

WHMIS ENSURES THAT EMPLOYEES USING OR EXPOSED TO HAZARDOUS MATERIALS HAVE HEALTH AND SAFETY INFORMATION ABOUT HAZARDOUS PRODUCTS USED IN THE WORKPLACE. SIMPLY PUT, WHMIS RECOGNIZES THAT EMPLOYEES HAVE A RIGHT TO KNOW WHAT THEY ARE WORKING WITH OR BEING EXPOSED TO. • A BASIC RULE OF WHMIS IS THAT THE SAFETY DOCUMENTATION, MORE SPECIFICALLY MATERIAL SAFETY DATA SHEETS, MUST INCLUDE FULL INFORMATION ON THE CHEMICAL IDENTITY AND CONCENTRATION OF ALL HAZARDOUS INGREDIENTS IN A PRODUCT. • THE EXCEPTION TO FULL DISCLOSURE OF SUCH INGREDIENT INFORMATION IS WHEN THIS DISCLOSURE WOULD REVEAL A TRADE SECRET RESULTING IN AN ECONOMIC LOSS TO THE CLAIMANT OR AN ECONOMIC GAIN TO THE CLAIMANT'S COMPETITORS. • THE COMMISSION, AN INDEPENDENT, QUASI-JUDICIAL AGENCY IS RESPONSIBLE FOR THE REVIEW OF SAFETY DOCUMENTATION IN ALL SITUATIONS WHERE A HAZARDOUS MATERIAL IS A TRADE SECRET.



Workers' right to know versus trade secret protection: **A BALANCING ACT**

Annual Report 2005-06





Workers' right to know versus trade secret protection:
A BALANCING ACT



Annual Report 2005-06

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The text which forms part of the design concept on the cover of this report is an excerpt from an opening statement made by Mr. Weldon Newton, President and Chief Executive Officer at his appearance before the Senate Committee on Social Affairs, Science and Technology on Bill S-2 *An Act to Amend the Hazardous Materials Act*, May 17, 2006.



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July 31, 2006

The Honourable Tony Clement, C.P., 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, 2006.

Yours sincerely,

Weldon Newton





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PRESIDENT'S MESSAGE |

As President & CEO of the Hazardous Materials Information Review Commission, it is my pleasure to present our Annual Report for 2005–06.

The work of the Commission may not be highly visible to the general public, but it is essential to those stakeholders who depend upon the Commission to protect workers' health and safety and protect industry's trade secrets.

The Commission, an independent, quasi-judicial government agency created in 1987, is part of the Workplace Hazardous Materials Information System (WHMIS) Program, a hazard communication system required by the federal, provincial and territorial governments. WHMIS ensures that employees using or exposed to hazardous materials have health and safety information about hazardous materials used in the workplace. The Commission was created with a mandate to grant exemptions from disclosure for *bona fide* trade secrets while at the same time ensuring that the documentation on the safe use of hazardous products provided to workers is accurate and complete.

The Commission's dual role therefore is to ensure a balance between workers' right to know what is in the products they work with and their hazards, and industry's right to protect its trade secrets which are key to maintaining competitiveness in the domestic and international markets.



The protection of trade secrets is critical to the success of many suppliers of hazardous materials. Based on information filed by claimants pertaining to the value of their trade secrets during the last fiscal year ending March 31, 2006, the disclosure protection mechanism administered by the Commission has a value in the order of \$624 million annually.

Another important part of the Commission's mandate is the scientific review of the health and safety information to be supplied to employers and workers

using the hazardous product. This part of our work is crucial, because employers and workers do not have access to the information protected as a trade secret, it is essential that all of the health and safety information they are provided is complete and accurate.

The Commission is unique in that its enabling statute, the *Hazardous Materials Information Review Act*, is incorporated by reference into the occupational health and safety legislation of provinces and territories. Its mandate is, therefore, carried out on behalf of the federal, provincial and territorial governments.

