



Hazardous Materials Information Review Commission Canada

Performance Report

For the period ending
March 31, 1999

Canada

Improved Reporting to Parliament Pilot Document

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

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

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

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Foreword

On April 24, 1997, the House of Commons passed a motion dividing on a pilot basis what was known as the annual *Part III of the Estimates* document for each department or agency into two documents, a *Report on Plans and Priorities* and a *Departmental Performance Report*.

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

This year, the Fall Performance Package is comprised of 82 Departmental Performance Reports and the government's report *Managing for Results - Volumes 1 and 2*.

This *Departmental Performance Report*, covering the period ending March 31, 1999, provides a focus on results-based accountability by reporting on accomplishments achieved against the performance expectations and results commitments as set out in the department's pilot *Report on Plans and Priorities* for 1998-99. The key result commitments for all departments and agencies are also included in Volume 2 of *Managing for Results*.

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

The government continues to refine and develop both managing for and reporting of results. The refinement comes from acquired experience as users make their information needs more precisely known. The performance reports and their use will continue to be monitored to make sure that they respond to Parliament's ongoing and evolving needs.

This report is accessible electronically from the Treasury Board Secretariat Internet site:
<http://www.tbs-sct.gc.ca/tb/key.html>

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Hazardous Materials Information
Review Commission

Conseil de contrôle des renseignements
relatifs aux matières dangereuses

Performance Report

**For the
period ending
March 31, 1999**

Allan Rock
Minister of Health

Table of Contents

Section I - Messages

Minister's Message	1
President's Message	2

Section II - Departmental Overview

Introduction	3
Mandate	4
Mission	4
Vision	5
Operating Environment	5
Renewal	6
Objectives	8
Strategic Priorities	9
Challenges	9
Departmental Organization	10
Business Line Description	13
Organization Chart	13

Section III - Departmental Performance

Summary 1998-1999 Performance Accomplishments	15
Cost Recovery	15
Claims	16
Decisions and Orders	18
Material Safety Data Sheet Review	19
Appeals	20
Quality Management System	21
WHMIS Enforcement Initiative	22
Policy and Interpretation Issues	22

Section IV - Consolidated Reporting

Year 2000 Readiness	23
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Section V - Financial Performance

Financial Performance Overview	25
Financial Summary Tables	25
Summary of Voted Appropriations	25
Comparison of Total Planned Spending to Actual Spending	26
Historical Comparison of Total Planned Spending to Actual Spending	27
Revenues Credited to the General Government Revenues (GGR)	27

Section VI - Supplementary Information

Contact for Further Information	29
Legislation Administered and Associated Regulations	29
List of Commission Publications	29

Section I - Messages

Minister's Message

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

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

Over the past year, the Commission has held numerous consultations with their tripartite stakeholders and its Council of Governors. The Commission now has a strategic plan for the future direction of its operations. This model will serve to illustrate the consensus building efforts amongst labour, industry and governments which continues to be a cornerstone of the WHMIS program.

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

President's Message

The past year has been a challenging one for the Hazardous Materials Information Review Commission (HMIRC). We have faced complex and critical choices. In our efforts to modernize the Commission, we have gone through an internal process of revisiting and updating our vision, mission, and operating principles. I made the renewal process my top priority since accepting the position of President and CEO in May 1998, and staff embraced the need for change and set about creating it.

The Commission's dual role is to balance the right of chemical companies to protect trade secrets and the need of workers to have accurate health and safety information about hazardous chemicals. The Commission, which was created in 1987 as part of the Workplace Hazardous Materials Information System (WHMIS), is a model of industry, labour and government consultation, consensus and co-operation. However, ten years of changing times and changing markets made it necessary to re-evaluate the Commission's approach to fulfilling this mandate.

Over time, some members of industry expressed their discontent with various aspects of our mandate. It was determined there was a growing need for a more client-oriented approach to service delivery. The ultimate challenge, however, was to maintain our organization's commitment to meeting the needs and interests of both industry and workers equally. By the Spring of 1998, substantial work had already been done to determine the initial stakeholders' views about the Commission, and later that same year the Minister of Health requested that HMIRC conduct a more widespread consultation with all interested parties. Working together with our stakeholder groups, staff drafted the Commission's first Strategic Plan entitled *Commission Renewal: Blueprint for Change*.

The proposed Strategic Plan was the springboard for open, honest and challenging dialogue, and acted as a gathering place around which all our stakeholders met to review, reaffirm and enhance the services offered by the Commission, and was ultimately approved by the Council of Governors. Throughout the process, everyone was motivated by concern for the Commission, recognizing its role and importance, and I am grateful for everyone's patience, support and enthusiasm. I would like to thank the members of the Intergovernmental WHMIS Coordinating Committee, HMIRC claimants, industry association members, labour association members, Council members, Commission staff and those from various federal government departments who assisted us in this renewal effort.

We have already succeeded in giving the Commission's staff a renewed sense of value - recognizing their contribution, and giving them the scope to perform to their full potential. We have found new solidarity with our partners in labour, industry and government.

