Hazardous Materials Information Review Commission

Conseil de contrôle des renseignements relatifs aux matières dangereuses

Hazardous Materials Information Review Commission

2004–2005

Departmental Performance Report

The Hon. Ujjal Dosanjh, P.C., M.P.
Minister of Health

Canada

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Section I Overview

President's Message

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

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

When I was appointed President and CEO, the Commission was going through a difficult period with its stakeholders. In the late 1990s, and with full support of the Council of Governors, we undertook a renewal program to make operations more effective and to address stakeholders concerns, through improved service delivery, increased transparency and accountability and modernized administrative procedures. Through this consultative process, many improvements to the operation of the Commission were identified. We have delivered on our commitments to stakeholders for all except three which require amendments to our enabling statute.

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

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

As I look back at 2004–2005, I realize that, thanks to the dedication and competence of our staff, we have put another demanding, yet successful year behind us. I look forward to working with Council, Commission staff, and our clients and stakeholders in the year ahead with the knowledge that our vigilance in maintaining *the balancing act* has had and will continue to have a direct and positive impact on workplace safety whilst affording trade secret protection to industry.

Weldon Newton
President and Chief Executive Officer

Management Representation Statement

I submit for tabling in Parliament, the 2004–2005 Departmental Performance Report (DPR) for the Hazardous Materials Information Review Commission.

This document has been prepared based on the reporting principles contained in the Treasury Board of Canada Secretariat's *Guide for the Preparation of 2004–2005 Departmental Performance Reports*:

- It adheres to the specific reporting requirements;
- It uses an approved Program Activity Architecture;
- It presents consistent, comprehensive, balance and accurate information;
- It provides a basis of accountability for the results pursued or achieved with the resources and authorities entrusted to it; and
- It reports finances based on approved numbers from the Estimates and the Public Accounts of Canada.

September 19, 2005

_____ _____

Weldon Newton
President and Chief Executive Officer

Date

Summary Information

Context

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

Mandate

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

- register claims for trade secret exemptions and issue registry numbers;
- adjudicate and issue decisions on the validity of claims for exemption using prescribed regulatory criteria;
- make decisions on the compliance of MSDSs and labels with WHMIS requirements; and
- convene independent boards with representatives drawn from labour, suppliers or employers to hear appeals from claimants or affected parties on our decisions and orders.

Mission

The HMIRC 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.

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.

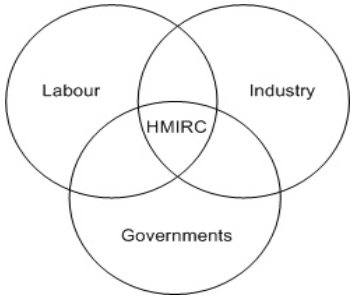
As part of this claim review process, our scientific evaluators play a key health and safety role. They review for completeness and accuracy all the information provided on the MSDSs and labels associated with a claim for exemption. When our scientific evaluators identify missing or incorrect information, they provide advice to screening officers who then issue formal orders requiring the necessary changes. HMIRC also convene 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;
- 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 HMIRC one of very few adjudicative bodies that represent multiple levels of government in Canada.

Governance structure

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

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

Vision

HMIRC has defined its vision as:

- making decisions based on both sound scientific principles and on regulations, and taking pride in being a professional quasi-judicial organization seeking creative and progressive approaches to enhancing workplace safety; and
- resolving complaints and disputes, whether under statutory mandate or not, in a manner that is impartial, fair and prompt.

Objectives

The HMIRC objectives are to:

- pursue activities that achieve maximum worker health and safety benefits while minimizing impact and cost to industry standards and practices;
- improve its processes and programs by using feedback from our clients and stakeholders;
- achieve established service standards consistently;
- establish a climate of effective communication to prevent disputes from occurring;
- utilize a range of mechanisms to resolve effectively the disputes that do occur;
- guide the operations of its core programs through a comprehensive policy framework, driven by input from stakeholders;

- recover costs for processing claims for trade secret exemptions according to the applicable policy;
- gain high visibility and wide recognition for the work performed; and
- ensure that its employees exhibit a client-oriented approach.

Values and operating principles

HMIRC 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.

Risks and challenges

The Commission is in the process of amending its legislation—equally a risk, a challenge and an opportunity. The work supporting such an initiative is taxing heavily on the Commission's limited resources and competes with other critical activities. Still, HMIRC has forcefully embraced the Commission's advocacy role to members of the House of Commons and of the Senate. The planned benefits are expected to far exceed the risks associated with the additional workload, not only to the Commission but also to all of our

stakeholders. Once the HMIRA legislation is amended, this will bring closure to the Commission's renewal initiated in the late 1990s.

A second important factor that continues to affect our costs and efficiencies is the variable accuracy and completeness of information supplied by companies with their claims. One of our responsibilities is to decide whether MSDSs and in certain cases labels, comply with the law and regulations by disclosing all hazardous ingredients in a product as well as other information including their toxicological properties, any safety precautions workers need to take when using the product, and the first aid treatment required in the case of harmful exposure. Over the past decade, the average annual number of deficiencies that we have identified in the MSDSs has ranged from six to 12 per claim—a variability over which we have no control, but which affects the number of claims we can process in a year.

