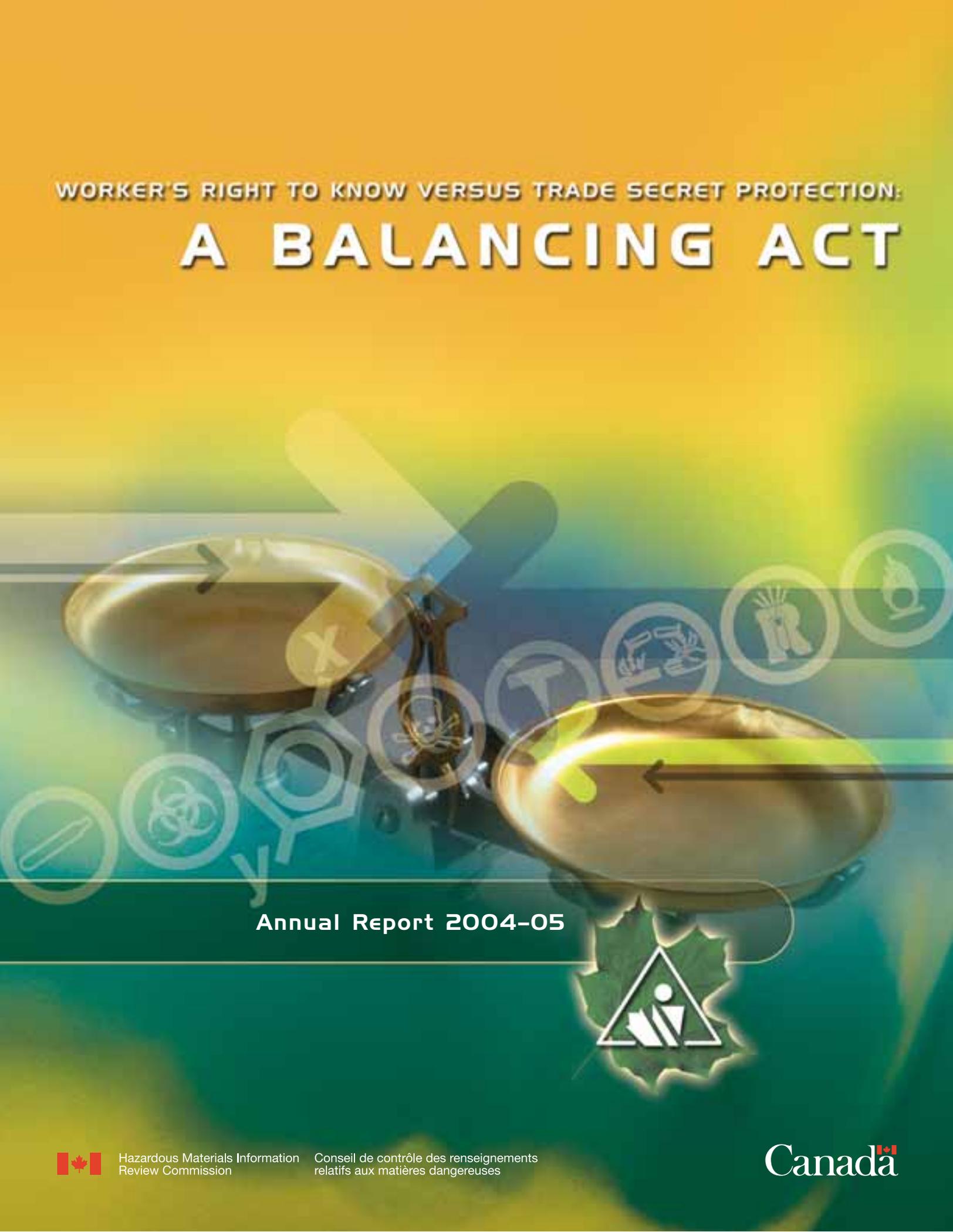


WORKER'S RIGHT TO KNOW VERSUS TRADE SECRET PROTECTION:
A BALANCING ACT



Annual Report 2004-05



Hazardous Materials Information
Review Commission

Conseil de contrôle des renseignements
relatifs aux matières dangereuses

Canada

WORKER'S RIGHT TO KNOW VERSUS TRADE SECRET PROTECTION:
A BALANCING ACT



Annual Report 2004-05

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July 31, 2005

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, 2005.

Yours sincerely,

Weldon Newton



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PRESIDENT'S MESSAGE

The Hazardous Materials Information Review Commission is an independent, quasi-judicial agency of government which plays an essential role in the protection of workers' health and safety. The Commission, through its enabling statute, the *Hazardous Materials Information Review Act*, is responsible for the review of safety documentation in all situations in which the secret ingredients, mixture or concentration of a hazardous material is a trade secret. Through a federal, provincial and territorial occupational safety and health communication system, we worked diligently this past year in delivering our core mandate—ensuring that safety documentation reviewed by the Commission and relied upon by workers is accurate while maintaining the confidentiality of trade secrets. This is what we call our balancing act . . . we ensure a balance . . . between a worker's right to know what is in the products that they are working with and their dangers and . . . industry's right to withhold information that would reveal its trade secret formulations.



