



ANNUAL REPORT 2006-07



SERVING THE WORKERS'
RIGHT TO KNOW AND
INDUSTRY'S RIGHT TO SAFEGUARD
CONFIDENTIAL BUSINESS
INFORMATION

A BALANCING ACT



Hazardous Materials Information
Review Commission

Le Conseil de contrôle des renseignements
relatifs aux matières dangereuses

Canada



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August 31, 2007

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, 2007.

Yours sincerely,

Sharon Watts



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PRESIDENT'S MESSAGE



With this annual report I am proud to announce that the Commission's long-sought legislative amendments have been enacted into law. Bill S-2, *An Act to Amend the Hazardous Materials Information Review Act*, received Royal Assent on March 29, 2007, marking the conclusion of a remarkable journey toward a revitalized, modernized Commission.

We began our renewal process in 1999 with the vision of becoming a more client-focused agency committed to improving service quality and timeliness. Along the way we implemented wide-ranging initiatives that touched every area of our operations, and introduced more openness, more transparency and more accountability into our everyday operations. And now, with the passage of three legislative amendments, we can finally say that we have transformed the Commission into a dynamic, progressive, well-performing agency.

These legislative amendments enhance our renewal process by introducing further efficiencies into our administrative processes. The first amendment relates to the Commission's mandate to protect industry's bona fide trade secrets. When a company believes that disclosing certain information on a hazardous product would betray a trade secret, the company can file a claim with the Commission for an exemption from the requirement to disclose that specific information.

Under the old legislation, claims for exemption had to be supported by cumbersome substantiating documentation—to verify that the information is a genuine trade secret, to detail the measures that protect the confidentiality of that information, and to prove that disclosing the confidential



information would result in an economic loss for the claimant or an economic gain for its competitors. This first amendment will significantly reduce the regulatory burden on industry so that a claimant will submit only minimal documentation to support its declaration that it is seeking to protect a bona fide trade secret. The streamlined process will reduce administration for industry, shorten the time the Commission needs to review each claim, and give workers information on hazardous materials more quickly.

The second legislative amendment relates to the second element of our mandate: to conduct a scientific review of the material safety data sheets (MSDSs) included with applications for trade secret protection. The Commission's role is critical in ensuring that MSDSs are as complete and correct as possible since they provide information to workers about safely handling hazardous materials. Under the old legislation, if the Commission decided that an MSDS did not comply with Workplace Hazardous Materials Information System (WHMIS) regulations, it had to publish a formal order against the claimant in the *Canada Gazette*—even if the claimant was willing to correct the information—and the order became binding only after a mandatory waiting period of at least 75 days. The amendment will allow us to expedite the process and bypass the waiting period by permitting claimants to voluntarily correct health and safety information without the stigma of a formal order. The streamlined approach will enhance workplace safety since workers will have corrected safety information much more quickly.

And finally, the third legislative change will expedite the appeals process, which is available to claimants or affected parties who disagree with Commission decisions. Appeal boards are independent from the Commission, and made up of three representatives from government, labour and industry. To expedite the appeal process, a Commission representative will now be allowed to give the board factual information on the decision, if necessary.

The revitalization of the Commission was my top priority when I accepted this position as President and CEO in 1998, and the successful conclusion to this initiative is a fitting end to my tenure. Throughout this renewal process I have been inspired by the commitment of the Commission's staff and all members of the Council of Governors. In consultation with our clients, stakeholders and WHMIS partners, we seized the renewal agenda and laid out our objectives in a strategic plan called *Blueprint for Change*. We then developed an operational workplan, a road map

of sorts, which plotted our journey toward renewal with 229 specific action items. The journey has had its share of challenges, of course, but by working collaboratively we have accomplished every action item that we set for ourselves.

In working toward renewal, the Commission has truly been a model of industry, labour and government consultation, consensus and collaboration. We began the process by consulting with our stakeholders, and continued to encourage open dialogue at every stage. Our new accessibility quickly paid dividends as we worked with industry to overcome misunderstandings and resolve issues. For example, to respond to a longstanding industry concern, we overhauled our cost-recovery structure to reflect the distinction between services performed primarily for private benefit and those carried out for the public good.

Working with industry, we redesigned our approach to dispute resolution. The new approach features open communication and frequent contact with clients during the MSDS and claims exemption processes. This ensures that disputes are resolved early on and serves to avoid appeals. Since we implemented this client-centred approach in 2001, not a single Commission decision has been appealed, indicating that our new approach is working.

