

Right to information and trade secrets protection:

Abalancing act

ANNUAL REPORT 2002-2003

PHYSICAL STATE • ODOUR AND APPEARANCE • ODOUR THRESHOLD • SPECIFIC GRAVITY • VAPOR DENSITY • VAPOR PRESSURE EVAPORATION RATE • BOILING POINT • FREEZING POINT • FLAMPAGELITY • MEANS OF EXTINCTION • FLASHPOINT AND METHOD • AUTOIGNITION • FLASHPOINT AND METHOD • AUTOIGNITION • FLASHPOINT AND METHOD • AUTOIGNITION • FLASHPOINT • EXPLOSION DATA • SENSITIVITY TO STATE HARGES • HAZARDOUS COMBUSTION POIS • CHEMICAL STABILITY • PRODUCTS • ROUTE OF ENERGY SKIN CONTACT PROPERTY • CARGINOGENICATION • THE STATE OF PRODUCTS • FREE TO CHRONIC • EXPLOSION • THE STATE OF PROPERTY • MUTAGENICATY • SYNERGISTIO PRODUCTS • LEAK AND SPILL PROCEDURE • FINGURE TO PRODUCTS • LEAK AND SPILL PROCEDURE • FINGURE OF PROPERTY • MUTAGENICATY • SYNERGISTIO PRODUCTS • LEAK AND SPILL PROCEDURE • FINGURE • DISPOSAL • TANDO INC.

Right to information and trade secrets protection:

A balancing act

ANNUAL REPORT 2002-2003

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July 31, 2003

The Honourable A. Anne McLellan, P.C., M.P. Minister of Health Hill Office, Room 306 Justice Building 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, 2003.

Yours sincerely,

Weldon Newton



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Hazardous Materials Information Review Commission

The Hazardous Materials Information Review Commission (HMIRC), an independent agency accountable to Parliament through the Minister of Health, ensures a balance between industry's right to protect confidential business information and the right of workers to know about the hazardous materials they deal with in the workplace.

Chemical suppliers are required to 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 information is conveyed by the product's mandatory material safety data sheet (MSDS) and label, and may be used by employers to prepare workplace MSDSs and labels and as part of workplace safety education.

When suppliers or employers want to protect confidential business information, such as the chemical identity of one or more trade secret hazardous ingredients, they must file a claim for exemption with HMIRC. The Commission rules on whether the claim is valid under the *Hazardous Materials Information Review Act*. It also determines whether the MSDS and label comply with the requirements of the Workplace Hazardous Materials Information System (WHMIS), a wide array of laws, regulations and procedures designed to minimize workplace injury and illness from the use of hazardous chemicals.

The Commission is governed by a tripartite Council of Governors representing industry, labour, and the federal, provincial and territorial governments.



President's Message

Last year the Commission emerged from renewal as a client-focused agency with an increased capacity to fulfill our dual mandate: to safeguard the right of workers to know about the hazardous materials they deal with in the workplace and to uphold the right of chemical companies and employers to protect trade secrets.

One of our accomplishments in 2002–03 was a reduction in the claims backlog. Expediting the elimination of this backlog is the Commission's highest priority, and we'll be maximizing the use of our resources even further to achieve it. Our new training program and ingredient tracking system, both introduced last year, are the types of creative approaches to increasing capacity we'll be looking to duplicate in the coming years.

A valuable new framework for such improvements began to take form last year as the Commission embarked on a government-wide initiative to modernize management practices. A capacity assessment completed in 2002–03 told us that

our work on renewal had paid off, and also gave us some guidance as to where to next focus our efforts. The plans and priorities that grew out of the assessment will no doubt assist us when we gather as a management team in the fall of 2003 to map the Commission's strategic direction for the next three to five years.

The unusual tripartite structure of the Council of Governors—representatives from industry, labour and government who govern the Commission—illustrates why openness and transparency are so critical to our effective operation. We continued to make efforts last year to reach out to our stakeholders, whether by participating in trade shows or introducing even more consultation into the claims process.