To reduce the risk to the health and safety of Canadian workers posed by inaccurate MSDSs, our evaluation staff must be highly qualified. For example, MSDS evaluators require a degree in biology, toxicology or other related discipline, preferably together with experience in evaluating hazardous chemicals. The labour market availability of potential staff with these qualifications is low, affecting our ability to recruit and retain the number of staff required to deal with operational workloads.

On another front, the environment of government financial uncertainty that prevailed in fiscal year 2004–2005 certainly affected the Commission's actions. The anticipated cap on salary growth and the program expenditure review has limited our initiatives. Like many other departments, the Commission had to assess potential program savings that could be invested in higher governmental priorities. This ongoing fiscal constraint and climate of uncertainty, particularly evident in a small agency, also affects employees' morale.

The Commission's role in the greater Canadian priorities

Canada places the health of its population high on the list of key priorities for Canadians. Canada's public health system exists to safeguard and improve the health of Canadians. The responsibility for public health is spread across federal, provincial, territorial and municipal governments. This is particularly applicable to the Commission's mandate where we deliver the WHMIS trade secret exemption mechanism on behalf of the federal government but also on behalf of the provinces and territories. One of the Commission's roles is to establish accuracy of the information disclosed on the MSDSs and in certain cases labels, and identifies the hazardous ingredients in a product, the specific risks to the health and safety of those using the product, the precautions which must be taken in handling the material and the appropriate first aid measures in the event of accidental exposure. The Commission's work supports improved occupational health and safety for Canadian workers, a key element to achieving a healthy Canadian population.

Total Financial Resources ($ thousands)

Planned	Authorities	Actual
3,582	3,866	3,520

Total Human Resources

Planned	Actual	Difference
35	34	1

Overall Departmental Performance

Although the overall federal fiscal environment limited our activities in fiscal year 2004–2005, the Commission has undertaken an extensive analysis of its global environment and the risks that it could pose. This assessment resulted in the development of a risk-based business plan that should mitigate the key risks the Commission could be facing.

The Commission continued to implement its aggressive workload management plan to deal with the backlog of claims. This, together with the streamlined processes implemented by the Commission through its renewal initiative, resulted in the Commission rendering 245 decisions.

The amendments to the *Hazardous Materials Information Review Act* were the last elements still pending before the Commission's renewal could be considered as completed. This labour intensive project was initiated with the collaboration of Health Canada and we received the Minister of Health's approval to proceed to the next level. The progress made in advancing the legislative amendments to our Act was well received by the members of our Council of Governors, representing the federal government, all provinces and territories, labour and industry.

2004–2005 Report on Plans and Priorities Commitments by Priorities	
Expected Results	**Current Status**
To safeguard both trade secrets and safeguard workers	**Type: ongoing** **Planned spending: $2,547,000**
▸ continuing to assess/evaluate claims for exemptions	▸ (Achieved) 245 decisions issued on claim validity
▸ providing more direction to claimants	▸ (Achieved) 100% of the 116 enquiries received were processed within 48 hours (telephone enquiries) or within one week (written enquiries)
▸ improving staff training	▸ (Achieved) training provided to scientific staff including a genetic toxicology course
▸ increasing workers' awareness	▸ (Partially achieved) through participation at the IAPA conference and trade show and distribution of violation statistics to labour through their representative on HMIRC's Council of Governors
▸ streamlining processes through the amendment to the *Hazardous Materials Information Review Act*	▸ (In progress) process initiated but not yet completed
To enhance workload management	**Type: ongoing** **Planned spending: $749,000**
▸ attempting to find ways of predicting future workload volumes	▸ (Achieved) study undertaken, however, no common denominator to allow forecasting workload identified
▸ finding ways of increasing our processing capacities to 400 claims annually	▸ (In progress) batching prioritization system implemented to increase by 50% the processing of highest risk hazard
▸ contracting out tasks that will not compromise confidentiality	▸ (Achieved) production of substance toxicity profile summaries contracted out
▸ introducing a voluntary compliance program	▸ (Achieved) voluntary compliance pilot program implemented

To monitor Canadian and international policy development	**Type: ongoing** **Planned spending: $90,000**
▸ continuing to closely watch the Canadian policy development and international activities	▸ (In progress) participated in the WHMIS Current Issues Committee and in the Intergovernmental WHMIS Coordinating Committee, Canadian coordination bodies of GHS as well as in GHS implementation working groups
To improve the focus of outreach activities	**Type: ongoing** **Planned spending: $179,000**
▸ continuing to staff booth at trade shows	▸ (Achieved) attended three trade shows
▸ making several improvements to our Web site	▸ (Achieved) updated material on the Web to make it more user friendly
▸ entering modest advertising program in labour and industry publications and submit articles on benefits of full compliance with WHMIS	▸ (Partially achieved) awareness project launched but no articles published
▸ media monitoring and analysis to determine effectiveness of planned advertising and journalism	▸ (Achieved) in the context of the awareness project, we monitored the response through the number of visits to the Web site