The Commission delivers a truly national program. Key to the governance of the Commission is our tripartite Council of Governors. The governors represent organized labour, industry, the federal government and all provincial and territorial governments. Council acts as an advisory body and provides strategic advice and guidance. It is through this Council that the concerns of stakeholders are expressed, and it is through this Council that appropriate means of resolving these concerns are identified.

When I was appointed President and CEO, the Commission was going through a difficult period with its stakeholders. In the late 1990s, and with full support of the Council of Governors, we undertook a renewal program to make operations more effective and to address stakeholders

concerns, through improved service delivery, increased transparency and accountability and modernized administrative procedures. Through this consultative process, many improvements to the operation of the Commission were identified. We have delivered on our commitments to stakeholders for all except three which require amendments to our enabling statute.

These amendments will reduce the time required to review claims for exemption from disclosure of confidential information, speed up the correction of the information workers need to handle hazardous materials safely and expedite the processing of appeals when Commission's decisions are challenged. The net result will be earlier access by workers to complete and accurate information on the safe handling of hazardous materials. This can only be positive for workplace health and safety. The efficiencies introduced will also reduce administrative burden on chemical industry claimants, thereby encouraging innovation. The changes are straight forward, and they are the product of extensive discussion and consensus among industry, labour and federal, provincial and territorial governments. With Parliament's approval, this then will complete the Commission's renewal journey.

As a member of the health portfolio partnership network, I work in close collaboration with my health portfolio partners and in particular, Health Canada. The portfolio promotes an interactive communications exchange and collaborative approach in responding to horizontal portfolio and government-wide issues. The success of the health portfolio approach is evidenced in many of the government-wide reviews that have necessitated labour intensive and often time sensitive reports to central agencies.

As I look back at 2004-05, I realize that, thanks to the dedication and competence of our staff, we have put another demanding, yet successful year behind us. I look forward to working with Council, Commission staff, and our clients and stakeholders in the year ahead with the knowledge that our vigilance in maintaining *the balancing act* has had and will continue to have a direct and positive impact on workplace safety whilst affording trade secret protection to industry.

Weldon Newton



HMIRC AT A GLANCE

Background

Labour, industry and government agree on the importance of reducing illnesses and injuries from hazardous materials in Canadian workplaces. The Workplace Hazardous Materials Information System (WHMIS), a combination of laws, regulations and procedures, was created in 1987 to help achieve this goal.

WHMIS requires suppliers—including manufacturers, importers and distributors—to provide information on the hazards of chemicals produced or used in Canadian workplaces. It requires cautionary labelling for containers of controlled (hazardous) products as designated under federal regulations and requires their suppliers to provide material safety data sheets (MSDSs).

Among the required information, each MSDS lists all hazardous ingredients in the product, any toxicological properties, the safety precautions workers need to take when using the product and first aid treatment in case of exposure. Employers must provide this MSDS information, worker training and education programs to employees.

When labour, industry and government agreed to create WHMIS, they recognized the need to balance the rights of workers and employers to have health and safety information, and chemical suppliers to protect confidential business information, such as trade secrets.

The *Hazardous Materials Information Review Act* and its regulations provide the mechanism to create that balance through the Hazardous Materials Information Review Commission. Our Commission is an independent agency with a quasi-judicial role that supports the WHMIS responsibilities and interests of the federal, provincial and territorial governments, workers, employers and the chemical industry.

Mandate

The *Hazardous Materials Information Review Act* mandates our Commission to:

- register claims for trade secret exemptions and issue registry numbers;
- adjudicate and issue decisions on the validity of claims for exemption using prescribed regulatory criteria;

- make decisions on the compliance of MSDSs and labels with WHMIS requirements; and
- convene independent boards with representatives drawn from labour, suppliers or employers to hear appeals from claimants or affected parties on our decisions and orders.

What the Commission Does

If a supplier or employer wants to withhold information that it believes to be as a trade secret, it must file a claim with the Commission for exemption from its WHMIS obligations to disclose this information. Our screening officers review these claims against requirements that are set out in federal regulations relating to chemical suppliers, and employers under federal jurisdiction, or provincial or territorial regulations relating to employers under their jurisdiction, and then rule on their validity. This process involves communication to avoid or resolve disputes.

As part of this claim review process, our scientific evaluators play a key health and safety role. They review for completeness and accuracy all the information provided on the MSDSs and labels associated with a claim for exemption. When our scientific evaluators identify missing or incorrect information, they provide advice to screening officers who then issue formal orders requiring the necessary changes.

The Commission also convenes independent boards to hear appeals from claimants or affected parties challenging our decisions and orders.