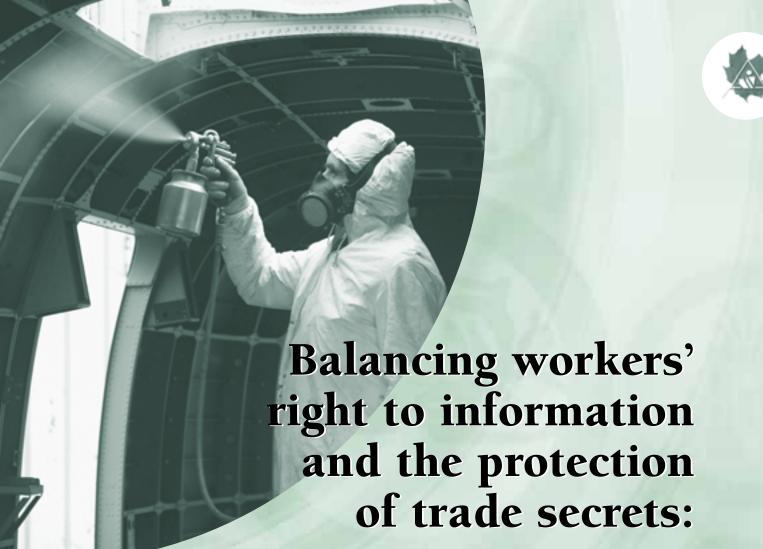
For the fourth consecutive year, there were no appeals filed with the Commission, which in my view is a sign that the renewal-driven, more communicative and transparent approach to claims processing is having a positive effect

on the acceptance of our decisions and orders. This, in turn, is good for worker health and safety, since MSDSs are being brought into compliance in a more timely fashion. Still, we feel that there is room to communicate even more with our clients, and in the next year we'll evaluate the effectiveness of our current suite of communication tools with an eye to investing in those that work best for us and those we serve.

Last year also saw a re-evaluation of how the Commission communicates with and supports its employees. A Wellness Committee has been set up to design programs to improve workplace well-being, such as the official awards program introduced last year.

Fiscal year 2002–03 confirmed the fitness of the course we've set for ourselves, bringing substantial returns on our investments in improving our processes, jumpstarting our productivity and connecting with our clients. I look forward to working with Commission staff, the Council of Governors, and our clients and stakeholders next year to build on these accomplishments.

Weldon Newton



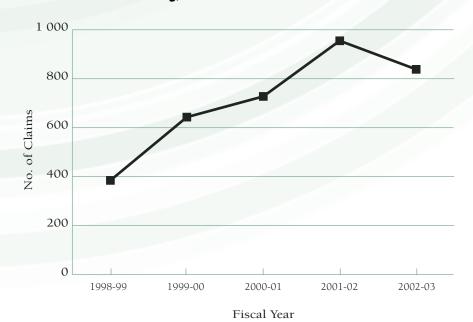
The year in review

The good news of 2002-03 was a jump in claims processing—supported by new hires, training programs and investments in information technology—that produced a reduction in the backlog of filed claims. The Commission continued to follow through on its commitment to operational improvement, putting the final elements of the renewal agenda in place as it shifted its focus to the challenges of modern comptrollership. Outreach to the occupational health and safety community and a new focus on employee wellness rounded out the year's activities.

Reducing the backlog

The Commission processed 181 claims in 2002–03, a significant increase over 2001–02 and the fourth highest number in its history. Combined with a reduction in the number of new claims and an increase in claims withdrawn, the Commission's performance translated into a more than 100-claim reduction in the backlog that had accumulated over the past few years, the result of an unprecedented rise in claim registrations coupled with HMIRC having to compete for qualified scientific/toxicological personnel. As new staff—including two new screening officers and three scientific evaluators welcomed in 2002–03—gain experience and increase their productivity, the number of claims processed each year will continue to rise.

FIGURE 1: Claims Backlog, 1998-99 to 2002-03





The Commission processed 181 claims in 2002–03, a significant increase over 2001–02 and the fourth highest number in its history.

Building capacity: Training and IT

Last year's fast-track training for new recruits and stepped-up investments in information technology are contributing to the Commission's increasing capacity to process claims.

New recruits are getting quickly up to speed with a new training program and reference manual. The training program makes extensive use of simulations, allowing new screening officers to see how their performance compares with the real-life process. For scientific evaluators, the reference manual is an invaluable one-stop information source, containing guidelines for preparing advice documents, revised literature search guidelines, a manual for using the new ingredient tracking system, and everything else a new recruit or even a seasoned employee might need. Both the manual and the training program will be expanded in 2003–04.