Crosswalk between PRAS and PAA

In the *2004–2005 Report on Plans and Priorities*, the three existing strategic outcomes from the Planning, Reporting and Accountability Structure (PRAS) had already been collapsed under one single strategic outcome in order to provide more meaningful reporting to Canadians and to parliamentarians. The new Program Activity Architecture (PAA) supports our initiative by streamlining the core activities under our sole legislated program, making it more comprehensive. The HMIRC program will continue to deliver activities such as protecting industry's confidential information, ensuring health and safety information needed to handle hazardous products safely is disclosed to the workers using those products, and convening independent boards to hear appeals of the Commission's decisions or orders which are launched by claimants or affected parties. But these activities are delivered in a more integrated fashion. The unique PAA activity, Claims Exemption Process, is composed of two sub-activities:

- Claims Processing—under this sub-activity, the Commission registers claims which enable companies to continue selling and/or distributing their product while the claim is being processed. Then the validity of the claim for exemption is determined based on the *Hazardous Materials Information Review Regulations* (HMIRR) criteria and the material safety data sheet (MSDS) is evaluated to ensure compliance with WHMIS requirements. The decision is issued by the screening officer and published in the *Canada Gazette*. Two outcomes are

expected from this sub-activity. The first is that manufacturers can import, distribute and sell their products as measured by the number of registry numbers assigned and by the number of decisions published in the *Canada Gazette*. The second is that the MSDS comply with the WHMIS legislation as demonstrated by the number of advice documents produced and by industry's compliance with the orders issued.

- Dispute Prevention/Appeal—under this sub-activity, the Commission administers an appeal process to the claim exemption rulings. Claimants have 45 days to launch an appeal once the decision on a claim is published in the *Canada Gazette*. An independent tripartite board is then convened to hear the appeals and/or disputes from claimants and renders a decision on the appeal. We also administer a dispute prevention process that works in conjunction with the appeals process by identifying and resolving problems and complaints, where possible, before an appeal becomes necessary. The expected outcomes are the resolution of issues raised during the information exchange touch points of the dispute prevention/resolution process, and appeal decisions. Both are evidenced by the number of issues raised and resolved, and by the number of appeals received and decisions issued.

The Commission's key priorities remain the same as they focus on the Program's long-term achievements and ensure that the Program objectives are fully realized. These priorities are:

- protecting trade secrets and safeguarding workers
- enhancing workload management
- monitoring Canadian and international policy development
- improving the focus of outreach activities

The following diagram depicts the transition that took place when migrating from the PRAS to the PAA structures:

PRAS	Program Activity Architecture (PAA)
Strategic Objectives	
Provide Canadians with a fair and transparent process for protecting valid confidential business information concerning suppliers' or employers' hazardous products. Provide Canadian workers with a fair and transparent process that ensures they will have information about the health and safety hazards of exposure to chemicals found in products associated with claims for exemption. Provide Canadians with a system that resolves claim disputes in a fair, efficient and cost-effective manner.	Trade secret exemptions within WHMIS that balance the right of industry to withhold *bona fide* confidential business information with the right of employers and workers to be provided with complete and accurate information on the health and safety hazards posed by workplace chemicals.
Business Lines ▸ Client Services ▸ MSDS Compliance ▸ Dispute Resolution	**Program Activity** ▸ Claims Exemption Process **Program Sub-Activities** ▸ Claims Processing ▸ Dispute Prevention/Appeals
Priorities ▸ To protect trade secrets and safeguard workers ▸ To enhance workload management ▸ To monitor Canadian and international policy development ▸ To improve the focus of outreach activities	

Section II Analysis of Performance by Strategic Outcome

Strategic Outcome

Trade secret exemptions within WHMIS that balance the right of industry to withhold *bona fide* confidential business information with the right of employers and workers to be provided with complete and accurate information on the health and safety hazards posed by workplace chemicals.

Program activity Claims Exemption Process

Financial Resources ($ thousands)

Planned Spending	Authorities	Actual Spending
3,582	3,866	3,582

Human Resources

Planned	Authorities	Actuals
35	35	34

Under this activity, HMIRC registers claims for exemption received from a supplier or employer who wishes to withhold confidential business information, decides on the validity of the claim, adjudicates and issues decisions on the compliance of material safety data sheet or label to which the claim relates, and administers an appeal process to these decisions.

Expected results

- The protection of valid confidential business information about suppliers' and employers' hazardous products
- A mechanism for workers to be informed about the health and safety hazards of exposure to chemicals found in products associated with claims for exemption
- A system that resolves disputes in a fair, efficient and cost effective manner

Program sub-activity Claims Processing

Under this sub-activity, HMIRC registers the claims that enable companies to sell and/or distribute their product while the claim is being processed. Then the validity of the claim for exemption is determined based on the *Hazardous Materials Information Review Regulations* criteria and the material safety data sheet is evaluated to ensure compliance with WHMIS requirements. Decisions are issued by the screening officer and published in the *Canada Gazette*.