Weldon Newton

Section II - Departmental Overview

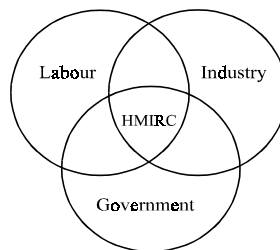
Introduction

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

Hazardous Materials
Information Review
Commission established
in 1987.

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

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



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

Mandate

Under the authority of the *Hazardous Materials Information Review Act* and the provincial and territorial Occupational Safety and Health Acts, the Hazardous Materials Information Review Commission is an arm's length administrative agency charged with carrying out a multi-faceted mandate to:

- formally register claims for trade secret exemptions, and issue Registry Numbers;
- issue decisions on the validity of claims for exemption using prescribed regulatory criteria;
- make decisions on the compliance of material safety data sheets and labels within the Workplace Hazardous Materials Information System requirements as set out in the *Hazardous Products Act* and *Controlled Products Regulations* and various provincial and territorial Occupational Safety and Health Acts; and
- convene independent, tripartite boards to hear appeals from claimants or affected parties on decisions and orders issued by the Commission.

Mission

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

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

Vision

The Commission will:

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

Operating Environment

We are seeking creative and innovative ways to serve:

- The Canadian Worker
- The Chemical Industry
- Federal/Provincial/Territorial Occupational Safety and Health Programs

In carrying out our fundamental commitment to the workers' right to know about the hazardous materials they encounter and the industry's right to protect trade secrets, it is the Commission's responsibility to ensure that the MSDSs and labels we review disclose accurate health and safety information concerning hazardous chemicals. HMIRC is committed to continuing and enhancing this service.

The aim of HMIRC employees is to provide objective, high quality service to WHMIS stakeholders.

We want to ensure that Canadian workers remain informed of and protected from all hazardous materials encountered in the workplace, and that employers have the supplier MSDS information they require to prepare accurate workplace MSDSs. Simply put, Canadian workers' right to know about safety in the workplace can only be achieved if the data on the MSDSs and labels is accurately conveyed.

HMIRC is valued by the Canadian and international chemical industry for the key role it plays in protecting the trade secrets of chemical companies. The Commission has handled over 3,000 claims in our first 10 years of existence: 64% of those claims came from Canadian manufacturers, 36% from American manufacturers and only a few from European companies. Preliminary market research suggests there are substantial opportunities to identify additional claims and to provide other value-added services to industry.

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

It is the aim of HMIRC employees to provide objective, high quality service to WHMIS stakeholders by rendering decisions consistent with sound legal principles. This is one of the key performance measures that enables us to demonstrate our commitment to all HMIRC clients and beneficiaries in a strong, fair and cost-efficient manner.

We recognize that we do not work alone. The WHMIS program is an integrated activity with many partners. The Commission will continue to work closely with the agencies responsible for enforcing WHMIS requirements-Health Canada, Human Resources Development Canada, and the various provincial and territorial occupational health and safety agencies-and with our labour and industry stakeholders, to secure worker safety while supporting industrial innovation by protecting their commercial trade secrets.

Renewal

The traditional approach

Our dual role of protecting worker safety and trade secrets means that the Commission has a unique relationship with labour and industry. Both parties have an interest in what we do and how we do it. To that end, the Commission has an interest in developing positive working relationships with industry and labour, with the goal of maintaining the balance between the workers' right to know about hazardous products being used and industry's right to protect legitimate trade secret ingredients from disclosure.

The Commission's traditional approach to its mandate was perceived as rigid and made it difficult for a truly effective working relationship to be created with industry. It 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 evolution of technology to the point where people now expect to have information easily available at the start of a process, so they can avoid problems in their dealings with government agencies.

Calls for changes

As times changed, industry called for changes from the Commission. The feelings of dissatisfaction, which the Commission had heard as murmurs for some years, became a low roar in mid 1997. At that time, the Commission's Council of Governors, which oversees its work, authorized a consultant to review industry concerns about HMIRC. Industry representatives expressed discontent with the broad scope of the Commission's mandate and the bureaucratic nature of the review process. They also complained about what they perceived as high fees for filing trade secret claims and said that they found the appeal hearings took too long and were too costly.

The consultant expressed the conclusions of his review in a report to HMIRC's Council of Governors. The Council of Governors endorsed 11 of the report's recommendations unanimously but did not reach consensus on two others. The Council reported this to the Minister of Health in May 1998. Later that same month, Mr. Weldon Newton was appointed President and Chief Executive Officer of the Commission.

Ideas for renewal-building on our experience

In October of 1998, the Minister requested that the new President conduct a more widespread renewal consultation with all interested parties. The Minister also requested that the Commission undertake an assessment of the potential impact of the implementation of the Council's Report recommendations on the operations of the Commission.

The President and staff were eager to examine HMIRC's operating procedures and working relationships. In a few intense months during the fall of 1998, Commission staff took stock of their experience in handling approximately 3,000 claims over 11 years, and developed ideas for renewal that more specifically addressed the issues raised by claimants. This effort included a survey of staff which determined that they were ready to support change. The survey was followed by a first-ever staff retreat where they gained a better appreciation of the program problem areas and undertook an analysis of solutions. This was an extraordinary year for staff, who were double-tasked to carry on with day-to-day operations while creating and developing the ideas and concepts such as our three business lines that will provide the basis for the Commission's future.