Upon requests, we also respond to the information needs from federal, provincial

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 the hazardous materials they deal with in the workplace;
- provide a trade secret mechanism within WHMIS; and
- resolve complaints and disputes impartially, fairly and promptly through statutory or alternate means.

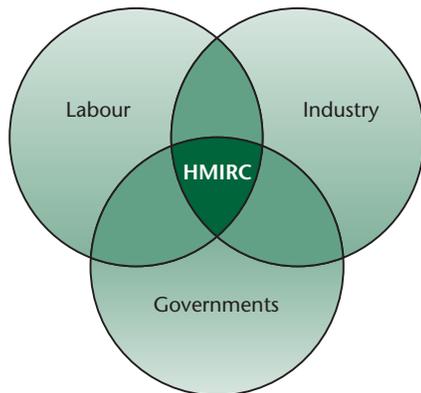
and territorial government health and safety officials respecting claims for exemption to administer and enforce their WHMIS obligations.

A Model Partnership of Key Stakeholders Across All Jurisdictions

The Commission deals with many WHMIS stakeholders:

- labour organizations and workers;
- suppliers in the chemical industry;
- employers with workplace WHMIS programs; and
- federal, provincial and territorial government agencies with WHMIS responsibilities.

As an independent agency, the Commission is a model of industry, labour and government consultation, consensus and cooperation. Our adjudicative efforts must result in a fair balance between the right of workers to know and the right of suppliers and employers to safeguard confidential business information. We make a tangible contribution to worker health and



safety and are a strategic partner to industry and employers. Our work also supports the federal, provincial and territorial governments in the delivery of their occupational safety and health regulatory activities, making the Commission one of very few adjudicative bodies that represent multiple levels of government in Canada.

Governance Structure

The Commission's governance structure is a model of collaboration. Our Council of Governors provides strategic advice and guidance to the Commission and makes recommendations to the Minister of Health. It consists of up to 18 members: two representing workers, one each representing suppliers and employers, one representing the federal government, and between four and 13 representing the provincial and territorial governments.

The Commission President and Chief Executive Officer supervises and directs the work of the agency. He is accountable to Parliament through the Minister of Health.

Values and Operating Principles

The Commission recognizes that continuous improvement is critical in order to remain relevant and to provide effective and efficient performance and service quality. We have identified the values and operating principles that foster continuous improvement in our operations.

- **FAIRNESS**—in our ability to provide services and to 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 propose legislative approaches only when they meet rigorous cost-benefit analysis and to be accountable for programs and the 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 consistent, firm enforcement of the regulations.
- **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.



2004-05: THE YEAR IN REVIEW

Protecting trade secrets and safeguarding workers

AN ESSENTIAL PART OF OCCUPATIONAL HEALTH AND SAFETY IS ENSURING THAT THOSE EMPLOYED IN OPERATIONS REQUIRING THE USE OF HAZARDOUS MATERIALS HAVE THE INFORMATION THEY NEED TO USE WITHOUT RISK OF INJURY AND WITH NO THREAT TO THEIR HEALTH EITHER IN THE SHORT TERM OR IN THE LONGER TERM.

The Commission is one part of the overall hazard communication system operated by the federal, provincial and territorial governments. It is through this system that workers are provided with the health and safety information they need to use hazardous materials safely. The system requires that this information, including the identification of hazardous ingredients, be disclosed on product labels and safety documentation. In this way the workers know what they are working with along with precautions to take and first aid measures.

In circumstances where the disclosure of information—such as the chemical identity or concentration of a hazardous ingredient—would betray a trade secret, an application can be made to the Commission for an exemption from the requirement to disclose that specific information.

For each application, the Commission carries out a two stage process. First, the documentation in support of the claim for exemption from disclosure is reviewed and a decision made as to whether the information meets the regulatory criteria respecting a trade secret. The Commission then determines whether the accompanying material safety data sheet is in compliance with federal, provincial or territorial requirements with respect to providing product hazard information. This two-pronged decision is then communicated to the applicant and published in the *Canada Gazette*.

When safety disclosure non-compliance is found, we issue orders obliging claimants to make corrections and they must provide the Commission with a copy of the revised



and corrected safety documentation. Failure to comply means that the claimant can no longer legally import or sell the product.

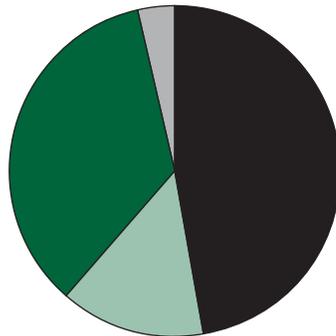
The Commission requires that all claim-related MSDSs, and where applicable, labels, be fully compliant with WHMIS requirements if the controlled product continues to be sold in Canada.