Expected Results/Outputs	Indicators
▸ Manufacturers can import, distribute and sell products	
▸ Registry number assigned	▸ number of claims registered ▸ number of complaints from suppliers/claimants about delays ▸ elapsed time between receipt of claim and registration
▸ Published decisions	▸ number of published decisions
▸ MSDSs comply with legislation	
▸ Decisions issued	▸ number of advice documents produced and used to render a decision ▸ congruence between advice documents and orders
▸ Compliance with orders	▸ extent to which claimants have complied with orders within the 75 calendar days allowed

Program sub-activity Dispute Prevention/Appeals

Under this sub-activity, HMIRC administers an appeal process. Claimants have 45 days to launch an appeal once the decision on a claim exemption is published in the *Canada Gazette*. An independent tripartite board is then convened to hear the appeal and render a decision. We also administer a dispute prevention process that works in conjunction with the appeals process by identifying and resolving problems and complaints, where possible, before an appeal becomes necessary.

Expected Results/Outputs	Indicators
▸ Resolution of issues raised during the information exchange phase of claims processing (i.e. dispute prevention)	▸ number of issues raised and resolved ▸ number of advice documents shared
▸ Appeal decisions	▸ number of appeals/decisions

In this DPR, the Commission will report on each of the four priorities defined under its core program activity:

Priority 1—Protect Trade Secrets and Safeguard Workers

An essential part of occupational health and safety is ensuring that those employed in operations requiring the use of hazardous materials have the information they need to use them without risk of injury and with no threat to their health either in the short term or in the longer term.

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

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

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

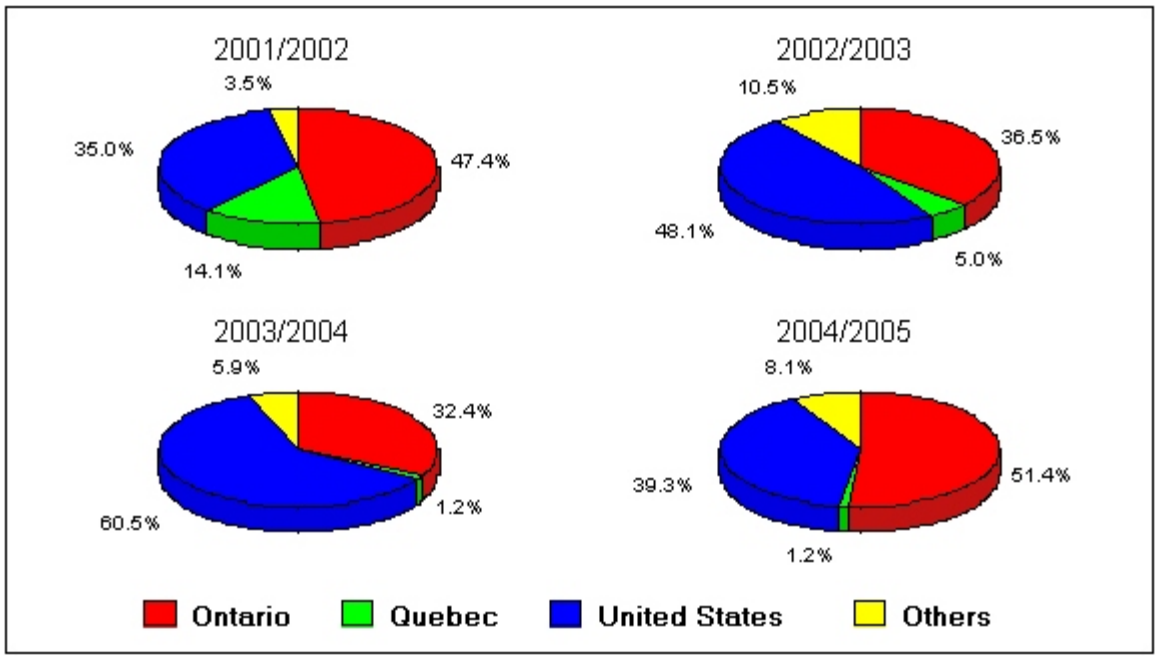
When safety disclosure non-compliance is found, we issue orders obliging claimants to make corrections and they must provide the Commission with a copy of the revised and corrected safety documentation. Failure to comply means that the claimant can no longer legally import or sell the product.

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

Claims registration

At this time, the Commission deals with over 100 separate companies, and most have numerous products for which they wish to claim exemptions. During the past year, Client Services registered 249 new and refiled claims. Almost 40% of the claims registered in 2004–2005 were from companies located in the United States, as compared to an average figure of 47% for the three-year period beginning in 2001–2002.

Geographic origin of claims by year of registration



MSDS violations and claims statistics

The Commission rendered 245 decisions in 2004–2005—an increase of close to 9% over last year, making this year the second highest level it has ever achieved.

The Commission reviews all claims for exemption—including the related MSDSs and, in some cases, labels—to make certain that they provide appropriate health and safety information and guidance to comply with WHMIS requirements, based on the *Hazardous Products Act*, the *Canada Labour Code*, the *Controlled Products Regulations* and provincial and territorial occupational health and safety legislation. This helps ensure that workers are informed of the hazards of exposure to chemicals found in products associated with claims for exemption. In each case, scientific evaluators review the scientific information relevant to each of the products and/or its ingredients, and their known health and safety hazards. They provide advice to screening officers, who decide whether the MSDS complies with the act and regulations.