Throughout this period of analysis and development there was extensive collaboration between Commission staff and the Council of Governors. Monthly meetings began in November during which Council provided valuable guidance and helped shape the vision. This critical contribution developed the consultation process and the conceptual framework that led to the Commission's first Strategic Plan.

In January 1999, the Commission presented a consultation draft of the Strategic Plan to the Council of Governors. With Council's endorsement to proceed, the President and senior management set out to hold the first-ever consultation meetings with the Commission's stakeholder groups.

A presentation was made at the Canadian Labour Congress Annual Health and Safety Workshop in February. In their input, labour made clear its expectation that the Commission remain a strong protector of their right to workplace health and safety information, as provided for in the WHMIS legislative scheme.

Next, the Intergovernmental WHMIS Coordinating Committee (IWCC) was consulted. This meeting was an opportunity for the Commission to strengthen the partnership with federal, provincial and territorial WHMIS colleagues. The IWCC indicated support for the continuation of HMIRC's mandate and the key elements of the Strategic Plan.

On March 30, 1999, the Commission's senior staff met with representatives from 21 companies, several from outside the country, who are responsible for the majority of claims filed with the Commission. The claimants were encouraged by the vision of HMIRC in the Strategic Plan. While this was the first such meeting in the Commission's history, it will not be the last. The Commission is committed to open dialogue and face-to-face discussions with all stakeholders on a regular basis in the future.

The new approach-faster, simpler, more responsive

We are changing the way we relate to industry. The Commission will provide more assistance to industry at the beginning of the application process. The flow of information about WHMIS policy and interpretation will be improved. We have plans to develop a web site where we can share information with industry and labour, and work to standardize information in a number of areas.

The goal of all of the changes as outlined in our Strategic Plan, is to encourage and assist industry to achieve early compliance with WHMIS requirements. It follows that early compliance means that workers have accurate health and safety information in a timely fashion. We are committed to providing service that is better and faster and to doing our job at a fair and reasonable cost. We are changing the way we work.

What will not change is the dual role of the Commission in protecting trade secrets while ensuring that health and safety information in the workplace is accurate.

Objectives

We aim to ensure that:

- our work is highly visible and widely recognized;
- our employees exhibit a business attitude through a strategic and client-oriented approach;

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

Strategic Priorities

The Commission's strategic priorities for the upcoming year are to:

- develop and implement an operational work plan from our Strategic Plan entitled "*Commission Renewal: Blueprint for Change*";
- re-define the organization from one business line into three business lines: MSDS Compliance; Client Services; and Dispute Resolution.

Challenges

The following challenges for the Commission will be to:

- ensure that industry, unions and governments continue to support and actively participate in the renewal agenda;
- continue to increase our investment in the training and development of employees to ensure they maintain the skills and expertise necessary to deliver regulatory program and client services in a manner which meets high standards of service and satisfies the expectations of our clients;
- continue to build on the relationship established with our Health portfolio partners;

- ensure that those renewal initiatives, which cannot be done through administrative means, are accomplished through legislative or regulatory change.

Departmental Organization

The 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. Council may also prescribe procedures for reviewing claims for exemption and the handling of appeals.

The Role of the President and CEO

The President and CEO is appointed by the Governor in Council, and as the Commission's Chief Executive Officer, 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.

The Operations Branch

formerly known as Compliance Branch

The Director, Operations Branch, who is also the Chief Screening Officer, has the authority and responsibility to supervise and direct the work within the MSDS Compliance Program and the Client Services Program.

In the MSDS Compliance Program, Screening Officers have the statutory responsibility to determine whether MSDSs or labels submitted with the claims comply with WHMIS legislation.

The MSDS/label compliance decision requires the application of legislation, which is also administered by other occupational safety and health agencies, as well as the consideration of health and safety advice received from Evaluators in the Branch's Toxicological and Chemical Evaluation Division. In past years, Evaluators were employees of Health Canada, but in December 1998 these positions were transferred to the Commission. The goal is a better flow of information between the claimants, the Screening Officers and the Evaluators,

helping to reduce the amount of time required to review claims. Increased communication between all parties prior to a decision may also result in fewer disputes at a later stage. Every effort will be made to ensure that the transfer of the Health Canada WHMIS Evaluation Section to HMIRC contributes to a more cost-effective approach to MSDS review.

At the conclusion of the review process, a formal Statement of Decision is forwarded to the claimant. Where the MSDS or label does not meet WHMIS requirements, the Screening Officer orders that changes be made to bring about compliance. All orders specify the period during which various changes must be made if the product is to continue to be sold in Canada.

A Notice is published in the *Canada Gazette* to make public the decision and any order issued by the Screening Officer, and to initiate the time during which the claimant and affected parties may appeal the decision or order. 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. At the conclusion of all proceedings, an advisory to that effect is sent to all provincial/territorial occupational safety and health agencies for their information.