The steady increase in claims filed is, I believe, another sign that our outreach efforts with industry have been successful. To raise the profile of the Commission, we reached out to various stakeholder groups and helped our international clientele understand the importance of our mandate. We worked hard to establish strategic partnerships with our provincial and territorial WHMIS partners, with central agencies, and with other organizations committed to similar health and safety objectives. I believe that our communication and outreach efforts encouraged claimants to come forward.

In the drive toward renewal we developed and continuously enhanced our Web site. We added user-friendly information on Commission business, and credit card payment options for the convenience

of our clients. Internally, we added and reorganized resources to right-size the Commission and allow us to better accomplish our vision. Even with our growth, we succeeded in staying small and nimble, able to respond quickly to challenges as they arise.

Many of our business processes have changed since 1998, but our fundamental role has not. Through our MSDS compliance efforts, the Commission is an important advocate for workers, and between 1998 and 2007 it made a measurable improvement to workplace safety by ordering corrections to 13,846 MSDS compliance violations. The Commission is also a strategic partner to industry, helping to safeguard trade secrets that help companies compete in the marketplace. Between 1998 and 2007 the value of those protected trade secrets totalled \$2.86 billion. We are continually striving to achieve a balance between the right of workers to know about the hazardous materials they deal with in the workplace and the right of industry to protect confidential business information.

I am proud to have led our renewal initiative, but this monumental achievement was very much a joint effort, involving staff members who were fully invested in the process and Council members who represent many different stakeholders yet came together to do the right thing for the public good. The end result shows what can be accomplished through partnership, through professionalism, and by committing ourselves to tangible and measurable results. We have fundamentally changed how we operate, and have set the Commission on a new course for the future.

This will be the last annual report in my tenure as President and CEO of the Hazardous Materials Information Review Commission. It has been an honour to have served in this role for nine years. I would like to thank staff members and Council members for their dedication, their support and their unwavering commitment to our goal. As I leave the Commission, I am confident that they will continue to make a difference to industry, to workers and to the health and safety community.

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—and employers 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 that suppliers provide a material safety data sheet (MSDS) for each product.

Each MSDS must include several types of information. For example, it must list 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 their employees with this MSDS information, as well as training and education programs.

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, against the rights of chemical suppliers to protect confidential business information.

The *Hazardous Materials Information Review Act* and its regulations provide the mechanism to create that balance through the Hazardous Materials Information Review Commission (HMIRC). The 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 appeal boards—representing labour, suppliers or employers, and the federal government—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 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 the applicable federal, provincial or territorial regulations, and rule on the claims' validity.

Our scientific evaluators play a key health and safety role in this claim review process. They review the MSDSs and labels associated with a claim for exemption to ensure the information is complete and accurate. This process involves communication between evaluators, screening officers and claimants to ensure transparency. When evaluators identify missing or incorrect information, they advise the screening officers, who issue formal orders requiring that claimants make the necessary changes and submit the corrected MSDS within 75 calendar days.

When claimants or affected parties challenge our decisions or orders, the Commission convenes independent boards to hear appeals.

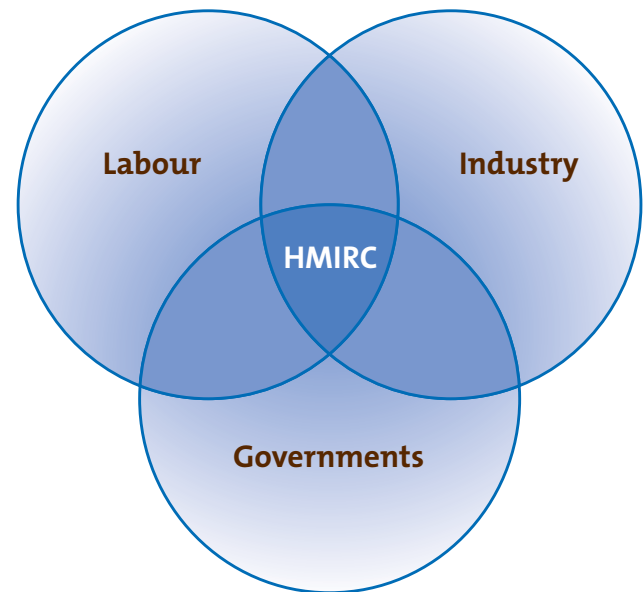
In addition, we respond to requests from federal, provincial and territorial government health and safety officials for information about claims for exemption to help these officials administer and enforce their WHMIS obligations.