Further efficiencies are being realized through a new ingredient tracking system, which frees scientific evaluators from the painstaking work of sorting and ordering ingredients for evaluation, as well as searching for recently completed evaluations. The Commission also introduced a new system for recording and tracking claim files in place of a manual system that had become too cumbersome as the Commission's size increased. The new system, which makes use of bar codes attached to each file and to each employee's pass, makes it much easier to track the movement of files within HMIRC.



2002–03 claims: A breakdown

The Commission received 180 claims in 2002–03, a sharp drop from the 350 average of the past three years. An analysis conducted by HMIRC could find no correlation between economic factors and the drop in claim submissions. The Commission will continue to consult with its clients for insight into possible causes of the decrease, as well as whether the trend can be expected to continue.

More claims were received from the United States last year and fewer from Canada, possibly reflecting a transfer of responsibility for regulatory affairs from Canadian branch operations to U.S. parent companies.

FIGURE 2: Claims Received and Registered by Year (Cumulative)

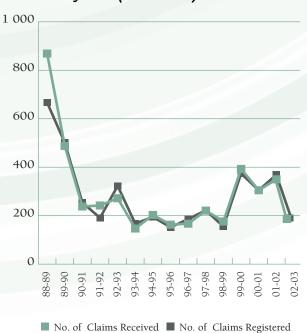


FIGURE 3: Geographic Origin of Claims

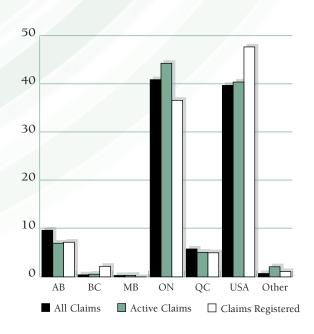




Table 1. MSDS Violations, 1996-97 to 2002-03

Number of Violations by Year

	Number of violations by real								
Violation Category	2002- 2003	2001– 2002	2000- 2001	1999– 2000	1998– 1999	1997– 1998	1996– 1997	Total	%
Toxicological properties	884	104	308	182	341	384	698	2 901	33.4
Hazardous ingredients	368	104	452	164	301	391	716	2 496	28.8
First aid measures	221	66	116	47	72	97	114	733	8.4
Fire or explosion hazard	186	55	109	21	66	49	56	542	6.2
Hazard classification	22	13	9	6	38	44	95	227	2.6
Physical data	49	9	99	13	28	29	49	276	3.2
Headings	13	10	157	19	22	31	71	323	3.7
Preparation information	21	8	35	3	20	9	14	110	1.3
Generic chemical identity	9	6	17	20	17	39	13	121	1.4
Product information	5	2	81	21	15	24	36	184	2.1
Format/wording	248	18	44	28	10	41	126	515	5.9
Preventive measures	9	12	3	2	4	3	8	41	0.5
Reactivity data	124	25	20	6	2	14	17	208	2.4
Total	2 159	432	1 450	532	936	1 155	2 013	8 677	100
Number of claims	181	69	155	85	143	150	204	987	
Average number of occurrences/	11.9	6.3	9.4	6.3	6.5	7.7	9.9	8.8	

Note: Changes from year to year in the number of MSDS violation occurrences should not be interpreted as an indicator of trends in compliance, as each year involves different claimants and MSDSs that are not directly comparable.

to modern

Improving operations: From renewal comptrollership

In 2002-03, the Commission worked on the final stages of renewal, introducing a new fee structure, initiating legislative changes implementing additional features of its dispute prevention framework. The Commission also began to build on the gains of renewal with work on the government-wide modern comptrollership initiative.

Wrapping up renewal

New fee structure

IVAN BLAKE, Executive

Director of the Comptrollership

Modernization Directorate at

Treasury Board

comptrollership with Commission staff.

Secretariat, discusses modern

> Claimants welcomed the Commission's new fee structure, which came into force in June 2002. It replaces complicated groupings with one flat, lower rate, lowers the fee for refiled claims, and retains the fee reduction for small business. Feedback on the new fee structure has been positive, with a substantial drop in the number of complaints about the complexity of the fee structure and registration process.

Legislative changes

With nearly all of the administrative and regulatory elements of its renewal agenda near completion, HMIRC turned its focus last year to legislative changes. Having discussed the proposed changes at length with all stakeholders and the Council of Governors, the Commission felt it had a mandate to launch the first step of the process: the drafting of a memorandum to Cabinet. The memorandum has passed an internal review and is now going through the ministerial and Cabinet approval process, which is expected to take up to two years, depending on government priorities.