CLAIMS REGISTRATION

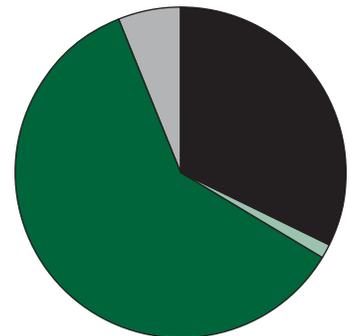
At this time, the Commission deals with over 100 separate companies, and most have numerous products for which they wish to claim exemptions. During the past year, Client Services registered 249 new and refiled claims. Almost 40% of the claims registered in 2004–05 were from companies located in the United States, as compared to an average figure of 47% for the three-year period beginning in 2001–02.

Geographic origins of claims by year of registration

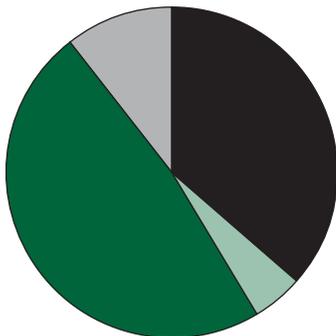
2001–2002



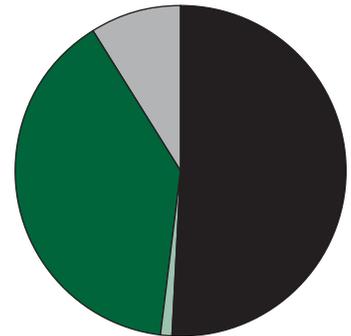
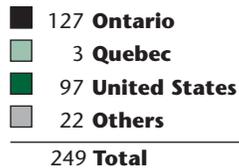
2003–2004



2002–2003



2004–2005



MSDS VIOLATIONS AND CLAIMS STATISTICS

The Commission rendered 245 decisions in 2004-05—an increase of close to 9% over last year, making this year the second highest level it has ever achieved.

The Commission reviews all claims for exemption—including 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. This helps ensure that workers are informed of the hazards of exposure to chemicals found in products associated with claims for exemption. 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 decision is forwarded to the claimant. If the MSDS does not meet

requirements, the screening officer also issues a formal order for its correction and follows up to ensure 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.

Historically, the Commission has found an average of six to 12 MSDS deficiencies per claim, with over two thirds of these occurring in the three violation categories of toxicological properties, hazardous ingredients and first aid measures. MSDS non-compliance in these important areas has the potential to negatively impact the health and safety of workers who come in contact with the products involved.

In ensuring that all MSDSs associated with claims for exemption comply with the WHMIS requirements, the Commission serves to maintain a proper balance between the industry's right to withhold trade secret information, and workers' right to health and safety information about chemical products. More generally, we believe that our findings should be regarded as illustrative of the quality of the general population of MSDSs taken as a whole.



MSDS Violations, 1998–99 to 2004–05

Violation Category	2004–05	2003–04	2002–03	2001–02	2000–01	1999–00	1998–99	Total	%
Toxicological properties	577	594	884	104	308	182	341	2,990	31.0
Hazardous ingredients	446	402	368	104	452	164	301	2,237	23.2
First aid measures	312	361	221	66	116	47	72	1,195	12.4
Fire or explosion hazard	58	112	186	55	109	21	66	607	6.3
Hazard classification	80	71	22	13	9	6	38	239	2.5
Physical data	79	91	49	9	99	13	28	368	3.8
Headings	70	6	13	10	157	19	22	297	3.1
Preparation information	147	132	21	8	35	3	20	366	3.8
Generic chemical identity	12	27	9	6	17	20	17	108	1.1
Product information	28	17	5	2	81	21	15	169	1.8
Format/wording	183	151	248	18	44	28	10	682	7.1
Preventive measures	4	17	9	12	3	2	4	51	0.5
Reactivity data	107	47	124	25	20	6	2	331	3.4
Total	2,103	2,028	2,159	432	1,450	532	936	9,640	100
Number of claims	245	225	181	69	155	85	143	1,103	
Average number of occurrences/claims	8.6	9	11.9	6.3	9.4	6.3	6.5	8.7	

In 2004-05 the Commission targeted the following four activities to improve services to our clients and stakeholders:

- providing more direction to claimants,
- improving staff training
- increasing workers' awareness, and
- streamlining processes.

These improvements contribute to Canadians' occupational health and safety services and protection from preventable risks by helping Canadian employees to know about the safe handling of hazardous chemical products they encounter in the workplace. At the same time, we contribute to the competitiveness of companies in Canada by allowing them to protect trade secrets associated with those products.

PROVIDING MORE DIRECTION TO CLAIMANTS

It was expected that improved guidance and direction could reduce errors in claimants submissions and accelerate the processing of claims. Commission staff received 116 enquiries during the year about our services and how to apply for a claim for exemption. In all cases, staff met or exceeded the Commission's service standards, which require a response to telephone enquiries within 48 hours and to written enquiries within a week. Despite our efforts to respond to enquiries from claimants, the number of errors in submissions has not diminished significantly.

