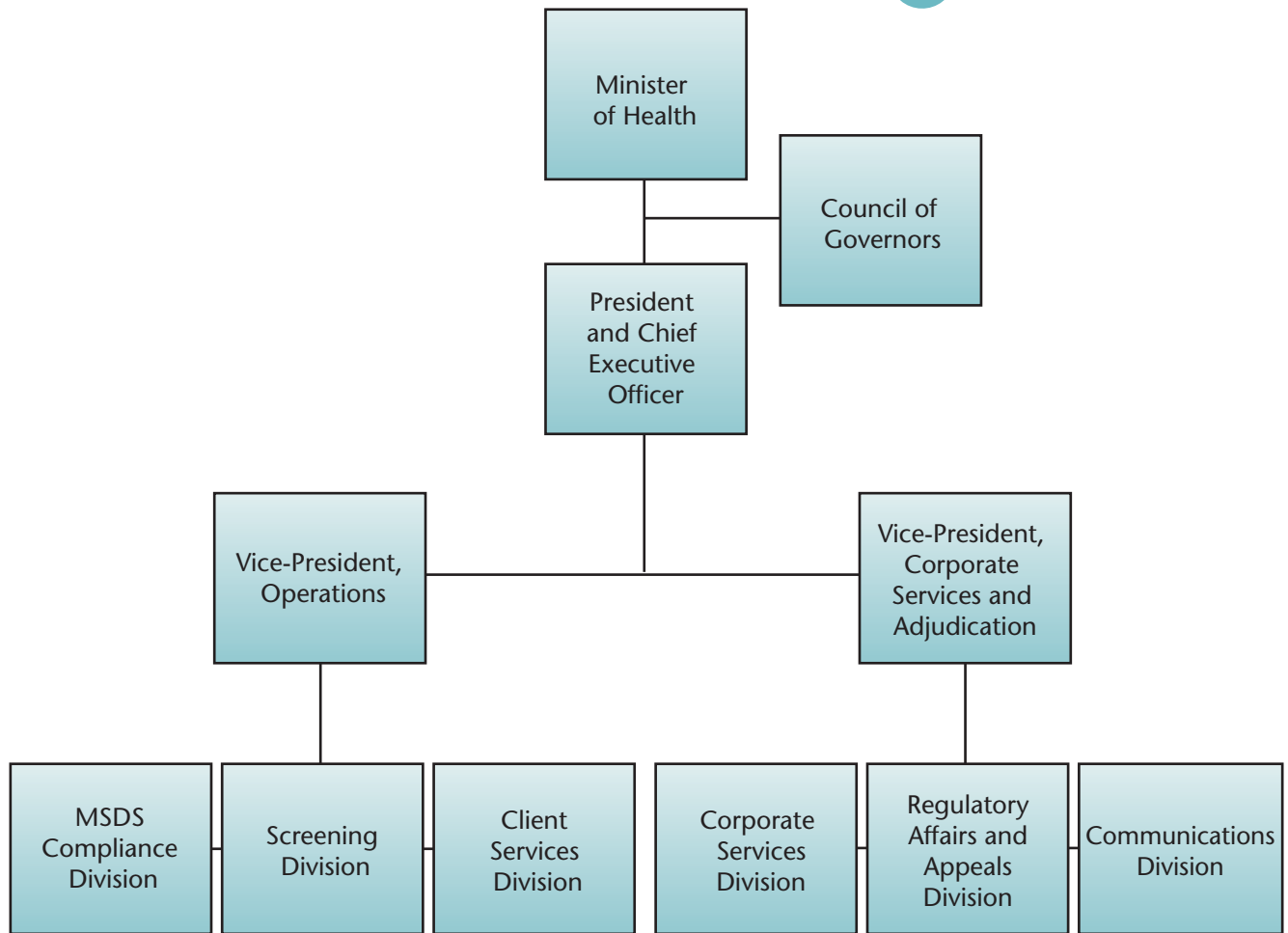
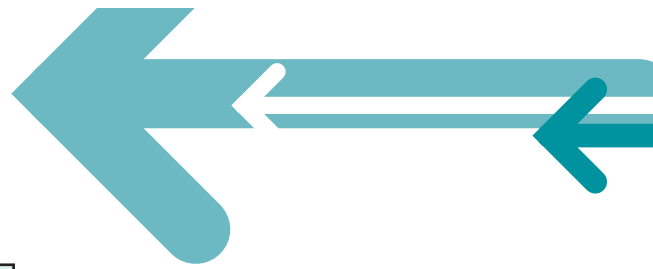
The provincial and territorial Council members concurrently represent occupational health and safety organizations, and thus the composition of the Council reflects the nation-wide occupational health and safety network. The Commission's enabling statute requires that the sole federal government representative on Council be recommended by the federal Minister of Labour, further reflecting the wide scope of this program.