At the conclusion of the MSDS review process, a formal statement of decision is forwarded to the claimant. If the MSDS does not meet requirements, the screening officer also issues a formal order for its correction and follows up to ensure compliance. Since the Commission first began this activity in 1990–1991, some 95% of the MSDSs reviewed have been found non-compliant with the WHMIS requirements.

Historically, the Commission has found an average of six to 12 MSDS deficiencies per claim, with over two thirds of these occurring in the three violation categories of toxicological properties, hazardous ingredients and first aid measures. MSDS

non-compliance in these important areas has the potential to negatively impact the health and safety of workers who come in contact with the products involved.

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

MSDS Violations, 1998–1999 to 2004–2005

	Number of Violations by Year								
Violation Category	2004–2005	2003–2004	2002–2003	2001–2002	2000–2001	1999–2000	1998–1999	Total	%
Toxicological properties	577	594	884	104	308	182	341	2,990	31.0
Hazardous ingredients	446	402	368	104	452	164	301	2,237	23.2
First aid measures	312	361	221	66	116	47	72	1,195	12.4
Fire or explosion hazard	58	112	186	55	109	21	66	607	6.3
Hazard classification	80	71	22	13	9	6	38	239	2.5
Physical data	79	91	49	9	99	13	28	368	3.8
Headings	70	6	13	10	157	19	22	297	3.1
Preparation information	147	132	21	8	35	3	20	366	3.8
Generic chemical identity	12	27	9	6	17	20	17	108	1.1
Product information	28	17	5	2	81	21	15	169	1.8
Format/wording	183	151	248	18	44	28	10	682	7.1
Preventive measures	4	17	9	12	3	2	4	51	0.5
Reactivity data	107	47	124	25	20	6	2	331	3.4
Total	**2,103**	**2,028**	**2,159**	**432**	**1,450**	**532**	**936**	**9,640**	**100**
Number of claims	**245**	**225**	**181**	**69**	**155**	**85**	**143**	**1,103**	
Average number of occurrences/claim	**8.6**	**9**	**11.9**	**6.3**	**9.4**	**6.3**	**6.5**	**8.7**	

As committed in the *2004–2005 Report on Plans and Priorities*, the Commission targeted the following four activities to improve services to our clients and stakeholders and therefore contribute to the competitiveness of companies in Canada by allowing them to protect their trade secrets as well as contribute to Canadians' occupational health and safety services and protection from preventable risks by helping Canadian employees to know about the safe handling of hazardous chemical products they encounter in the workplace:

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

Providing more direction to claimants

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

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

In addition, the Commission's Web site provides claimants with extensive information on how to file a claim or how to file an appeal, which includes downloadable forms in different formats. It also provides links to the WHMIS site, to the laws and regulations that form the regulatory framework within which the Commission carries out its mission, and to its federal, provincial and territorial partners.

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

Improved staff training

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

As well, a formal mentoring system, pairing a seasoned evaluator with a new staff member, was put in place as part of the training and orientation program for new scientific/toxicological staff. In addition, a case study was developed whereby a new evaluator is required to prepare an advice document based on a set of known facts and circumstances which is then reviewed for purposes of providing feedback to the trainee. The Commission has not updated the screening manual nor the guidelines for reviewing the MSDS but this is still a planned key activity to improve staff training. We will maintain our efforts to achieve the highest possible levels of expertise in these areas.

Increased workers' awareness

The Commission balances the right of suppliers and employers to protect their *bona fide* trade secret information with the right of workers to be informed about the hazards of the chemicals to which they are exposed in the workplace. To deliver on this part of its dual-role mandate, the Commission assesses the MSDSs provided with claims for exemption and ensures that all of the information is accurate. These MSDSs are an invaluable health and safety information source for Canadian workers.

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

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

Streamlined processes

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

have been implemented with the exception of those requiring amendments to our legislation.

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

The Commission proposes to allow claimants to declare that the information for which they are seeking an exemption from disclosure is confidential business information. Currently, claimants are required to submit detailed documentation on the steps they have taken to protect confidentiality and on the potential financial implications of disclosure. This is an administrative burden on claimants and on the Commission. While generally allowing claimants to declare that information is confidential business information, the Commission will collect full documentation when an affected party challenges a claim or when a claim is selected through measures set up to discourage false or frivolous claims.

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

Finally, the Commission proposes that it provide factual clarifications 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.