● 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.



● 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

with both the industry and employers. Our work also supports the federal, provincial and territorial governments in delivering their occupational safety and health regulatory activities, making the Commission one of very few adjudicative bodies in Canada that represent multiple levels of government.

● 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:

- 2 representing workers,
- 1 representing suppliers,
- 1 representing employers,
- 1 representing the federal government, and
- between 4 and 13 representing the provincial and territorial governments responsible for occupational health and safety.

The Commission President and CEO, who is accountable to Parliament through the Minister of Health, supervises and directs the work of the agency.

● VALUES AND OPERATING PRINCIPLES

The Commission recognizes that continuous improvement is critical to remaining relevant and to providing 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 analyses, 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.

2006-2007: THE YEAR IN REVIEW



● SUMMARY OF ACCOMPLISHMENTS

The Commission's renewal process reached an important milestone in 2006-07 with the enactment of Bill S-2, *An Act to Amend the Hazardous Materials Information Review Act*. The amendments reduce the time required to review claims for exemption from disclosure of confidential business information, speed up the correction of the information that workers need to handle hazardous materials safely, and expedite and improve the appeals process. Claimants will find it simpler to file, and, the claims exemption process will be more efficient.

As part of the Commission's commitment to continuous improvement, the claims process and the claims form itself came under scrutiny, with further refinements planned for the next fiscal year. Several tools used to assess MSDSs were updated to ensure the Commission is using the most advanced scientific information available.

The Commission took steps to address recurring challenges in recruiting and retaining specialized scientific staff. Most significantly, the Commission developed a new plan that aligns its human resources needs with its business plan. In addition, the Commission developed a significant alliance with

its Health portfolio partners in creating a list of qualified candidates who could be recruited quickly to fill vacancies.

Outreach efforts concentrated on the Web site, the Commission's most important communication and outreach tool. Preparations were made for three major Web site updates in the next fiscal year: to reflect the new legislative amendments, to improve clients' access to information, and to meet a new federal standard on Common Look and Feel for the Internet.

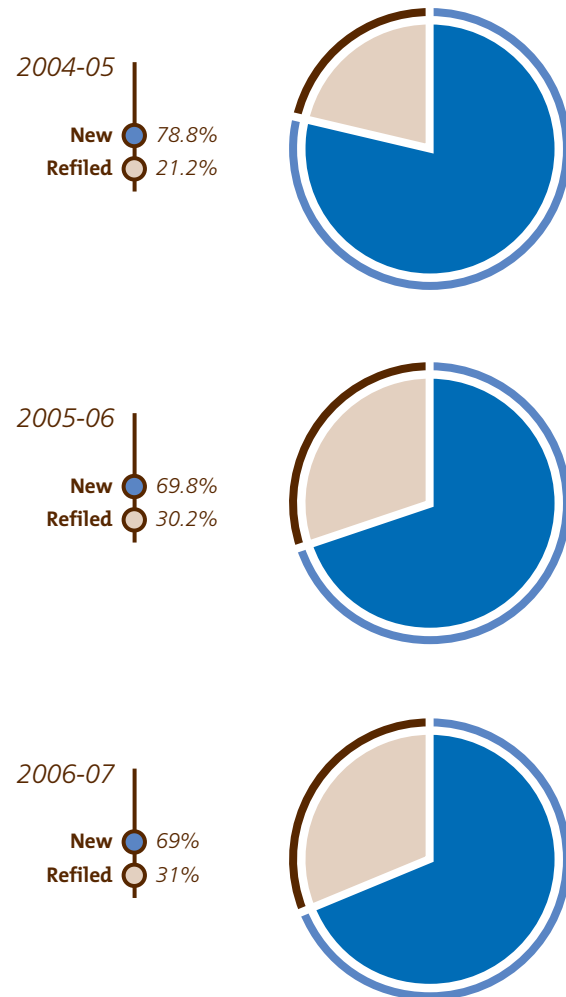
The Commission also worked with Health portfolio partners on several executive-level committees and strengthened ties with the offices of both the Minister and the Deputy Minister of Health. Through extensive interaction with the Minister's office, several members were appointed to the Commission's multi-stakeholder Council of Governors, significantly increasing the effectiveness of the Council as a governing body. For the first time in 10 years, all Council positions requiring the approval of the Minister of Health have been filled. In addition, relationships were strengthened with several stakeholder organizations, and collaborations continued with partner agencies in the Health portfolio.