A key part of the governance of this multi-jurisdictional agency is its tripartite Council of Governors. The 18-member Council represents organized labour, suppliers, employers, the federal government and all provincial and territorial governments. It is unique to have these stakeholder groups at the same table and I am always impressed by their vigilance in carrying out their responsibilities in a positive and constructive manner and arriving at important decisions with unanimity.

As an agency striving to modernize, we called on our stakeholders to come together as partners in the renewal of the Commission's operations. We engaged claimants, Commission staff and our Council of Governors to improve service delivery, increase transparency and accountability and make operations more effective. Many improvements have been implemented in the spirit of collaboration and partnership. The final leg of our renewal program involves three commitments to our Council of Governors, all of which require legislative amendments. The objectives of the renewal program were to make the operations of the Commission more transparent and efficient, with a focus on early compliance with health and safety standards, and each

of these amendments take us further down the road to this goal.

The amendments will reduce the time required to review claims for exemption from disclosure of confidential business information, speed up the correction of the information workers need to handle hazardous materials safely, and expedite appeals process. The net result will be earlier access to complete and accurate information by workers on the safe handling of hazardous materials, which can only be positive for workplace health and safety.

Despite its successes, the Commission's capacity continues to be challenged. Given our relatively small size and budget constraints, we have worked hard to be an organization that can respond quickly to change and effectively align our resources accordingly. We continue to seek data necessary to support strategic and operational planning needs and consistent with our commitment to improvement. We are reviewing our key functions and responsibilities vital to maintaining a modern and efficient organization that respects the values and principles we have built with our partners.

Looking back at this past year, I know that the successes we have enjoyed and those that await us are due to the dedication and capabilities of Commission staff. I look forward to continuing to work with this group of professionals, to collaborating with Council, clients and stakeholders in the year ahead as we work together to maintain our *balancing act* between workers' right to know and industry's right to protect trade secrets.

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 to 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 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

HMIRC deals with many WHMIS stakeholders:

- labour organizations and workers;

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.

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

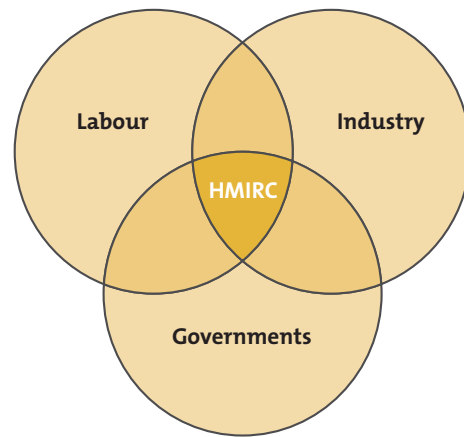
As an independent agency, the Commission is a model of industry, labour and government consultation, consensus and cooperation. Our adjudicative efforts must result in a fair balance between the right of workers to know and the right of suppliers and employers to safeguard confidential business information.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

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.



2005–06 THE YEAR IN REVIEW

Protecting trade secrets and safeguarding workers

An essential part of any occupational health and safety program is ensuring that those employed in operations requiring the use of hazardous materials have the information they need, 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 about hazardous products used in the workplace. The system requires that product labels and material safety data sheets include the identifications of the hazardous ingredients in a product, the specific hazards posed by the product, the precautions to be taken in handling the product, and the first aid measures to be applied in the event of exposure to the product.

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 the material safety data sheet, and in some cases labels, are found to be non-compliant, we issue orders obliging claimants to make corrections and they must provide the Commission with a copy of the revised health and safety documentation. Failure to comply means that the claimant can no longer legally import or sell the product.