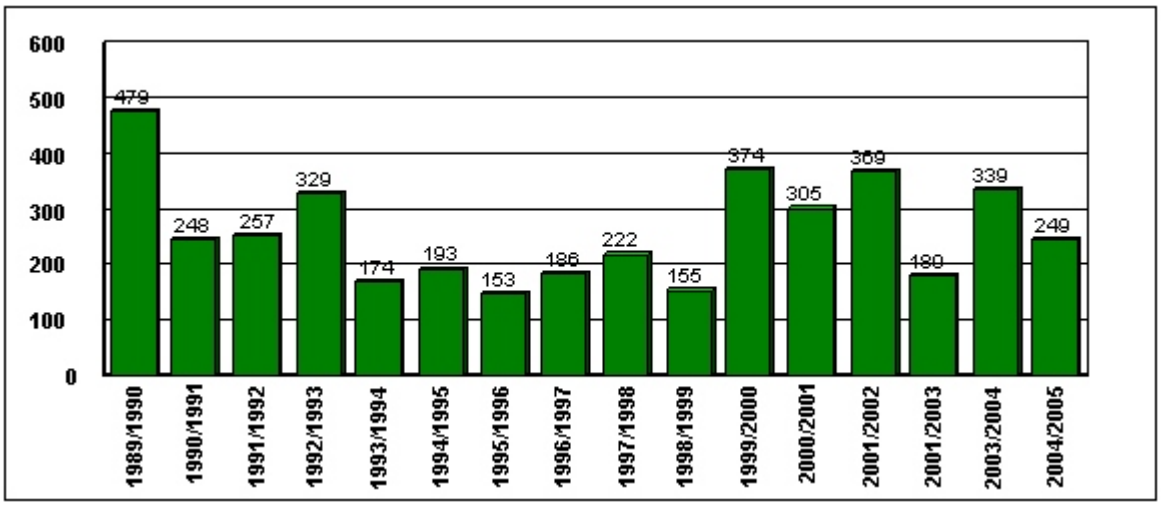
In summary, these proposed amendments will reduce the time required to review claims for exemption from disclosure of confidential information, speed up the correction of the information workers need to handle hazardous materials safely and expedite the processing of appeals.

Priority 2—Enhance Workload Management

While the reduction of the backlog remains a high priority for the Commission, our efforts to predict the volume of claims that will be received in any given period have eluded success. The number of claims has varied widely from year to year, and from month to month. This unpredictability has direct effects on our planning, staff workloads and the timeliness of our services. An unexpected surge of claims beginning in 1999–2000 contributed to the current backlog of registered claims but not yet reviewed.

With some additional funding received in 2001 and 2003, we expect to reduce the backlog to about 380 claims by 2008–2009, from its high point of 951 in March 2002. This projection is based on our estimates of new claims, refiling of claims and withdrawn claims, and on our ultimate capacity to render 400 decisions annually. Our ability to meet these targets will be influenced by the actual number of new and refiled claims received, the number of claims withdrawn and our success in staffing vacant positions.

Claims registered by year



While there have been variances with respect to certain components of the multi-year claim workload estimates established at the beginning of 2003–2004, the overall reduction of the number of claims currently being processed, 691 as of March 31, 2005, is in line with the forecast.

We continue to look for ways to streamline processes, reallocate resources, and adjust priorities in order to maximize the Commission's ability to address claim workloads. This past year, a prioritization system was established for the selection of claims awaiting processing. This system allows for a group of claims to be comprised of approximately 50% claims associated with controlled products with a perceived high hazard potential, while the balance of claims is made up of those that have been in the backlog for the greatest length of time.

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

Claim Workload Estimates—2004–2005 to 2008–2009

	2004–2005		2005–2006	2006–2007	2007–2008	2008–2009
Carry Forward	789		691	556	441	386
Plus						
	Estimate	Actual	Estimate			
New Claims	245	196	245	245	245	245
Refilings	35	53	90	100	150	200
Subtotal	280	249	335	345	395	445
Minus						
Withdrawals	75	102	70	60	50	50
Claims Processed	300	245	400	400	400	400
Subtotal	375	347	470	460	450	450
Equals						
Balance*	694	691	556	441	386	381

*Indicates the number of claims remaining to be adjudicated.

Priority 3—Monitor Canadian and International Policy Development

In 1992 the United Nations Conference on Environment and Development—the Earth Summit—adopted an international mandate to develop a globally harmonized system for hazard classification and labelling (GHS). Canada fully supported this endeavour and took a leadership role in the ensuing multi-lateral discussions. After several years of negotiations among many countries, a globally harmonized standard for hazard communications was issued with a tentative voluntary implementation date of 2008.

The Commission is a member of the WHMIS Current Issues Committee, which is coordinating the workplace hazard communication aspects of implementing the standard. The Commission is also represented on the Intergovernmental WHMIS Coordinating Committee, the intergovernmental consultation forum responsible for providing unified government positions on WHMIS related matters. A Commission official participated as a member of the technical tripartite working group convened to develop consensus approaches for the implementation of the Globally Harmonized System for the Classification and Labelling of Chemicals in Canada. Being involved in such work allows the Commission to apply its expertise and experience in the area of MSDS compliance for the benefit of all WHMIS stakeholders as Canada moves forward on this important international initiative. Should other countries—especially those with underdeveloped economies—wish to adopt Canada's approach to exempting trade secrets, we will make the Commission's experience and expertise available to them.

Priority 4—Improve 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 limited resources. Our Web site has become a primary source of information for claimants.