● CLAIMS REGISTRATION

In 2006-07, the Commission registered 387 claims for exemption, which was virtually unchanged from the 388 claims registered during 2005-06. Of that total, 97%, or 377 claims, were received with all the necessary information and were verified and registered within the seven-day turnaround time specified in the Commission's service standard. The Commission exceeded the seven-day turnaround time for the remaining 3% because the claimants had to submit additional information to substantiate their claims before they could be verified and registered.

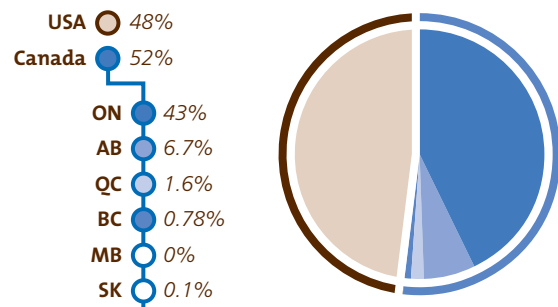
As in the previous fiscal year, about 70% of the claims registered in 2006-07 were new filings and 30% were previously approved claims that were refiled after three years, as the law requires (Figure 1).

● **Figure 1: Percentages of new and refiled claims registered, 2004-05 to 2006-07**



As in previous years, the percentage of claims from Canadian suppliers in 2006-07 was slightly higher than that from U.S. suppliers. Most claims from Canadian suppliers originated in Ontario (Figure 2).

● **Figure 2: Geographic origin of claims, 2003-04 to 2006-07 (average percentages)**



● CLAIMS PROCESSING

A total of 192 claims for exemptions were processed to completion, which represents a drop of 36% from the number processed in 2005-06. Much of this decrease from the previous year can be attributed to the unusual complexity of more than half the claims reviewed; they involved 10 ingredients or more and required significantly more time for review. In addition, recently hired staff members were not fully trained, which affected productivity.

In 2006-07, the Commission updated and enhanced several assessment tools to ensure that MSDS reviews are based on the most advanced scientific expertise. For example, the Commission's prioritization scheme, developed in 2005-06, was updated to include the most current scientific information on the hazards of workplace chemicals. The Commission developed the prioritization scheme so that claims for products with a high hazard that are likely to pose a major risk to workers' health will be identified and reviewed without significant delay. This practice allows the corrected MSDSs of high-hazard products to reach the workplace sooner. Of the 192 decisions issued in 2006-07, 55% were classified as high-hazard.

The reference manual used by scientists in reviewing MSDSs was also revised. The Commission's database was updated to include published papers on 528 new ingredients. Eight toxicology profiles were updated as well to include the most recent scientific literature.

The dispute resolution mechanism successfully dealt with 387 issues raised through increased transparency and communication between claimants and the Commission. The majority of the issues resolved dealt with the disclosure of all hazardous ingredients in a product on the MSDSs. Another significant type of issue concerned the extent of a product's potential for causing irritation or corrosion to either the skin or the eyes. All of the issues were eventually resolved and no appeals were filed.

● **Table 1: MSDS violations, 2004-05 to 2006-07**

Violation Category	Number of Violations by Year				
	2006-07	2005-06	2004-05	Total	%
Toxicological properties	372	850	769	1991	31.5
Hazardous ingredients	257	333	254	844	13.3
First aid measures	249	370	312	931	14.7
Preparation information	237	232	147	616	9.7
Registry number/date of filing	59	263	147	469	7.4
Physical data	92	95	79	266	4.2
Reactivity data	33	117	107	257	4.1
Hazard classification	53	76	80	209	3.3
Format/wording	82	57	36	175	2.8
Fire or explosion hazard	52	58	58	168	2.6
Headings	41	52	70	163	2.6
Generic chemical identity	53	43	12	108	1.7
Product information	15	55	28	96	1.5
Preventive measures	6	14	4	24	0.4
Total	1601	2615	2103	6319	100
Number of claims—controlled products	192	298	245	735	
Average number of violation occurrences per claim	8.3	8.7	8.6	8.6	

● MSDS VIOLATIONS

An MSDS is required to be fully compliant with the *Hazardous Products Act* and *Controlled Products Regulations* when a claim is submitted to the Commission. To ensure that this is the case, the Commission reviews the MSDSs for all claims. As in previous years, only about 5% of the MSDSs (10/192) were found to be in compliance, and on average there were 8.3 violation occurrences per claim in 2006-07, reflecting nearly similar occurrences in the previous two years. Of the great majority that were non-compliant, approximately 59.5% of the violations were related to toxicological properties, hazardous ingredients and first aid measures as indicated by average percentages over the last three years. 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.