The Commission's Web site provides claimants with extensive information on how to file a claim or how to file an appeal, which includes downloadable forms in different formats. It also provides links to the WHMIS site, to the laws and regulations that form the regulatory

framework within which the Commission carries out its mission, and to its federal, provincial and territorial partners.

In the fall of 2004, the Commission launched an MSDS pre-assessment pilot program designed to assist claimants in identifying and correcting certain MSDS problems of a technical/format nature before submitting the MSDS to the Commission as part of a claim for exemption. A checklist was sent out for the use of all claimants as part of a six-month pilot study to determine the extent to which this program improves the quality of incoming MSDSs. Based on the results of this study, the Commission will decide if any program changes are required in order to improve its effectiveness on an ongoing basis.

Stakeholders were surveyed early in the fiscal year to determine the level of interest in a Commission-sponsored workshop relating to the regulations and the processes associated with the WHMIS trade secret exemption mechanism. The relatively low level of positive response, coupled with the ongoing pressures on our resources, led to the conclusion that we would not proceed with a workshop for this year. Nevertheless, the Commission continued to provide a full presentation and briefing to any stakeholder that wished to visit our offices for that purpose.

IMPROVED STAFF TRAINING

The scientific expertise of the Commission's staff is critical to the delivery of our mandate. Consequently, the training and development of Commission staff continues to be a high priority in terms of the internal allocation of the limited financial resources at our disposal.



Of particular importance is ensuring that our scientific and toxicological personnel are given ample opportunity to keep abreast of ongoing research into the many occupational illnesses and diseases related to the use, handling and storage of workplace hazardous materials. For example, this past year an Applied Genetic Toxicology course, presented by a Health Canada expert, was organized for all of the Commission's operational staff.

In addition, a formal mentoring system, pairing a seasoned evaluator with a new staff member, was put in place as part of the training and orientation program for new scientific/toxicological staff. A case study was also developed whereby a new evaluator is required to prepare an advice document based on a set of known facts and circumstances which is then reviewed for purposes of providing feedback to the trainee. We will maintain our efforts to achieve the highest possible levels of expertise in these areas.

INCREASED WORKERS' AWARENESS

The Commission has a regular presence at trade shows, exhibitions and conferences, which provides the opportunity to dialogue with worker delegates and attendees on the WHMIS trade secret exemption mechanism as well as on Commission programs and services. In October 2004, the Commission staff was on hand at the Industrial Accident Prevention Association (IAPA) Conference and Trade Show in Ottawa to provide information and answer questions on the trade secret mechanism within WHMIS. Primarily occupational safety and health professionals attended this conference and trade show.

Also, reports on material safety data sheet violation statistics are provided to organized labour through labour representatives on the Commission's Council of Governors.

STREAMLINED PROCESSES

In the late 1990s and with the unanimous support of the Commission's Council of Governors, the Commission undertook a review of its operations to make them more effective and to address stakeholders' concerns. Through this consultative process, many improvements in the operations of the Commission were identified. These improvements have been implemented with the exception of those requiring amendments to our legislation.

As part of our remaining action items to complete the Commission's renewal initiative, we multiplied efforts with the Minister's Office to introduce amendments to the *Hazardous Materials Information Review Act* during this session of Parliament to streamline our processes.

The Commission proposes to allow claimants to declare that the information for which they are seeking an exemption from disclosure is confidential business information. Currently, claimants are required to submit detailed documentation on the steps they have taken to protect confidentiality and on the potential financial implications of disclosure. This is an administrative burden on claimants and on the Commission. While generally allowing claimants to declare that information is confidential business information, the Commission will collect full documentation

when an affected party challenges a claim or when a claim is selected through measures set up to discourage false or frivolous claims.

The Commission also proposes to allow claimants to voluntarily correct material safety data sheets and product labels when these are found non-compliant by the Commission. As the Act now stands, the Commission must issue formal correction orders even if the claimant is fully prepared to make all necessary corrections voluntarily. Claimants feel that these orders imply a reluctance on their part to fulfill their responsibilities for workplace safety. These orders are published in the *Canada Gazette* but do not become binding until 75 days after publication. Allowing corrections to be made without issuing an order will expedite the process of getting accurate safety information into the hands of workers.

Finally, the Commission proposes that it provide factual clarification to appeal boards when this is needed to facilitate the appeals process. Appeals of decisions and orders of the Commission are heard by independent boards with three members drawn from labour, industry and government.

In summary, these proposed amendments will reduce the time required to review claims for exemption from disclosure of confidential information, speed up the correction of the information workers need to handle hazardous materials safely and expedite the processing of appeals.

Enhancing workload management

While the reduction of the backlog remains a high priority for the Commission, 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 registered claims but not yet reviewed.