Reaching out

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

The site recorded some 25,000 visitors—of whom over 15,000 were new—who viewed almost 73,000 pages.

To optimize the use of our Web site, the Commission launched an awareness project in 2004–2005. We distributed 30,000 mailing cards to the American chemical industry and over 3,000 to the Canadian chemical industry. The objective of the card was to create awareness to the Commission's programs and services by inviting the receiver to visit the Commission's Web site where introductory information on the Commission was presented. During that period, we recorded an increase in the number of visits to our Web site as well as an increase in requests for information which indicated to us that our awareness project was successful.

The Commission was also at GlobalChem 2005 Trade Show in Arlington, Virginia in March 2005. Unlike the IAPA conference, this event drew chemical industry and regulatory professionals from Canada and the United States. It allowed the Commission to reach a broader audience as well as providing an excellent venue to make new contacts within the chemical industry.

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

During the year, a question was added to the questionnaire asking new claimants how they came to find out about the Commission. This feedback will be considered when developing our future awareness strategy.

Section III Supplementary Information

HMIRC's Organization

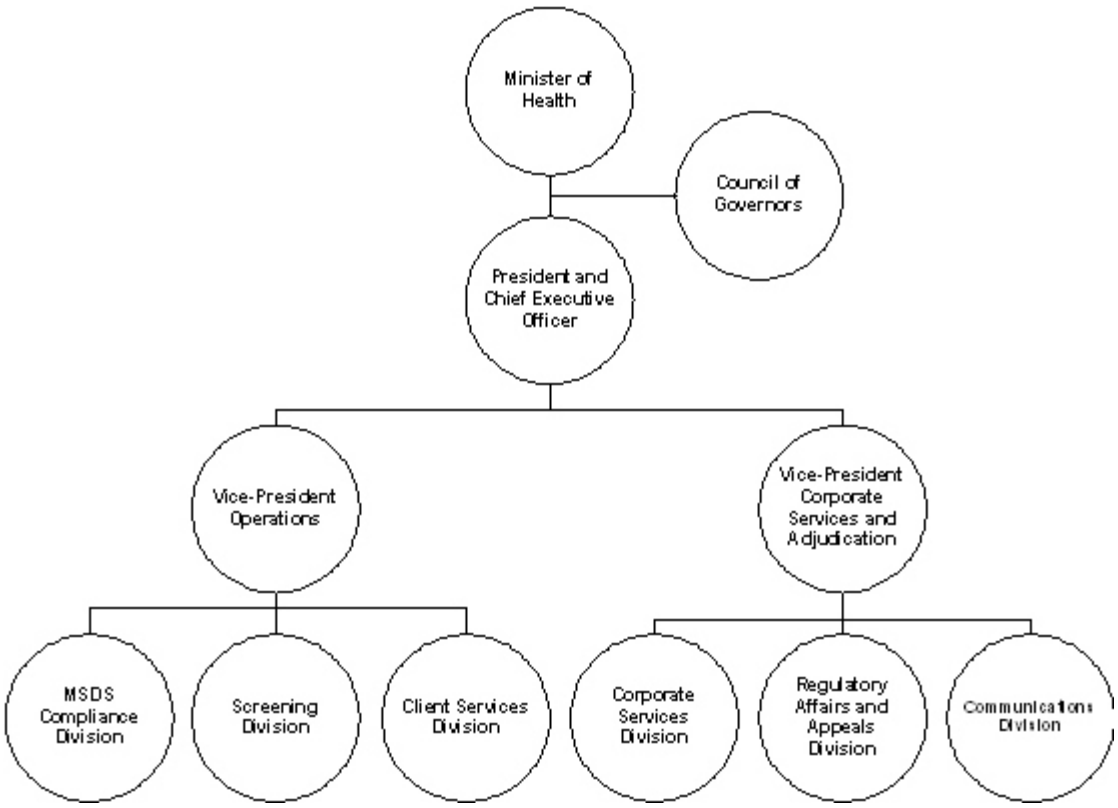
The President and CEO is appointed by the Governor in Council and has the authority and responsibility to supervise and direct the organization's work on a day-to-day basis. The President is accountable to Parliament through the Minister of Health.

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 to the Commission. The Council consists of 18 members: two representing workers, one representing suppliers and one representing employers, one representing the federal government, and between four and 13 representing the provincial and territorial governments. Each governor is appointed by the Governor in Council for up to three years. The Council is headed by a chairperson chosen by the governors for a term of one year. The Council is responsible for making various recommendations to the Minister of Health, including changes to the regulations related to the Commission's fee structure, the procedures for reviewing claims for exemption and the appeal procedures.

Most Council members concurrently represent other occupational and safety organizations, and thus are part of the existing multi-jurisdictional occupational health and safety network.

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.