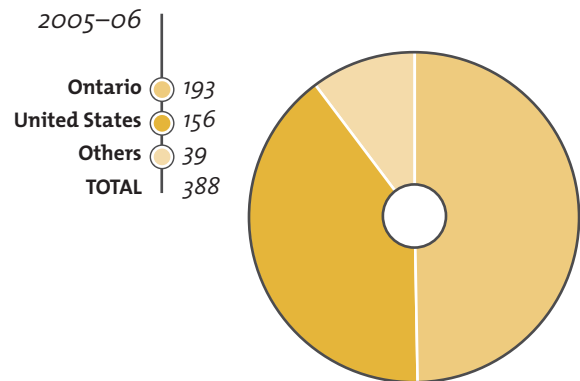
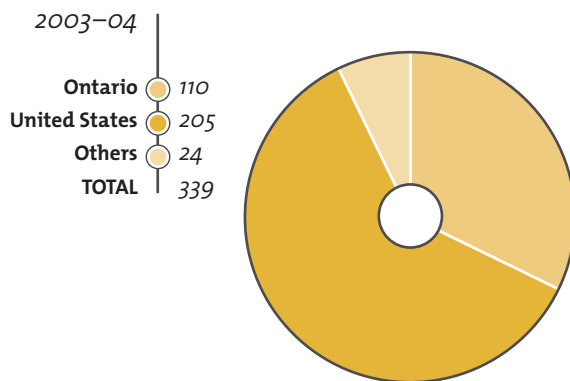
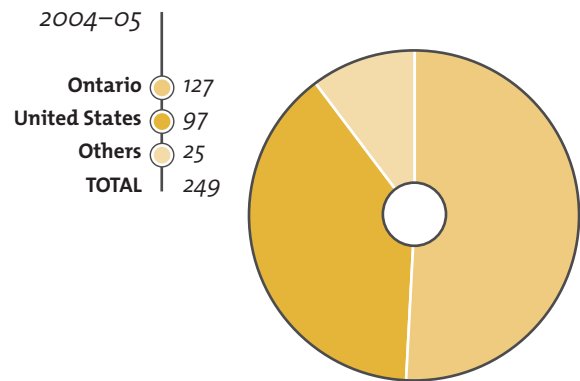
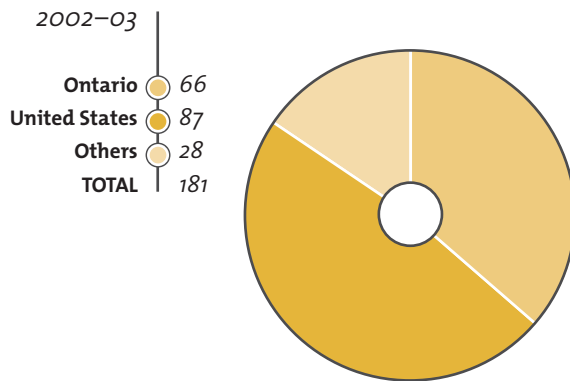
| *Claims registration*

In 2005–06, Client Services registered 388 new and refiled claims for exemption—the highest number since each of the first two years of the Commission's

operations, when there was the initial influx of claims submitted. Forty percent of the claims filed in the past year were from 24 claimants located in the United States, as compared to an average figure of 46% for the previous four-year period beginning in 2001-02. By comparison, 27 Canadian claimants filed a total of 232 claims in 2005-06. In terms of the level of service rendered to claimants, all of the claims filed where the submission was without problems were

registered within the seven-day turnaround time specified in the Commission's service standard—in fact, most claims were dealt with within one working day. In many of the cases where the claimant's initial submission had not been acceptable, Client Services was still able to resolve the discrepancies and register the claim in less than seven days. Claimant responses to our Client Services Survey reflect a high degree of satisfaction in such dealings with the Commission.

| Geographic origin of claims by year of registration



| *Decisions and orders*

In 2005–06, the Commission processed 298 claims through to completion—a 22% increase over the previous year, and the highest such volume in its history. All but two of the total claims adjudicated were found to be valid. With respect to the compliance of the MSDSs associated with the 298 claims processed, there were only 12 instances where no problems were found. In all other cases, formal orders needed to be issued to bring about full compliance with the WHMIS requirements for MSDS and, in two cases, label disclosure.

| *MSDS violations and claims statistics*

The Commission reviews all MSDSs, and in some cases labels, related to claims for exemption, 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 approximately 50 to 66% 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.