The Client Services Program within the Operations Branch is responsible for the registration and security of claims for exemption including the Confidential Business Information (CBI). Claims are filed by suppliers or employers using hazardous industrial materials who are seeking exemption from the full disclosure requirements of WHMIS. The claims registration function includes the collection and verification of claim fees, and the preliminary review of claim submissions, for the purpose of issuing Registry Numbers, which on receipt permits the claimant to market its product in Canada. The decision on claim validity is reached by reviewing supporting information from the claimant against the criteria prescribed in the *Hazardous Materials Information Review Regulations*. Should a claim be ruled invalid, an order is issued to the claimant to disclose the CBI which was the subject of the claim.

The Corporate Policy, Planning and Adjudications Branch
formerly known as Appeals Branch

The Director, Corporate Policy, Planning and Adjudications Branch, who is also the Chief Appeals Officer, has the authority and responsibility to supervise and direct the work within Adjudication Services, Corporate Services, Strategic Planning, Communications, Access to Information and Privacy, and Policy Coordination & Development.

Adjudication Services

The Branch is responsible for convening, when needed, independent, tripartite, quasi-judicial boards to hear appeals arising from the decisions and orders of Screening Officers. Claimants or affected parties may appeal these decisions and orders by filing a Statement of

Appeal with the Chief Appeals Officer. An appeal may relate to the compliance of an MSDS, the rejection of a claim or to a request that CBI be disclosed in confidence to an affected party for occupational safety and health reasons.

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

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 Board. Once the Board has heard and ruled on the appeal, a Notice of Decision is published in the *Canada Gazette*. Appeal Board decisions may be reviewed on process by the Federal Court, at the request of any of the parties who participated in the appeal.

The Commission is also establishing a Dispute Resolution Program in order to prevent disputes from arising, wherever possible, and, where they do arise, to address them as early and effectively as possible. The Dispute Resolution Program is intended to supplement and work in conjunction with the current appeals process.

Corporate Services

Provides a full range of services to the Commission including finance, personnel, records management, facilities management, physical and personnel security, telecommunications and informatics management services.

Strategic Planning

Develops and implements the Commission's strategic planning framework and oversees the business planning mechanisms and processes including performance measurement, quality and service standards, accountability, and review processes consistent with the Commission's mandate.

Communications

Develops and implements internal and external Commission communication plans, provision of communications and media relations services including the preparation of speaking notes, briefing materials, information and promotional materials to external clients, and quality assurance and translation services for Commission documentation.

Access to Information and Privacy

Develops, disseminates and interprets Commission's policy on Access to Information and Privacy, and processes all requests for Access to Information.