The **President and CEO** is appointed by the Governor in Council and, as CEO, supervises and directs the organization's day-to-day work. The President is accountable to Parliament through the Minister of Health.

The **Vice-President of Operations** directs the work of the MSDS Compliance, Screening and Client Services divisions. The **Vice-President of Corporate Services and Adjudication** directs the work of the Corporate Services, Regulatory Affairs and Appeals, and Communications divisions.

The **Executive Committee** consists of the two Vice-Presidents and the Commission's President and Chief Executive Officer (CEO) and deals with long-term strategies and policies.

The **Senior Management Committee** consists of the Directors of the six divisions within the Commission. It deals with day-to-day management issues and helps coordinate tasks that cut across internal boundaries.



Council of Governors

(as of March 31, 2004)

Chair and Quebec

Dr. Yves Brissette

Commission de la santé et de la sécurité
du travail

Workers

Mr. Lawrence D. Stoffman

United Food and Commercial Workers Union

Suppliers

Mr. Gordon Lloyd

Canadian Chemical Producers' Association

Employers

Vacant

Government of Canada

Mr. Gerry Blanchard

Human Resources and Skills
Development Canada

British Columbia

Mr. T. Saravanabawan
Workers' Compensation Board
of British Columbia

Alberta

Mr. Dan T. Clarke
Alberta Human Resources and Employment

Saskatchewan

Ms. Jennifer Fabian
Saskatchewan Labour

Manitoba

Vacant

Ontario

Dr. Ed McCloskey
Ontario Ministry of Labour

Nova Scotia

Mr. Jim LeBlanc
Nova Scotia Environment and Labour

New Brunswick

Mr. Richard Blais
Workplace Health, Safety and Compensation
Commission of New Brunswick

Prince Edward Island

Mr. George Stewart
Workers Compensation Board
of Prince Edward Island

Newfoundland and Labrador

Mr. Sean Casey
Occupational Health and Safety Inspections,
Department of Labour of Newfoundland
and Labrador