| MSDS Violations, 2001–02 to 2005–06

Violation Category	Number of Violations by Year						
	2005–06	2004–05	2003–04	2002–03	2001–02	Total	%
Toxicological properties	600	577	594	884	104	2,759	29.6
Hazardous ingredients	583	446	402	368	104	1,903	20.4
First aid measures	370	312	361	221	66	1,330	14.3
Fire or explosion hazard	58	58	112	186	55	469	5.0
Hazard classification	76	80	71	22	13	262	2.8
Physical data	95	79	91	49	9	323	3.5
Headings	52	70	6	13	10	151	1.6
Preparation information	232	147	132	21	8	540	5.8
Generic chemical identity	43	12	27	9	6	97	1.0
Product information	55	28	17	5	2	107	1.1
Format/wording	320	183	151	248	18	920	9.9
Preventive measures	14	4	17	9	12	56	0.6
Reactivity data	107	107	47	124	25	410	4.4
Total	2,605	2,103	2,028	2,159	432	9,327	100
Number of claims	298	245	225	181	69	1,018	
Average number of occurrences/claim	8.7	8.6	9	11.9	6.3	9.2	

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.

I Improving operations

The Commission's long standing commitment to the continuous improvement of its procedures, practices and policies has resulted in a high level of efficiency in its claims processing operations. The regulatory structure within which we operate has remained stable for a number of years, and in addition, we are gradually building a broader experience base amongst our staff. Nonetheless, the Commission's personnel is challenged on an ongoing basis to search out and evaluate even the most modest of operational improvements as we continue to ensure that our limited resources are put to best use.

As mentioned in last year's annual report, the Commission had undertaken certain initiatives that were designed to provide claimants with more upfront assistance and guidance, improve staff training and increase workers' awareness of the WHMIS program in general, and its trade secret exemption mechanism in particular.

The Commission's Web site provides claimants with extensive information on how to file a claim or how

to file an appeal, including downloadable forms in different formats. It also provides links to the site of the National WHMIS Office, 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.

Commission staff have responded to close to 100 enquiries during the year about trade secret exemption requirements 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.

During 2005–06, Commission staff were on hand to provide information and answer questions on the trade secret mechanism within WHMIS at two Industrial Accident Prevention Association (IAPA) conferences and trade shows held in Toronto and Ottawa. Primarily occupational safety and health professionals attended these trade shows. Documentation was available for distribution and of particular interest to delegates was a fact sheet containing statistics on MSDS violations. These same statistics are provided to organized labour through labour representatives on the Commission's Council of Governors.

As part of a pilot project with claimants to improve the quality of incoming material safety data sheets that initially accompany claims for exemption, we have developed a checklist of commonly found compliance problems that can be identified and voluntarily corrected by claimants in a relatively straightforward manner. The use of the checklist is being actively promoted, made

widely available to claimants and has been posted on the Commission's Web site. In an effort to evaluate the effectiveness of this initiative, and as part of our ongoing analysis of material safety data sheet violation data, we will be seeking to determine whether there is an actual reduction in the number of checklisted problems found during the formal compliance review process.

I Improving 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.

The Commission's MSDS Compliance Division has established a mentoring program for new staff and students. This gives new employees an orientation and grounding both to the work and to the government culture for those new to the public service. Our process is proactive and the mentor is encouraged to meet regularly to answer questions rather than waiting for the new employee to come to them. Mentors establish lines of communication from the very beginning so the new employee is comfortable seeking advice later on when the really difficult questions arise. The

Commission has also revised the training manual, the literature search guidelines and the non-toxicological service standards to assist staff in the performance of their work.

I 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.

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. The amendments would allow claimants to declare, with a minimum of supporting documentation, that the information for which they are seeking an exemption from disclosure is confidential business information. On the basis of this submission, the screening officer will decide whether the claim is valid. However, the Commission will collect full documentation when an affected party challenges a claim or when a claim is selected through measures set up to ensure the ongoing integrity of the new approach.