Dispute prevention

The Commission continues to reap the benefits of the dispute prevention framework introduced in 2000–01; for the fourth consecutive year, no appeals of the screening officers decisions were filed. The framework's focus on transparency and consultation—all claimants now have the opportunity to respond to the scientific evaluator's report before a final decision is made, for example—combined with the removal of many causes of disputes has essentially eliminated the need to use the often lengthy and costly appeals process.

In 2002–03, an additional element of the dispute prevention framework was put into practice. Claimants who are of the opinion that the wording of a draft order from the Commission would restrict their options for complying with the order can now propose an alternative method of achieving compliance. The Commission may accept the proposed method, in which case the order will be reworded, or reject it. One claimant made use of this process in 2002–03.

Modern comptrollership

Renewal may be nearly at an end, but the philosophy of continuous improvement it inspired among Commission employees continues to find expression, most recently through work on the modern comptrollership initiative. Intended to modernize management practices throughout the federal government, modern comptrollership promotes

clear accountability, mature risk management, integrated performance information (program and financial information) and rigorous stewardship.

In early 2002, the Commission completed a capacity assessment—the first phase of modern comptrollership implementation—that gauged the health of HMIRC's operations against seven criteria: strategic leadership, integrated performance information, motivated people, mature risk management, clear accountability, shared values and ethics, and rigorous stewardship. HMIRC emerged as a well-performing, client-oriented agency, confirming external feedback and internal perceptions that renewal has succeeded. The assessment also identified some areas that need improvement, from which the Commission selected its top priorities. Studies expected to begin in April 2003 will undergird work on these priorities, which will be championed by the Commission's new modern comptrollership office; the most pressing improvements will be started and largely completed during 2003-04.

HMIRC benefited from its participation with other agencies in several modern comptrollership initiatives, including a group working on a risk management framework for small agencies (expected to be completed in fall 2003), the Small Agencies Modernization Council (the governing body for small agencies involved in modern comptrollership) and the Small Agency Modern Comptrollership Group.

Reaching out

During 2002-03, the Commission continued to increase its visibility and the public's awareness of its mandate. The Commission's profile business among the and labour communities was elevated with staff attendance at several trade shows and conferences held by the Industrial Accident Prevention Association (IAPA) and the Society for Chemical Hazard Communication (SCHC), as well as at the Nova Scotia Safety Council trade show and conference in mid-March 2003. HMIRC set up a booth at the Nova Scotia trade show and conference and the 2002 trade show and conference of the IAPA's Eastern Ontario Division, held in Ottawa in October.

The SCHC occupies an important place in the Commission's outreach program: its members represent most of the Commission's claimants with U.S. head offices, as well as a number of Canadian-based claimants. Having discussed the Commission's mandate and its recent fee changes at the Society's spring and fall meetings, HMIRC's Director of Client Services was invited to take part in a panel discussion on international trade secret legislation in Asia, Europe and Canada at the SCHC spring convention in Florida in April 2003.

Outreach to all Commission stakeholders became more systematic and targeted with last year's expansion of the Commission's database of contacts. The database supports the Commission's greater use of electronic mail as a means to increase general awareness of its role within WHMIS, as well as to quickly inform clients of changes to the Commission's processes (such as the new fee structure). Face-to-face contact is still a priority; even screening officers and scientific evaluators have taken on a role as ambassadors of the Commission, talking about the

The Commission's

booth at the 15th Annual Eastern

Ontario Division Health and Safety

Trade Show 2002.

Conference &



Feedback on the Commission's services continues to be positive. More than 90% of claimants who responded to the Commission's client satisfaction questionnaire gave the Commission a rating of at least 8 out of 10.

Commission's mandate and having promotional materials at hand when they attend training courses. At home, the Commission responded to 150 enquiries in 2002–03 about HMIRC legislation, the

Commission's mandate and how to file a claim. Many of the enquiries led to filings in 2002–03 or laid the foundation for future filings.

FOCUS ON EMPLOYEE WELLNESS

Through renewal and now modern comptrollership, HMIRC has been dedicating significant time and resources to improving how its serves and relates to its clients. Recruiting and retaining qualified screening officers, scientific evaluators and other employees is a large part of this work.

In 2002–03, HMIRC established a committee charged with proposing new initiatives to make the Commission a workplace of choice. The Wellness Committee is also a vehicle through which any employee can suggest how workplace well-being could be improved.