With some additional funding received in 2001 and 2003, we expect to reduce the backlog to about 380 claims by 2008–09, from its high point of 951 in March 2002. This projection is based on our estimates of new claims, refiling of claims and withdrawn claims, and on our ultimate capacity to render 400 decisions annually. Our ability to meet these targets will be influenced by the actual number of new and refiled claims received, the number of claims withdrawn and our success in staffing vacant positions.

While there have been variances with respect to certain components of the multi-year claim workload estimates established at the beginning of 2003–04, the overall reduction of the number of claims currently being processed—691 as at March 31, 2005—is in line with the forecast.

We continue to look for ways to streamline processes, reallocate resources, and adjust priorities in order to maximize the Commission's ability to address claim workloads. This past year, a prioritization system was established for the



Claim Workload Estimates, 2004–05 to 2008–09

	2004–05		2005–06		2006–07		2007–08		2008–09	
Carry Forward	789		691		556		441		386	
	Estimate	Actual					Estimate			
PLUS										
New Claims	245	196	245	245	245	245	245	245	245	245
Refilings	35	53	90	100	150	200				
Subtotal	280	249	335	345	395	445				
MINUS										
Withdrawals	75	102	70	60	50	50				
Claims Processed	300	245	400	400	400	400				
Subtotal	375	347	470	460	450	450				
EQUALS										
Balance*	694	691	556	441	386	381				

* Indicates the number of claims remaining to be adjudicated.

selection of claims awaiting processing. This system allows for a group of claims to be comprised of approximately 50% claims associated with controlled products with a perceived high hazard potential, while the balance of claims is made up of those that have been in the backlog for the greatest length of time.

Some of the work associated with the production of pure substance toxicity profile summaries continued to be contracted out, enabling our evaluators to focus on the specific MSDS review associated with claim processing.

Monitoring Canadian and international policy development

After several years of negotiations among many countries, including Canada, a globally

harmonized standard for hazard communications was issued in 2002, with a tentative voluntary implementation date of 2008.

The Commission is a member of the WHMIS Current Issues Committee, which is coordinating the workplace hazard communication aspects of implementing the standard. The Commission is also represented on the Intergovernmental WHMIS Coordinating Committee, the intergovernmental consultation forum responsible for providing government positions on WHMIS related matters. A Commission official participated as a member of the technical tripartite working group convened to develop consensus approaches for the implementation of the Globally Harmonized System for the Classification and Labelling of Chemicals in Canada. Being involved in such work allows the Commission to apply its expertise and

experience in the area of MSDS compliance for the benefit of all WHMIS stakeholders as Canada moves forward on this important international initiative. Should other countries—especially those with underdeveloped economies—wish to adopt Canada's approach to exempting trade secrets, we will make the Commission's experience and expertise available to them.

Improving the focus of outreach activities

To increase awareness of the Commission both within Canada and internationally requires careful targeting of our existing stakeholders and potential clients, given our very limited communications resources. Our Web site has become a primary source of information for claimants.

To optimize the use of our Web site, the Commission launched an awareness project in 2004-05. We distributed 30,000 mailing cards to the American chemical industry and over 3,000 to the Canadian chemical industry. The objective of the card was to create awareness of the Commission's programs and services by inviting the receiver to visit the Commission's Web site where introductory information on the Commission was presented. During that period, we recorded an increase in the number of visits to our Web site as well as an increase in requests for information which we are associating with this project.

The Commission was also at GlobalChem 2005 Trade Show in Arlington, Virginia in March 2005. Unlike the IAPA conference, this event drew chemical industry and regulatory professionals from Canada and the United States. It allowed

Reaching out

As a relatively small agency, our communications strategic plan focuses on ensuring an up-to-date and relevant Web site as the primary vehicle for communications with clients and stakeholders.

The site recorded some 25,000 visitors—of whom over 15,000 were new—who viewed almost 73,000 pages. We continue to receive and respond to suggestions from claimants including enhancements to the instructions guide on how to complete the application form for a claim for exemption.

the Commission to reach a broader audience as well as providing an excellent venue to make new contacts within the chemical industry.

Since renewal the Commission has maintained a client-focused approach and continuously keeps in touch with its stakeholders. The Commission's Client Services Survey questionnaire established a few years ago has provided an opportunity for claimants to rate the degree of satisfaction in respect of their dealings with us and to provide any general comments they feel appropriate. Of the voluntary responses received, all but one rated the Commission's overall level of service at registration as either nine out of 10, or 10 out of 10. The lower rating response suggested that the claim for exemption guide available on our Web site might include somewhat more details. The instructions guide has since been enhanced to reflect this comment.

In general, we continue to view claimants' ratings as a positive indicator of our effectiveness. However, we subscribe firmly to the principle of continuous improvement and are open to any suggestions on how we may be able to do better.