Yukon

Mr. Rob McClure
Yukon Workers' Compensation,
Health and Safety Board

Northwest Territories

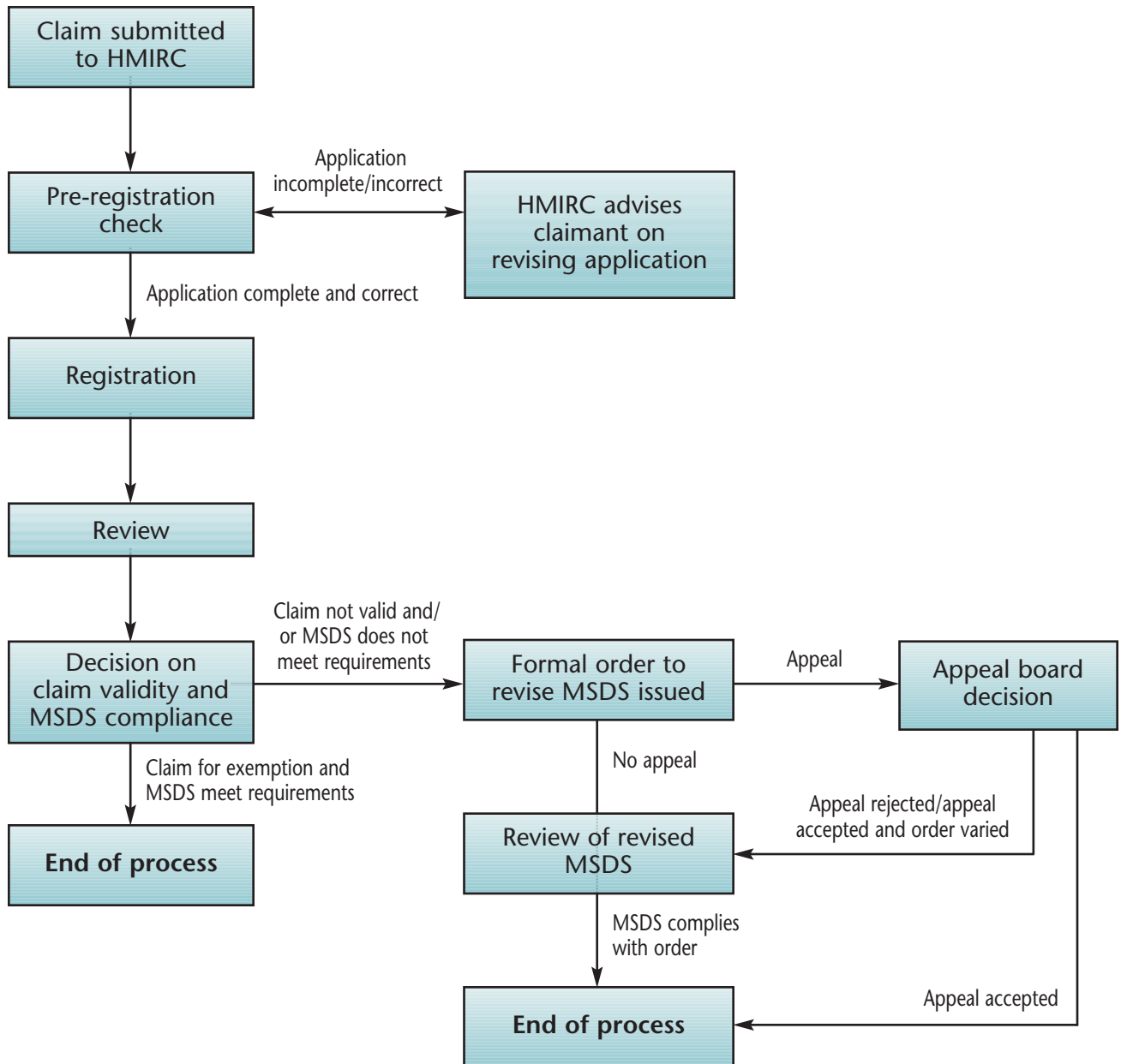
Vacant

Nunavut

Vacant



APPENDIX 3: AN OVERVIEW OF THE CLAIMS FOR EXEMPTION PROCESS



The Workplace Hazardous Materials Information System (WHMIS) requires that chemical suppliers provide employers with information on the hazards of materials produced or used in Canadian workplaces. Suppliers must disclose the health and safety risks associated with their products, together with instructions for safe handling, storage, transportation, disposal and first-aid treatment. This is accomplished with product labels and material safety data sheets (MSDSs). Employers may then use this information to prepare workplace MSDSs and labels, and provide workplace safety education.

When a supplier or employer wants to protect confidential business information, for example, the chemical identity of one or more trade secret hazardous ingredients, they must file a claim for exemption with the Hazardous Materials Information Review Commission in order to be exempt from having to disclose that information. For that product to be legally available on the Canadian market, a registry number issued by the Commission is required to be shown on the MSDS, and for certain claims, on the label. *A claimant may decide to withdraw a claim at any stage of the process.*

SUBMITTING A CLAIM

Claimants submit a claim for exemption directly to the Commission. (For more about submitting a claim, please see the Commission's Web site at <http://www.hmirc-ccrmd.gc.ca>.)