The amendments would also 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 amendments would allow the Commission to 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.

Bill S-40, *An Act to Amend the Hazardous Materials Information Review Act* was tabled in Parliament during

the last session. However, the Bill died on the order paper with the dissolution of Parliament last fall when the general election was called. The amendments have been reintroduced as Bill S-2 *An Act to Amend the Hazardous Materials Information Review Act*. It is presently awaiting Second Reading in the House of Commons.

Managing the workload

Although the number of claims processed in 2005–06 was a record high, the number of unprocessed claims remaining at the end of the year was considerably higher than projected in the Commission's 2004–05 to 2008–09 claim workload estimates. There were two main contributing factors leading to this result. First, the number of new claims received this past year was 16% more than had been estimated. Secondly, a lack of operational resources prevented the realization of the projected claims processing capacity found in the above-noted estimates. As a consequence, and in order to ensure that the number of claims awaiting processing does not exceed reasonable limits, a resource requirement review was initiated towards the end of the fiscal year. This review will determine whether a viable business case exists as a basis on which to make a resource submission to Treasury Board.

I Claim Workload Estimates—2004–05 to 2008–09

	2004–05		2005–06		2006–07	2007–08	2008–09
Carry Forward	789		691		708	583	483
	Estimate	Actual	Estimate	Actual	Estimate		
PLUS							
New Claims	245	196	245	271	245	245	245
Refilings	35	53	90	117	100	125	145
Subtotal	280	249	335	388	345	370	390
MINUS							
Withdrawals	75	102	70	73	70	70	70
Claims Processed	300	245	400	298	400	400	400
Subtotal	375	347	470	371	470	470	470
EQUALS							
Balance*	694	691	556	708	583	483	403

* Indicates the number of claims remaining to be adjudicated.

Monitoring implementation initiatives under the Globally Harmonized System

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. Progress continues towards the 2008 implementation date.

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 is 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. The site recorded some 27,000 visitors—of whom over 17,000 were new—who viewed almost 80,000 pages. We continue to receive and respond to suggestions from claimants on how to improve our site.

In March 2006 the Commission participated as an exhibitor at the Society of Toxicology ToxExpo in San Diego, California. Our presence at this trade show allowed the Commission to reach a broader audience as well as providing an excellent venue to make new contacts within the chemical industry.

The Commission maintains a client-focused approach and continuously keeps in touch with its stakeholders. The Commission’s Client Services Survey provides 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. 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 1 FINANCIAL STATEMENTS

Revenue (in thousands of dollars)

Revenue from claims for exemption	570
Revenue from appeals	–
<i>Total revenue</i>	<i>570</i>

Expenditures (in thousands of dollars)

Salaries and wages	2,391
Other operating	468
<i>Total expenditures</i>	<i>2,859</i>

Human Resources

Full-time equivalent staff

Office of the President	2
Operations Branch	22
Corporate Services and Adjudication Branch	11
<i>Total</i>	<i>35</i>



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 responsible for occupational health and safety. 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.