APPENDIX I: FINANCIAL STATEMENTS

Revenue (in thousands of dollars)

Revenue from claims for exemption	570
Revenue from appeals	0
Total revenue	570

Expenditures (in thousands of dollars)

Salaries and wages	2,380
Other operating	721
Total expenditures	3,101

Human Resources

Full-time equivalent staff

Office of the President	2
Operations Branch	22
Corporate Services and Adjudication Branch	11
Total	35

APPENDIX 2: GOVERNANCE

The Commission's governance and management framework is unique. The Commission was created through a tripartite consultative process, requiring consensus as a condition for the participation of labour, industry and different levels of government.

The **Council of Governors** constitutes the key element of the Commission'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 between four and 13 represent the provincial and territorial governments. 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.

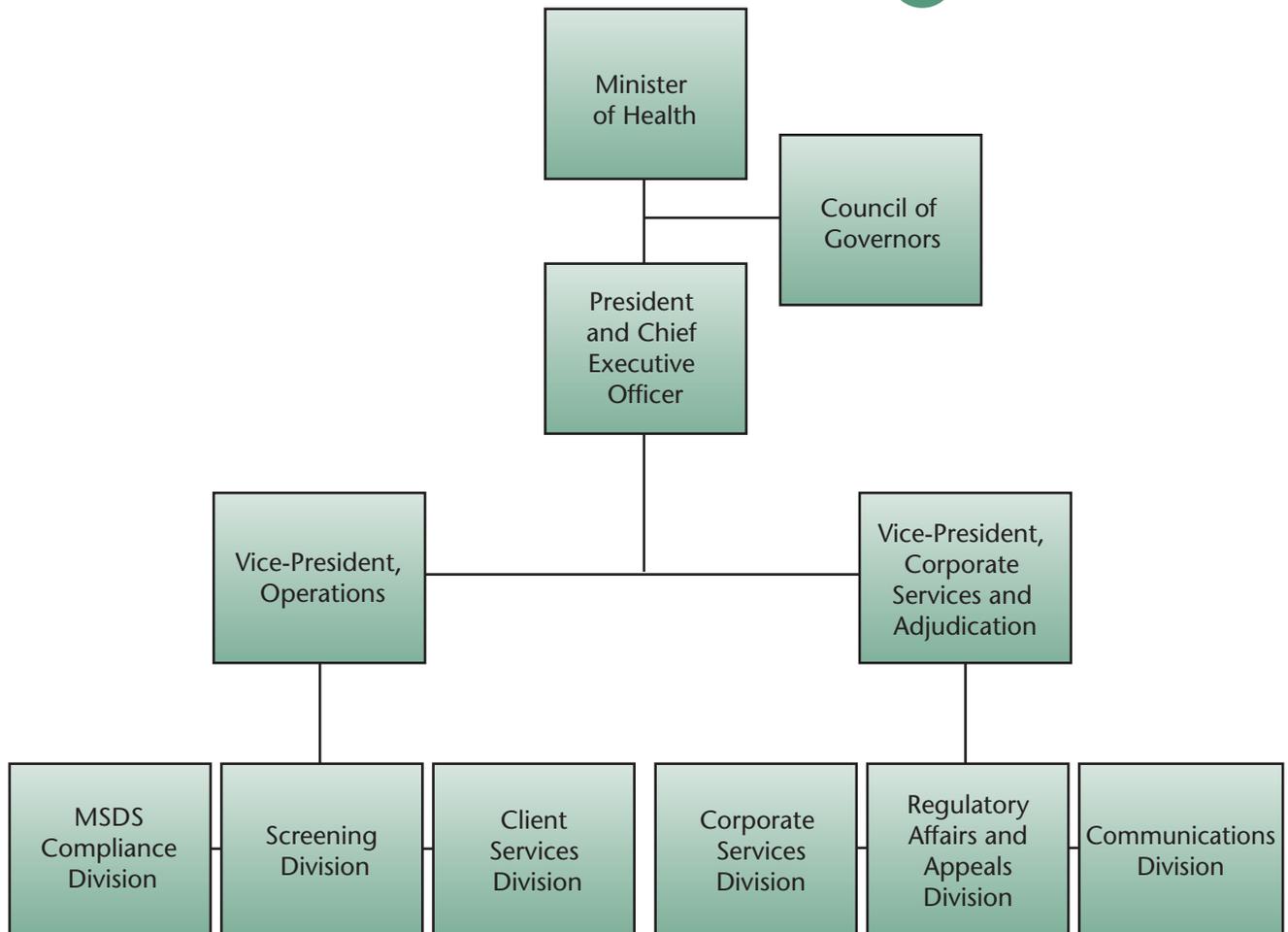
This approach to governance has passed the test of time, and the Commission continues to build on the consultative processes and synergies that exist within and between the Commission, Human Resources and Skills Development Canada's Labour Program, provincial/territorial ministries of labour, provincial/territorial occupational safety and health programs, industry associations and the Canadian Labour Congress.