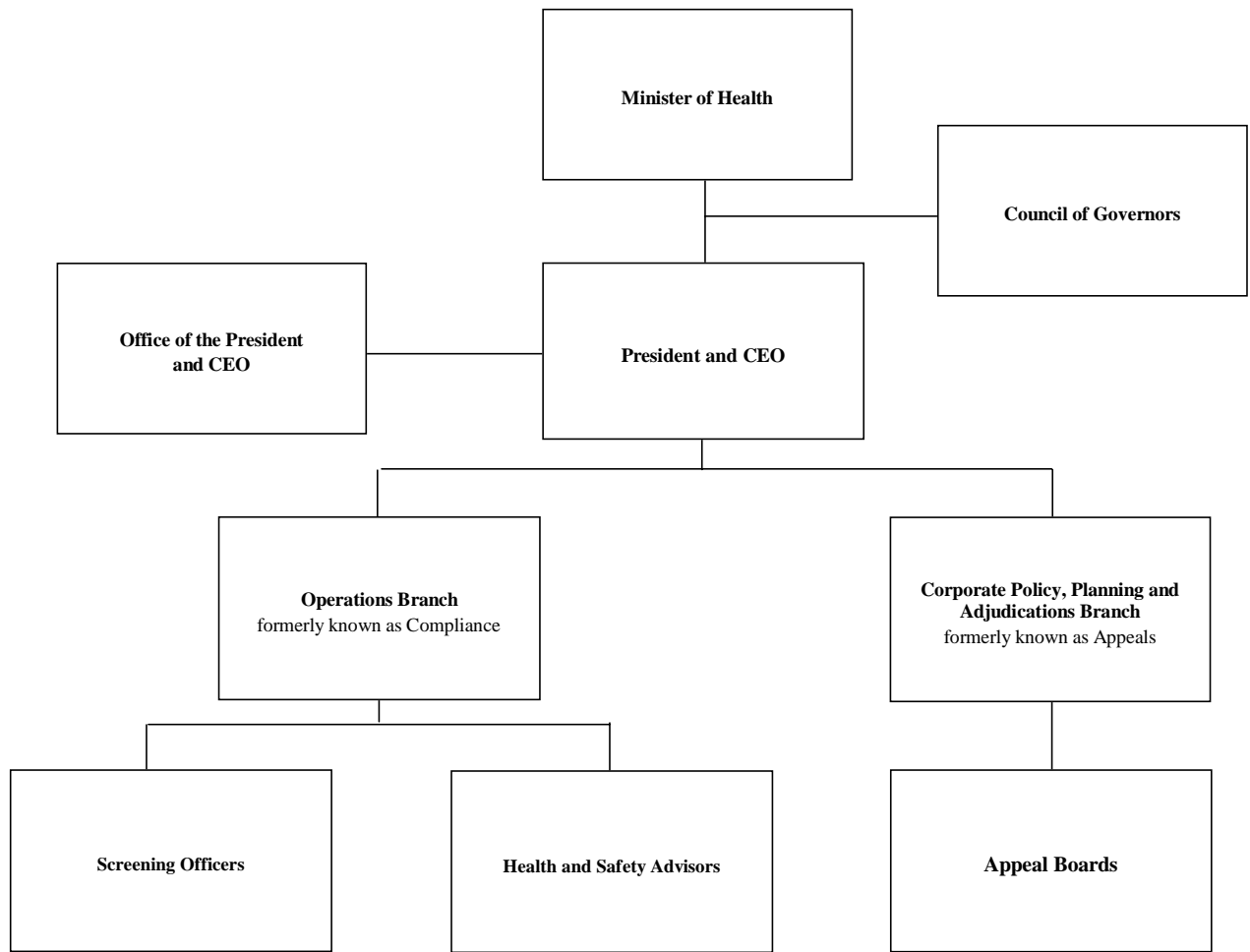
Policy Coordination & Development

Analyses and develops all legislative and regulatory proposals, including consultation with interested parties, prepares Memoranda to Cabinet, and coordinates interventions with officials of the Treasury Board and the Privy Council Office.

Business Line Description

The Hazardous Materials Information Review Commission's business line is *to ensure a balance between industry's right to protect confidential business information and workers' right to know about the hazardous materials to which they are exposed and the corresponding preventive health and safety measures.*

Organization Chart



Section III - Departmental Performance

Summary 1998-1999 Performance Accomplishments		
To provide Canadians with:	To be demonstrated by:	Achievements reported in:
An independent, adjudicative means by which the Workplace Hazardous Materials Information System (WHMIS) balances the right of a supplier or employer to withhold trade secret information with the right of a worker to know about the health and safety hazards of chemicals.	Exemptions from the full disclosure requirements of WHMIS granted when industry claims are valid.	DPR Section III pages 15 to 17
	Consistent application of the prescribed regulatory criteria agreed to by governments, industry and labour.	DPR Section III pages 18 to 20
	Compliance of claim-related labels and MSDSs with the WHMIS disclosure requirements.	DPR Section III pages 18 to 20
	Changes to related labels and MSDSs made as a result of orders issued to correct deficiencies.	DPR Section III pages 18 to 19
	Independent tripartite quasi-judicial boards to hear appeals from claimants or affected parties on decisions and orders issued by the Commission.	DPR Section III pages 20 to 21

Cost Recovery

1998-1999 23% cost recovery rate

Commission costs are partly recovered through fees charged for filing claims for exemption and appeals. The Commission's targeted level of cost recovery for fiscal year 1998-1999 was 25% of total annual program costs. The level of cost recovery achieved was 23%.

Since its establishment, the Commission has considered the achievement of operational efficiency and effectiveness measures to be a priority, and is continually striving to maximize the degree to which it can recover costs of operations. Close monitoring of such costs allows for the assessment of existing ways of doing business, and for the identification of any new areas which might be examined for improvement.

Cost recovery not only entails cost containment but also revenue. The Commission is cooperating with provincial occupational safety and health (OSH) agencies to increase compliance with the WHMIS trade secret requirements under the *Hazardous Products Act*.

Claims

As in past years, claims came principally from companies headquartered in Ontario and the United States. 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 or modify information that would normally be included in the product’s MSDS. All claims for which a decision was issued this year met the criteria.

1998-99	
Claims Registered	155
Decisions Issued	143
Claims in Process	379

Outputs: During fiscal year 1998-1999, the Commission registered 155 claims to bring the total to 3,012 claims registered up to March 31, 1999. To date, 1,526 of these have been withdrawn by claimants, while 597 were allowed by claimants to expire at the end of the three-year exemption period, for a total of 2,123.

A breakdown by geographical location of total claims registered and withdrawn since 1988 is presented on page 17. Another 137 claims were received during this same period, of which 116 were withdrawn before being registered. The balance is awaiting registration due to incomplete regulatory required information.

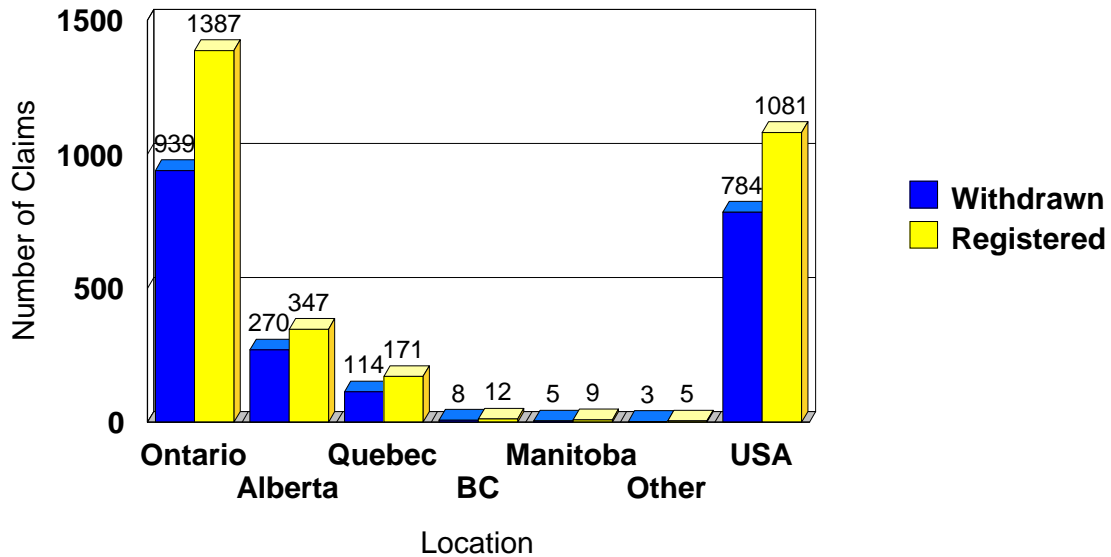
<p>1998-1999 155 claims registered</p>
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Claimants choose to withdraw claims filed for a variety of reasons including:

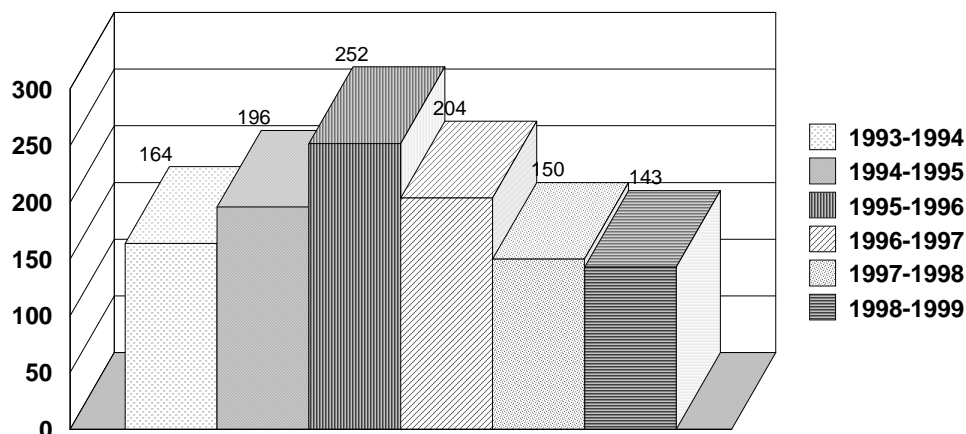
- the product was never sold in Canada;
- the product is no longer being sold in Canada;
- the confidential business information (CBI) ingredient(s) has (have) been removed from the product formulation;
- former CBI ingredient(s) is (are) now being disclosed on the MSDS; or
- there has been a change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

Notices of Filing: To afford affected parties an opportunity to make representations to the Commission with respect to claims, notices outlining the basic characteristics of registered claims must be published in Part I of the *Canada Gazette*. During the 1998-1999 fiscal year, the Commission published three such Notices, covering 169 claims for exemption.

Claims Status by Geographical Location as of March 31, 1999



Issuance of Decisions as of March 31, 1999



Decisions and Orders

1998-1999

- 143 decisions rendered
- 143 claims found valid
- 129 claims where MSDSs found in non-compliance

Outputs: During the 1998-1999 fiscal year, the Commission rendered decisions on a total of 143 claims for exemption.

Of the 143 claims which were adjudicated during the 1998-1999 fiscal year, all were found valid when assessed against the regulatory criteria respecting the confidentiality of the claimed information which

ordinarily would have to have been disclosed on the relevant MSDS. However, MSDSs for all but 14 of the 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. An analysis of the MSDS violations found in respect of these claims is presented on Page 19.

Health and Safety Advice: Health and safety advice to the Commission, related to the compliance of MSDSs with WHMIS requirements, continued to be provided by Health Canada. This partnership with the Commission has existed, from the outset of operations, through a formal Memorandum of Understanding; however, as mentioned earlier in this report, a decision was made in December 1998, to transfer the department's resources associated with this activity to the Commission, effective April 1, 1999.

The number of decisions rendered by the Commission is dependent on the number of health and safety advice documents received from the Toxicological and Chemical Evaluation Division. Advice documents relating to 219 claims were written by the Evaluators. A total of 204 claims, for which an advice document had been received, were carried over into fiscal year 1998-1999 including 66 for which advice documents were provided in the last quarter of the fiscal year.

Material Safety Data Sheet Review

In recent years we have noted a positive trend in our analysis of MSDSs filed with claims for exemption, as Screening Officers find fewer violations. We believe that this is due to companies having more experience submitting MSDSs with their claims and more knowledge about what is required for compliance.