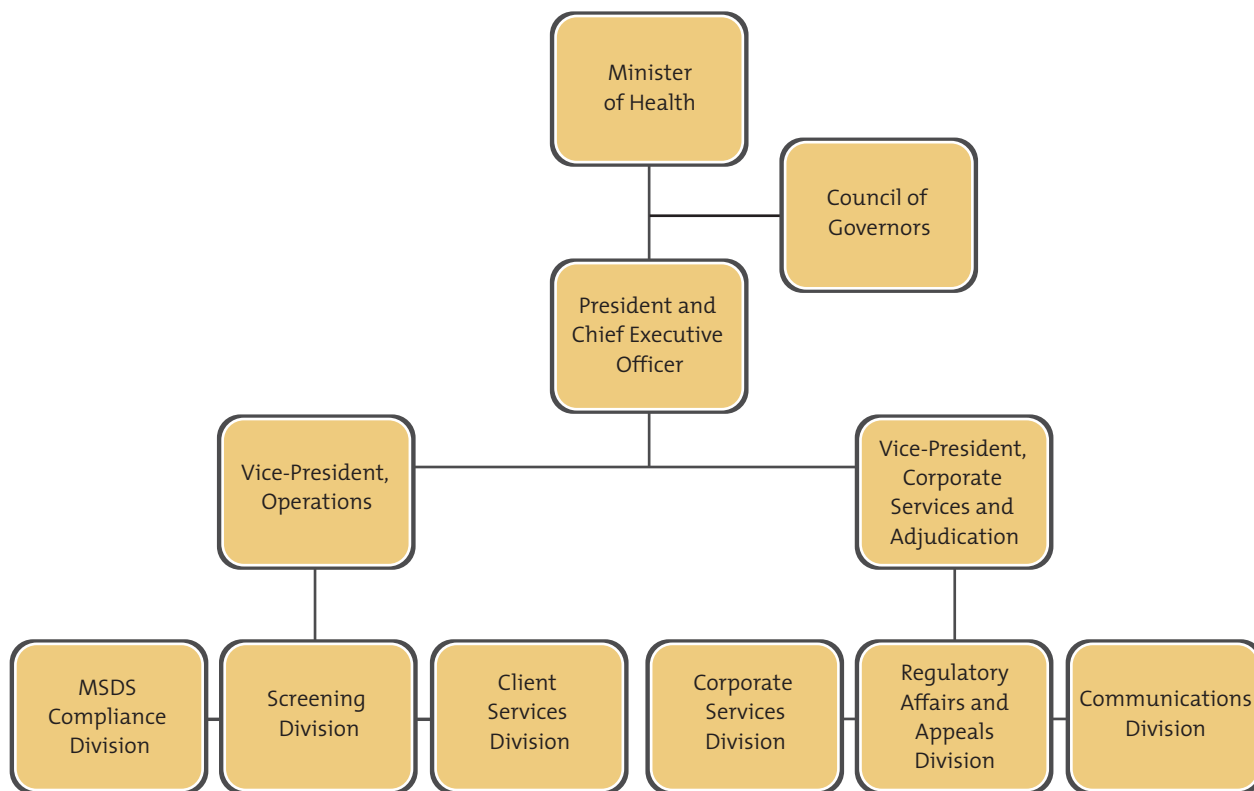
The provincial and territorial Council members concurrently represent occupational health and safety government organizations, and thus the composition of the Council reflects the nation-wide occupational health and safety network. The Commission's enabling statute requires

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.



Council of Governors

(as of March 31, 2006)