Initiatives proposed by the Committee last year included the establishment of an official awards and recognition program, recently approved by HMIRC's senior management committee, that builds on the ad hoc awards presented in 2002 to honour the work employees put into organizational renewal.



SUSAN MONTSION, recently retired from the Commission after close to 25 years of exemplary service, receives the President and CEO Leadership Award from HMIRC President, WELDON NEWTON.

Appendix 1: Financial statements

Revenue (in thousands of dollars	in thousands of dollar	thousands of dolla	(in	venue	Rev
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Revenue from claims for exemption	355
Revenue from appeals	0
Total revenue	355

Expenditures (in thousands of dollars)

Salaries and wages Operating costs	2,198 737
Minor capital costs	110
Total expenditures	3,045

Human Resources Office of the President

Full-time equivalent staff

Corporate Services and Adjudication Branch	12
Total	34

Cost of Program for 2002–03 (in thousands of dollars)

Commission Operating Costs	Other Costs*	Total Program Costs	Total Program Costs for Private Benefit Activities	Revenue	% Costs Recovered**
3,045	1,091	4,136	827	355	43

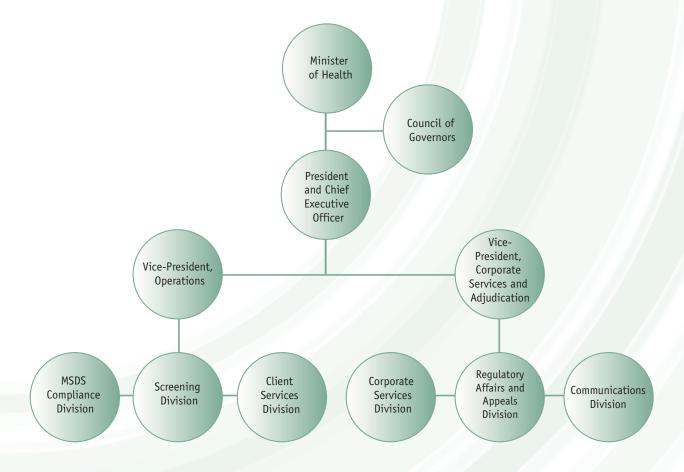
*Includes the following:

Total	1,091
and costs paid by Treasury Board Secretariat	407
Employee benefits, covering the employer's share of insurance premiums	
Accommodation received from Public Works and Government Services Canada	684

** In June 2002, the Commission's new fee schedule was enacted. This schedule brought the Commission in line with Treasury Board Cost Recovery and Charging Policy, which requires distinguishing between private benefit and public good activities and setting charges based on private benefit only. Therefore, this figure represents the percentage of costs recovered on the total program costs for private benefit activities.



Appendix 2: The Commission's structure



A **Council of Governors**, representing industry, labour, and the federal, provincial and territorial governments, presides over the Commission. As well as overseeing the work of the Commission, the Council makes recommendations to the Minister of Health on matters such as changes to policies, procedures and fees.

The **President and Chief Executive Officer** is appointed by the Governor in Council, and supervises and directs the Commission's day-to-day work. The President is accountable to the Council of Governors and to 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.

A Senior Management Committee (SMC) brings together the six Division Directors. SMC deals with day-to-day management issues, and helps coordinate the tasks that cut across Division and Branch boundaries. The Executive Committee consists of the two Vice-Presidents and the Commission's President and Chief Executive Officer, and deals with long-term strategic and policy matters.

Council of Governors

(as of March 31, 2003)