Minister of Health
Council of Governors
President and Chief Executive Officer
Vice-President Operations
Vice-President Corporate Services and Adjudication
MSDS Compliance Division
Screening Division
Client Services Division
Corporate Services Division
Regulatory Affairs and Appeals Division
Communications Division

Financial Performance

Table 1: Comparison of planned to actual spending including full time equivalents ($ thousands)

	2002–2003 Actual	2003–2004 Actual	2004–2005			
			Main Estimates	Planned Spending	Total Authorities	Actual
HMIRC	3,452	3,735	3,582	3,582	3,866	3,520
Total	3,452	3,735	3,582	3,582	3,866	3,520
Less: Non-Respendable Revenue	355	499	570	570	570	570
Plus: Cost of Services Received without Charge*	120	120	120	120	120	880
Net Cost of Department	3,217	3,356	3,132	3,132	3,416	3,830
Full Time Equivalents	34	35	35	35	35	34

*Cost of services received without charge—explanation of differences between Main Estimates and Actual cost. The 2004–2005 Actual column includes Public Works and Government Services Canada costs for accommodation, contributions covering employer's share of employees' insurance premiums, workers' compensation coverage provided by Social Development Canada, and services received from Justice Canada.

Table 2: Use of resources by program activity ($ thousands)

2004–2005					
	Budgetary				
HMIRC	Operating	Total: Gross Budgetary Expenditures	Less: Respendable Revenue	Total: Net Budgetary Expenditures	Total
Main Estimates	3,582	3,582	–	3,582	3,582
Planned Spending	3,582	3,582	–	3,582	3,582
Total Authorities*	3,866	3,866	–	3,866	3,866
Actual Spending	3,520	3,520	–	3,520	3,520

*Total Authorities are the Main Estimates, Supplementary Estimates and other Treasury Board approved Authorities.

Table 3: Voted and statutory items ($ thousands)

Vote or Statutory Item	Truncated Vote or Statutory Wording	2004–2005			
		Main Estimates	Planned Spending	Total Authorities	Actual
20	Operating expenditures	3,065	3,065	3,349	3,101
(S)	Contributions to employee benefit plans	517	517	517	419
	Total	3,582	3,582	3,866	3,520

Table 4: Net cost of department ($ thousands)

	2004–2005
Total Actual Spending	3,520
*P*lus: *Services Received without Charge*	
▸ Accommodation provided by Public Works and Government Services Canada (PWGSC)	690
▸ Contributions covering employers' share of employees' insurance premiums and expenditure paid by Treasury Board Secretariat (excluding revolving funds)	190
▸ Worker's compensation coverage provided by Social Development Canada	–
▸ Salary and associated expenditures of legal services provided by Justice Canada	–
Less: Non-Respendable Revenue	570
2004–2005 Net cost of Department	3,830

Table 5: Sources of non-respendable revenue ($ thousands)

	Actual 2002–2003	Actual 2003–2004	2004–2005			
			Main Estimates	Planned Revenue	Total Authorities	Actual
HMIRC	355	499	570	570	570	570 [(1)]
Total Non-Respendable Revenue	355	499	570	570	570	570 [(1)]

[(1)] Actual revenues composed by $407,460 of fees collected and $162,540 of Health Canada's frozen allotment.

Table 6–A: User fee reporting—*User Fees Act* ($ thousands)

User Fee	Fee Type	Fee Setting Authority	Date Last Modified
Confidential business information exemption fees	Regulatory	*Hazardous Materials Information Review Act*	June 13, 2002
2004–2005	**Forecast Revenue (Gross)**	**Actual Revenue (Gross)**	**Full Cost**
	570	407[1]	704[2]
Planning Years			
Forecast Revenue 2005–2006	**Forecast Revenue 2006–2007**	**Forecast Revenue 2007–2008**	**Estimated Full Cost**
570	570	570	678[3]
Other Information			

Note: Fees have been established as per the Government of Canada's *External Charging Policy* of 1997.

[1]Represents the shortfall between the forecast revenue and the actual revenue of what was covered by Health Canada through a frozen allotment.

[2]This amount is calculated based on the Government of Canada's *External Charging Policy* of 1997, to recover 100 % of private good activities in our revised fee schedule.

[3]Based on 20/80 ratio utilized for differentiation between private goods/public goods activities as per the revised fee schedule.

Table 6–B: User fee reporting—Policy on service standards for external fees

External Fee	Service Standard	Performance Result	Stakeholder Consultation
Confidential business information exemption fees	Respond to phone enquiries within 48 hours	100 % of the 79 phone enquiries responded within 48 hours or less	HMIRC's service standards were established in the course of the fee structure review in 2001. At that time, HMIRC consulted with all of its active claimants as well as with its Council of Governors representing federal, provincial and territorial governments, industry and labour. The Commission received full buy-in from all stakeholders.
	Respond to written enquiries within a week	100 % of the 37 written enquiries responded within one week or less	
	Complete pre-registration check and register claims within seven days of receipt, provided all necessary information is included	97% of the 149 new or refiled claims received were verified and registered within seven days or less	
	On special request, register claims within 48 hours, if submission is in order	100% of the 100 special requests to register a claim were processed within 48 hours	

Table 7: Travel policies

HMIRC follows and uses Treasury Board's travel policy parameters

Section IV Other Items of Interest

For further Information:

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E-mail: **hmirc-ccrmd@hc-sc.gc.ca**