The **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, 2005*)

Chair and Quebec

Dr. Yves Brissette

Commission de la santé et
de la sécurité du travail

Workers

Mr. Bill Chedore

Canadian Labour Congress

Vacant

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

Vacant

Prince Edward Island

Vacant

Newfoundland and Labrador

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

Yukon

Vacant

Northwest Territories

Vacant

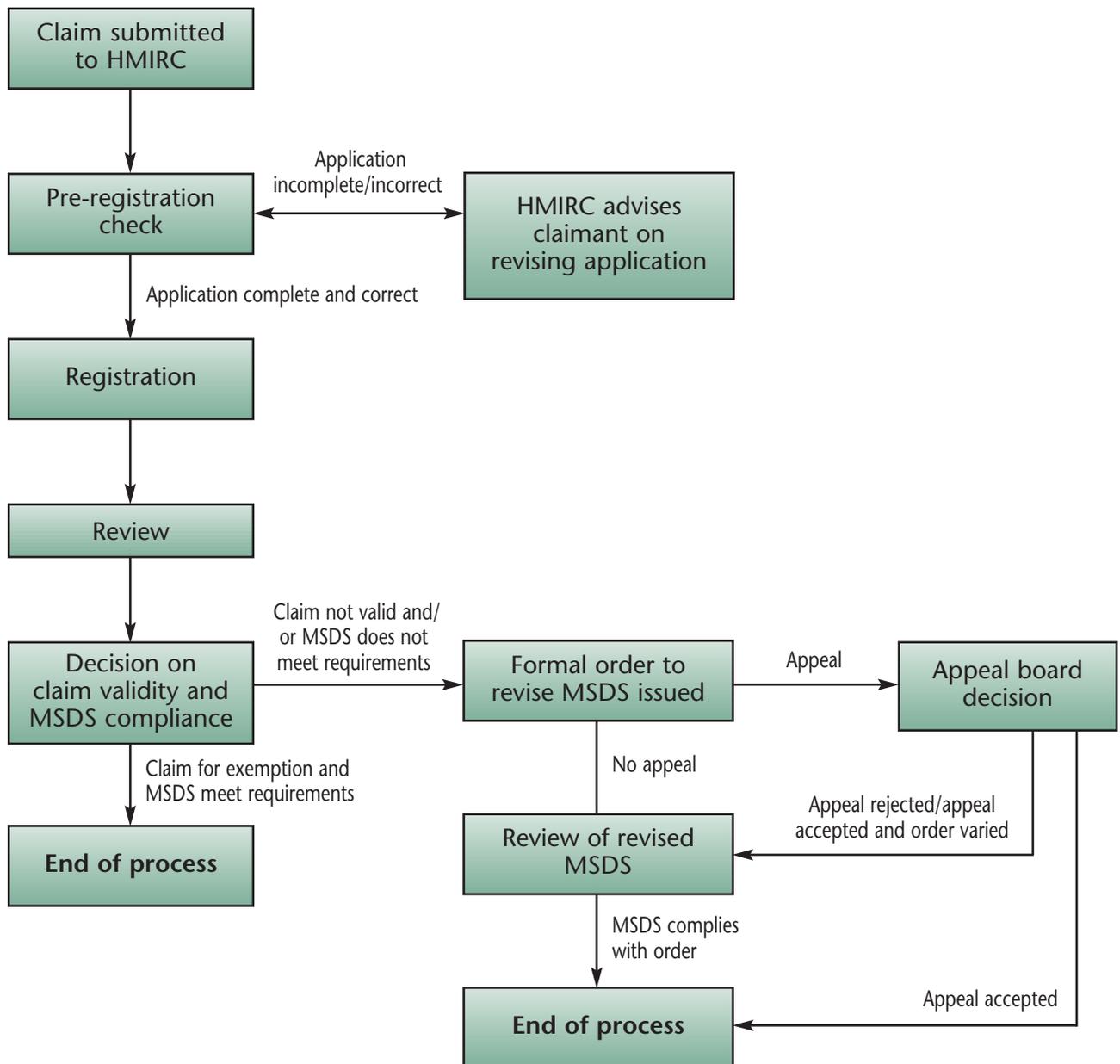
Nunavut

Vacant

* It should be noted that the appointment or reappointment of the members of Council of Governors representing workers, the provinces of Manitoba, New Brunswick and Prince Edward Island, the Northwest Territories and Nunavut were pending as at March 31, 2005. The other two vacant positions were awaiting nomination.



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.hmircc-crmd.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 decision making process continues.

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 product 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 claimant wishes to continue protection of 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 date by which corrections 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 2004
- Reports on Plans and Priorities, 2000-01 to 2005-06
- Performance Reports, 1998-99 to 2003-04
- *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
- *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*

**Visit our Web site at
www.hmirc-ccrmd.gc.ca**