| Chair and Quebec

Dr. Yves Brisette

Commission de la santé et de la sécurité du travail

| Workers

Mr. Bill Chedore

Canadian Labour Congress

Mr. Lawrence D. Stoffman

United Food and Commercial

Workers Union

| Suppliers

Mr. Gordon Lloyd

Canadian Chemical Producers' Association

| Employers

Vacant

| Government of Canada

Mr. Gerry Blanchard

Human Resources and Skills Development Canada

| British Columbia

Vacant

| Alberta

Mr. Dan T. Clarke

Alberta Human Resources and Employment

| Saskatchewan

Ms. Jennifer Fabian

Saskatchewan Labour

| *Manitoba*

Mr. Dennis Nikkel
Manitoba Labour and Immigration

| *Ontario*

Vacant

| *Nova Scotia*

Mr. Jim LeBlanc
Nova Scotia Environment and Labour

| *New Brunswick*

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

| *Prince Edward Island*

Mr. George Stewart
Workers Compensation Board of Prince Edward Island

| *Newfoundland and Labrador*

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

| *Yukon*

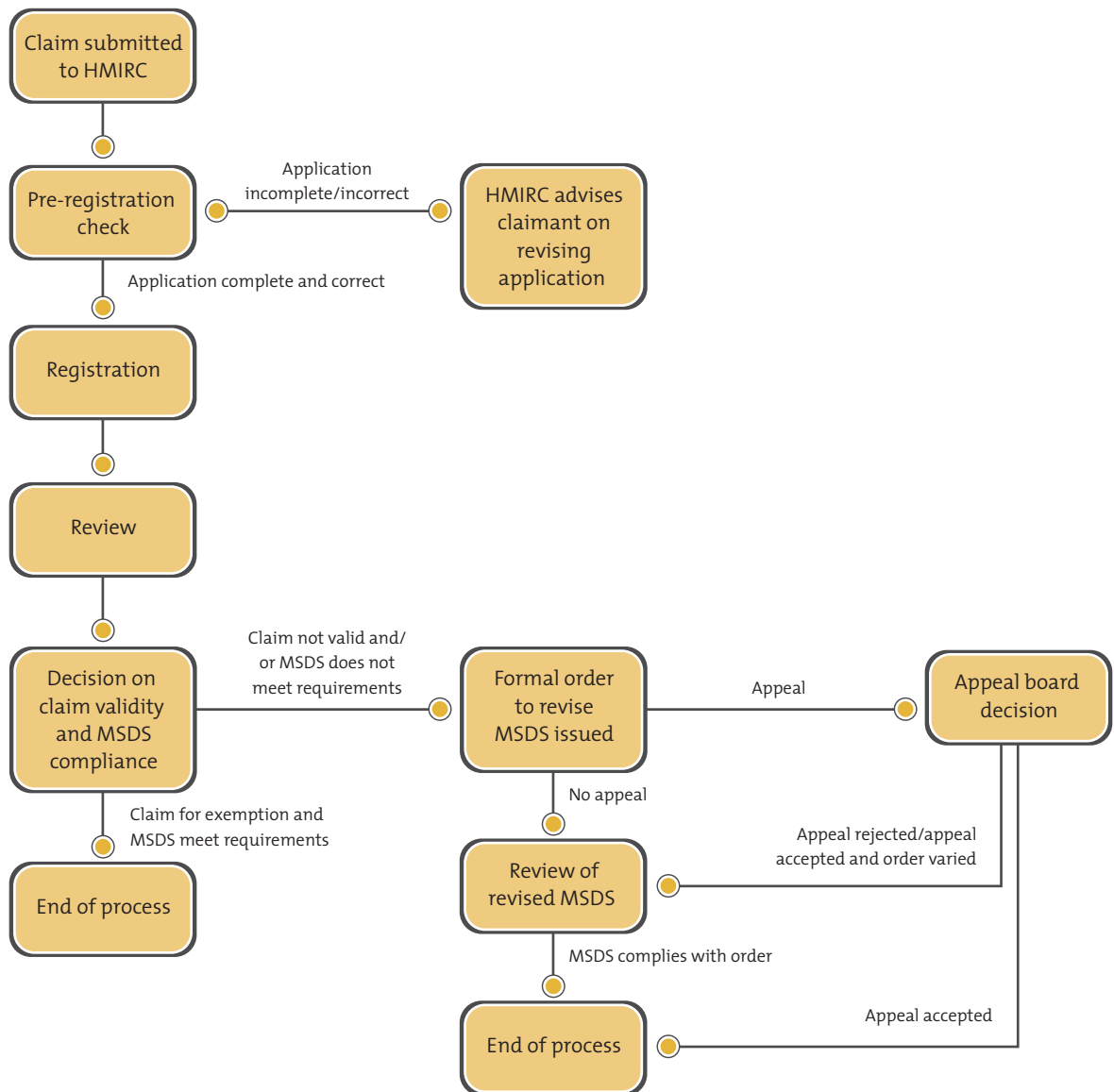
Vacant

| *Northwest Territories and Nunavut*

Mr. Bruce Graney
Northwest Territories/Nunavut Workers' Compensation Board



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.hmir-c-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 registry number. The Commission sends a letter to the claimant indicating the registry 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 and/or label comply 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 40 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 2005
- 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