PRE-REGISTRATION CHECK

On receipt of a claim, Commission staff check that the application and accompanying MSDS (and label, for certain employer claims) are complete and contain no obvious errors, and collect and verify fees. If errors or omissions are found, staff contact the claimant to obtain the needed information.

REGISTERING THE CLAIM

Once the claim application is judged to be complete and correct, it is assigned a registration number. The Commission sends a letter to the claimant indicating the registration number and the date of filing. This information is then placed on the MSDS in place of the claimed confidential business information.

Claim registration allows the company to import or sell its product while the various decision making processes are carried out.

Once the claim is registered with the Commission, a notice of filing outlining the basic characteristics of the claim is published in Part I of the *Canada Gazette*. This gives anyone affected by the claim the opportunity to provide a written submission to the Commission as to whether the claim should or should not be judged valid.



REVIEWING THE CLAIM

The registered claim then undergoes a more thorough review. Based on their assessment of the information submitted by the claimant and any submissions from those affected by the claim for exemption, one of the Commission's screening officers reviews the claim against the regulatory criteria and decides whether the claim is valid. The screening officer also determines whether the MSDS (or label, in some cases) submitted with the claim complies with the *Hazardous Products Act* and *Controlled Products Regulations* or, in the case of an employer claim, other applicable federal, provincial or territorial occupational health and safety requirements.

In each case, the Commission's scientific evaluators review the most recent scientific information relevant to each of the products and/or their ingredients, and their known health and safety hazards. They advise the screening officer, who then decides whether the MSDS complies with regulations.

THE DECISION

At the conclusion of both the claim review process and the MSDS review process, a formal Statement of Decision is forwarded to the claimant. If the claim is found to be valid, the claimant is granted an exemption of three years. At the end of the three-year exemption period, the claimant will need to refile the claim if the information is the same and the claimant wishes to continue to protect the trade secret. If the claim is found to be invalid and/or 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.

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 within 30 days of expiration of appeal period, who reviews it to ensure compliance with the order.

APPEALS

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 appeals process varies with the complexity of the case.

For each appeal filed, a notice of appeal is published in the *Canada Gazette* to provide affected parties an opportunity to make representations to the appeal board.

The final outcome of the appeals process is a decision by the appeal board on whether 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 reasons, is published in the *Canada Gazette*.

APPENDIX 4: PUBLICATIONS

HMIRC Operations

The following publications describe the Commission's operations and assist clients in filing applications. They are available from the Commission's Web site at **www.hmirc-ccrmd.gc.ca** in various formats for downloading or on-screen viewing. Printed copies may also be requested from:

Hazardous Materials Information Review Commission

427 Laurier Avenue West, 7th floor
Ottawa, Ontario K1A 1M3
Tel: (613) 993-4331
Fax: (613) 993-4686

- Annual Reports, 1999 to 2003
- Reports on Plans and Priorities, 2000-01 to 2004-05
- Performance Reports, 1998-99 to 2002-03
- *Commission Renewal: Blueprint for Change* (strategic plan)
- *Workplan* (operational plan based on *Blueprint for Change*)
- Information Bulletins 1 to 4
- Application for a Claim for Exemption
- *A Guide to Completing an Application for a Claim for Exemption*
- *Guidelines for Toxicological Summary Requirements*
- Statement of Appeal Form 1

Laws and Regulations

The following laws and regulations form the regulatory framework within which the Commission carries out its mission. All the documents can be found on the Commission's Web site (select Legislation). Printed copies may be obtained from public libraries or purchased from booksellers that carry government publications. Copies can also be ordered from:

Canadian Government Publishing

Ottawa, Ontario K1A 0S9
Tel: 1 800 635-7943 or (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
- *Inquiries Act*