MSDS Violation Statistics							
Violation Category	No. of Occurrences						
	98/99	97/98	96/97	95/96	94/95	Total	%
Toxicological Properties	341	384	698	580	609	2612	33.7
Hazardous Ingredients	301	391	716	367	238	2013	26
First Aid Measures	72	97	114	63	113	459	5.9
Fire or Explosion Hazard	66	49	56	104	140	415	5.4
Hazard Classification	38	44	95	42	79	298	3.8
Physical Data	28	29	49	48	55	209	2.7
Headings	22	31	71	122	113	359	4.6
Preparation Information	20	9	14	36	35	114	1.5
Generic Chemical Identity	17	39	13	27	56	152	2
Product Information	15	24	36	49	48	172	2.2
Format/Wording	10	41	126	205	390	772	10
Preventive Measures	4	3	8	5	49	69	0.9
Reactivity Data	2	14	17	19	52	104	1.3
Total	936	1155	2013	1667	1977	7748	100
No. Claims Adjudicated	143	150	204	252	196	947	
No. Occurrences/Claim	6.5	7.7	9.9	6.6	10.1	8.2	

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

An opportunity is then given to claimants to supplement their initial submissions so that the decision on claim validity can be based on as much relevant information as possible. As for the determination of MSDS compliance, before seeking the advice of the Commission's experts in this regard, claimants are contacted to ensure that the latest version of the MSDS has been obtained, and information is requested respecting the basis on which it was initially prepared by the claimant. This contact also affords the opportunity to identify/confirm claim status, in the event that the claim may be about to be withdrawn.

With this information, the Commission is better placed to render higher quality advice and decisions, as well as eliminating, to the fullest extent possible, work being done unnecessarily. Although the costs to the Commission in rendering decisions could be decreased by foregoing this process and rendering decisions on the face of the information provided by the claimant when the initial filing was made, it is likely that this would simply increase the number of appeals and potentially hamper the availability of products on the Canadian market. At the same time, Canadian workers are protected no less effectively because of these efforts on the part of the Commission.

Claimants, and any affected party that may have made a representation to the Screening Officer as a result of the Notice of Filing published in the Canada Gazette, are offered an opportunity to review and comment on the health and safety information and advice provided to Screening Officers. This step in the process has the primary objective of enhancing the transparency of the process.

Immediately prior to the formal signing and issuance of Statements of Decision/Order, Screening Officers conduct a telephone discussion with the claimant. The primary purpose of this discussion is to offer the claimant's representative the option of going through the draft documents with the Screening Officer, and to seek clarification, if required, on any matter dealt with therein. At this time, the claimant may also wish to determine (for example, with a non-compliant MSDS) if the Screening Officer is amenable to corrective action other than that which is specified in the draft Order. If the Screening Officer deems that any revision can be appropriately made to the Statement, this is done.

Appeals

During the year in review, an Appeal Board was appointed pursuant to the *Hazardous Materials Information Review Act* for one (1) appeal filed against the decisions and orders of the Screening Officer.

In another appeal matter, a Notice of Withdrawal of the Appeal Board was published in Part I of the *Canada Gazette* on March 27, 1999, by the Chief Appeals Officer, for the withdrawal of five (5) appeals in accordance with the statutory requirements.

1998 - 1999	
Appeals Filed	1
Appeal Hearings Concluded	0
Appeals Withdrawn	5
Appeals Still In Process	1

The appeals process is seldom used, and only one new appeal was begun in 1998-1999. Each appeal may involve several order items issued by Screening Officers. Over the lifetime of the Commission, Appeal Boards have heard 8 appeals and ruled on 51 order items issued by Screening Officers. Appeal Board decisions have upheld the majority of these orders, however, a significant number have been modified or rescinded. Seven (7) appeals have been withdrawn prior to issuance of a decision by the Appeal Board.

Quality Management System

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

Published Service Standards: During the past fiscal year, the Commission monitored its activities respecting claims registered and enquiries serviced, against its published service standards.

Claims Registered: Following a pre-registration check, the service standard calls for claims to be registered within 7 days after receipt of filing, if the supporting documentation, as set out in the *Hazardous Materials Information Review Regulations*, is complete. When there is an expressed request from a claimant, the Commission can and has registered well-prepared claims within 48 hours of receipt; however, this is not accomplished without increases in unit time costs.

The Commission's turnaround times for registration are important to claimants because registration allows the company to sell their product while the adjudication process is being carried out.

<p>1998-1999 140 claims were registered within 7 days.</p>

During fiscal year 1998-1999, the Commission received 176 claims, of which 155 were registered during this fiscal year. The remaining 21 were not registered. The supporting information required by regulation was incomplete and registration was impeded until the deficiencies were rectified by the claimant.

Of the 155 claims registered, 24 were registered within 48 hours of their receipt, and 116 were registered within 7 days of their receipt. The remaining 15 claims were registered after 7 days of their receipt as they were submitted with incomplete mandatory information.

Enquiries Serviced: 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 105 enquiries in 1998-1999, of which 89 were by telephone and 16 were written.

In-Branch Reviews: This is the term given to a process by which draft Statements of Decision/Order prepared by Screening Officers are peer-reviewed within the Operations Branch against several well-defined criteria. These reviews endeavour to promote such attributes as completeness, clarity and ensuring the Statement of Decision/Order is well reasoned.

WHMIS Enforcement Initiative

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 Human Resources Development Canada and the various provincial and territorial occupational health and safety agencies. Over the past year, staff liaised on an ad hoc basis with provincial government representatives regarding collaborative efforts to identify suppliers who claim proprietary information on MSDSs without filing a claim with the Commission.

The Commission will continue 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, ensuring that a level competitive field is maintained for those suppliers who do file with the Commission.