Workers

Mr. Lawrence D. Stoffman Canadian Labour Congress

Suppliers

Mr. Gordon Lloyd Canadian Chemical Producers' Association

Employers

Vacant

Government of Canada

Mr. Gerry Blanchard Human Resources Development Canada

British Columbia

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

Alberta

Mr. Dan T. Clarke Workplace Health, Safety and Strategic Services

Saskatchewan

Ms. Jennifer Fabian Saskatchewan Labour

Manitoba and Chair

Mr. Geoffrey Bawden Transportation and Government Services

Ontario

Dr. Ed McCloskey Ministry of Labour

Quebec

Mr. Yves Brissette Commission de la santé et de la sécurité du travail

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

Vacant

Yukon

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

Northwest Territories

Vacant

Nunavut

Vacant

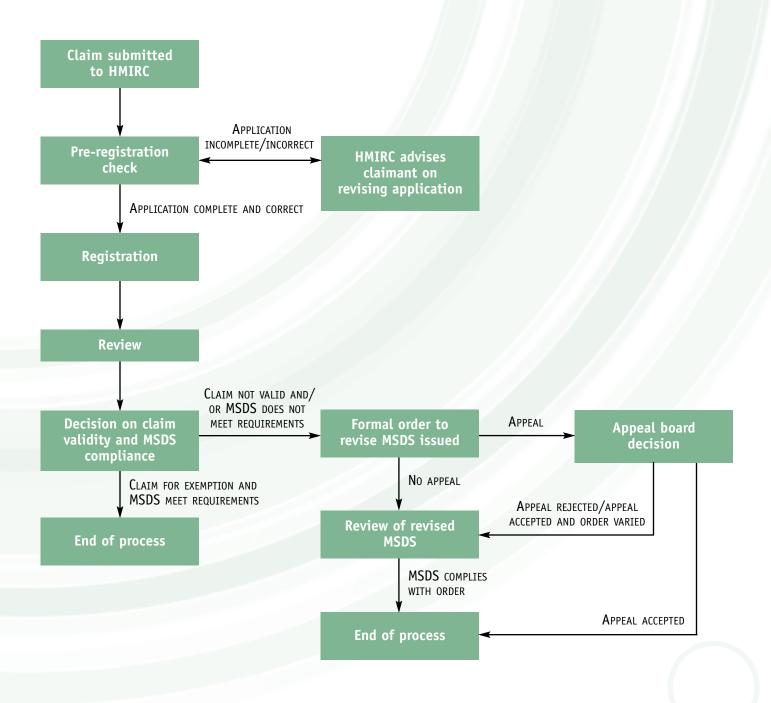
In December 2002, Council Chair Geoffrey Bawden was awarded a commemorative medal for the Queen's Golden Jubilee. The medal recognizes Canadians who have made a significant contribution to their fellow citizens, to their community or to Canada. As a member of the HMIRC Council of Governors since 1994, and Chair since 1996, Mr. Bawden has made a significant contribution to the Commission and its Council, and to enhancing workplace safety and health in Canada.



Geoffrey Bawden (left), Chair of the HMIRC Council of Governors, with HMIRC President. WFLDON NEWTON.



Appendix 3: An overview of the claims for exemption process



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

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

A claimant may decide to withdraw a claim at any stage of the process.

Submitting a claim

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

Pre-registration check

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

Registering the claim

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

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

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

Reviewing the claim

The registered claim then undergoes a more thorough review. Based on their assessment of the information submitted by the claimant and any submissions from those affected by the claim for



exemption, one of the Commission's screening officers reviews the claim against the regulatory criteria and decides whether the claim is valid. The screening officer also determines whether the MSDS (or label, in some cases) submitted with the claim complies with the *Hazardous Products Act* and *Controlled Products Regulations* or, in the case of an employer claim, other applicable federal, provincial or territorial occupational health and safety requirements.

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

The decision

At the conclusion of both the claim review process and the MSDS review process, a formal Statement of Decision is forwarded to the claimant. If the claim is found to be invalid and/or the MSDS does not meet requirements, the screening officer issues a formal order for its revision and follows up to ensure compliance. All orders specify the period during which various changes must be made if the product is to continue to be sold in Canada.

A notice is published in the *Canada Gazette* to make public the decisions and orders issued by the screening officer, and to initiate the time during which the claimant and affected parties may appeal the decisions or orders. If no appeal is filed, the claimant must provide a copy of the amended MSDS to the screening officer, 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 2002

Reports on Plans and Priorities 2000-01 to 2003-04

Performance Reports 1998-99 to 2001-02

Commission Renewal: Blueprint for Change (strategic plan)

Workplan (operational plan based on Blueprint for Change)

Information Bulletins 1 to 4

Application for a Claim for Exemption

A Guide to Completing an Application for a Claim for Exemption

Guidelines for Toxicological Summary Requirements

Statement of Appeal Form 1

Laws and regulations

The following laws and regulations form the regulatory framework within which the Commission carries out its mission. All the documents can be found on the Commission's Web site. 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

Regulations Amending the Hazardous Materials Information Review Regulations

Hazardous Materials Information Review Regulations

Hazardous Materials Information Review Act Appeal Board Procedures and 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