Policy and Interpretation Issues

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

Section IV - Consolidated Reporting

Year 2000 Readiness

The Commission is in a good position in regards to the Y2K issue. It has recently upgraded all of its work stations with Y2K compliant PCs. All of the day to day software is “off the shelf” and have been regularly updated. The Commission has also completed the re-engineering of its sole Y2K non-compliant database program. This database is used for recording, registering, tracking and managing claims. Through a Health Canada portfolio partnership agreement, Health Canada personnel will be reviewing the Y2K status of the Commission and will be prepared to ensure that the Commission is fully compliant. The Commission is also a member of the Health Canada Y2K Information Technology Sub-Committee. The Commission will be working on its Business Contingency Plan in the upcoming fiscal year.

Section V - Financial Performance

Financial Performance Overview (in millions)	
Planned Spending	1.16
Total Authorities	1.249
1998-1999 Actuals	1.218

Financial Summary Tables

In this section of the DPR you will find the following financial tables that are applicable to the Commission:

- Table 1 Summary of Voted Appropriations
- Table 2 Comparison of Total Planned Spending to Actual Spending
- Table 3 Historical Comparison of Total Planned Spending to Actual Spending
- Table 7 Revenues Credited to the General Government Revenues (GGR)

Table 1 Summary of Voted Appropriations

Authorities for 1998-1999 - Part II of the Estimates
Financial Requirements by Authority (\$ millions)

Vote	(thousands of dollars)	1998-1999		
		Planned Spending	Total Authorities	Actual
	Program			
15	Program Expenditures	0.998	1.082	1.053
L	Contributions to employee benefit plans	0.165	0.105	0.165
L	Refunds of amounts credited to revenues in previous years	0	0	0
	Total Department	1.16	1.247	1.218

Table 2
Comparison of Total Planned Spending to Actual Spending
(\$ millions)

Service Line	FTE	Operation	Capital	Voted Grants and Contributions	Subtotal: Gross Voted Expenditures	Statutory Grants and Contributions	Total Gross Expenditures	Less: Re-spendable Revenues	Total Net Expenditures
Compliance	6	0.444	-	-	-	-	-	-	0.444
<i>(total authorities)</i>	6	0.444	-	-	-	-	-	-	0.444
(actuals)	6	0.498	-	-	-	-	-	-	0.498
Appeals	2	0.199	-	-	-	-	-	-	0.199
<i>(total authorities)</i>	2	0.199	-	-	-	-	-	-	0.199
(actuals)	2	0.149	-	-	-	-	-	-	0.149
President's Office	445	0.517	-	-	-	-	-	-	0.517
<i>(total authorities)</i>		0.604	-	-	-	-	-	-	0.604
(actuals)		0.571	-	-	-	-	-	-	0.511
Totals	12	1.16	-	-	-	-	-	-	1.16
<i>(total authorities)</i>	12	1.249	-	-	-	-	-	-	1.247
(actuals)	13	1.218	-	-	-	-	-	-	1.218
Other Revenues and Expenditures									
Non-Respendable Revenues ²									0.599
<i>(total authorities)</i>									0.599
(actuals)									0.463
Cost of services provided by other departments ³									0.797
<i>(total authorities)</i>									0.797
(actuals)									0.816
Net Cost of the Program									1.957
<i>(total authorities)</i>									2.044
(actuals)									2.034

- Notes 1: Operating includes contributions to employee benefit plans and ministers' allowances.
2: These revenues were formerly called "Revenues Credited to the Vote".
3: Other costs include: professional services costs of HC, accommodation, compensation administration, employer's share of insurance, PST and GST.

Table 3
Historical Comparison of Total Planned Spending to Actual Spending
(\$ millions)

	Actual 1996-97	Actual 1997-98	1998-99		
			Planned Spending	Total Authorities	Actual
HMIRC	1.2	1.246	1.16	1.247	1.218
Total	1.2	1.246	1.16	1.247	1.218

Table 7
Revenues Credited to the General Government Revenues (GGR)
(\$ millions)

	Actual 1996-97	Actual 1997-98	1998-99		
			Planned Spending	Total Authorities	Actual
HMIRC	0.533	0.468	0.599	0.599	0.463
Total Non-Respendable Revenues ¹	0.533	0.468	0.599	0.599	0.463

Note 1. These revenues were formerly called "Revenues Credited to the Vote"

Section VI - Other Information

Contacts for Further Information

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Legislation Administered and Associated Regulations

The following documents contain the various laws and regulations concerning the Commission and are available in public libraries. They may also be purchased from booksellers that carry or distribute government documents, or ordered from the Canada Communication Group, Publishing Section, Ottawa, Ontario K1A 0S9, Tel: (819) 956-4802.

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 available from the Hazardous Materials Information Review Commission, 200 Kent Street, Suite 9000, Ottawa, Ontario K1A 0M1, Tel (613) 993-4331, Fax (613) 993-4686. They are available at no cost.

Annual Reports, 1988 to 1999
Commission Renewal: Blueprint for Change - 1999 Strategic Plan
Information Bulletins
Claim for Exemption Form
(also available in Word 97™ and WordPerfect 7™ format on diskette)
Guide to Completing a Claim for Exemption Form
Guidelines for Toxicological Summary Requirements
Statement of Appeal Form