● CLAIMS WORKLOAD ESTIMATES

Historically, the volume of claims received annually has fluctuated dramatically, making it difficult to plan. However, in recent years the number and breakdown of claims received remained relatively consistent. Consequently, the Commission has established the 2005-06 and 2006-07 years as the baseline upon which to forecast the workload for 2007-08 and subsequent years.

To forecast the number of claims expected to be withdrawn in 2007-08 and in subsequent years, an average of the last three years (15%) was used as an estimate. The withdrawal of claims can occur for various reasons. For instance, if a company changes hands, the new company must withdraw the claims and refile them; a company may decide to declare the ingredients that it was seeking to protect; or the company may no longer be selling the product.

● **Table 2: Claim workload estimates, 2005-06 to 2008-09**

	Actual number of claims		Estimated number of claims	
	2005-06	2006-07	2007-08	2008-09
Brought forward	691	708	813	791
PLUS				
New claims	271	267	280	280
Refilings	117	120	120	120
Subtotal	388	387	400	400
MINUS				
Withdrawals	73	90	122	118
Claims processed	298	192	300	300
Subtotal	371	282	422	418
EQUALS				
Balance*	708	813	791	773

*INDICATES THE NUMBER OF CLAIMS REMAINING TO BE ADJUDICATED.

The Commission staff will have often spent a significant amount of time reviewing these claims before they are withdrawn.

All forecasted numbers are reassessed and adjusted annually if required to ensure that all projections remain meaningful.

● IMPROVING SERVICES TO OUR CLIENTS AND OTHER STAKEHOLDERS

In 1999, following broad consultations with stakeholders and a thorough review of its operations, the Commission embarked on a wide-ranging renewal process to improve the quality and timeliness of its service to clients. Throughout the renewal process the Commission made extensive operational improvements, and with the exception of three matters that required legislative amendment, has successfully implemented all administrative changes that were identified in the extensive consultation and review.

In 2006-07, the Commission entered the final stage of the renewal process as the three legislative amendments were introduced to Parliament as

Bill S-2, *An Act to Amend the Hazardous Materials Information Review Act*. Bolstered by the unanimous support of all stakeholders and all parties in both the House of Commons and the Senate, Bill S-2 passed without amendment and received Royal Assent on March 29, 2007.

These three amendments, which will be fully implemented in the next fiscal year, will further streamline the Commission's administrative processes for clients. The first amendment relates to the Commission's mandate to protect industry's confidential business information. Currently, claimants seeking to exempt certain information from disclosure are required to submit detailed documentation on how they are protecting the confidentiality of their information and on how they would be harmed by the disclosure of the information. These requirements are an administrative burden on claimants, and also increase the amount of time that the Commission needs to review the claims. The amendment will allow claimants to declare, with minimal supporting documentation, that the information they are seeking to protect from disclosure is confidential business

information, and will decrease the Commission's review time. However, the Commission will collect full documentation when an affected party challenges a claim or when a claim is selected for review.

The amendments will also allow claimants to voluntarily correct MSDSs and product labels when the Commission finds that these are non-compliant. The old Act required the Commission to issue formal correction orders against a claimant, even if the claimant was fully prepared to make all necessary corrections voluntarily. Claimants felt that these orders imply a reluctance to fulfill their responsibilities for workplace safety. Additionally, these orders only became binding 75 days after being published in the *Canada Gazette*. Allowing corrections to be made without issuing orders will dramatically shorten the process and give workers much faster access to accurate safety information.

Finally, the amendments will allow the Commission to provide factual clarification to independent appeal boards, if needed, to facilitate the appeals process. Previously, the Commission was prohibited from providing explanatory information to appeal boards, which often resulted in difficulties for appeal boards when interpreting the record of the screening officer. The amendment to allow factual clarifications will facilitate decision-making by appeal boards and expedite the appeals process.

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

Although the formal renewal process has been successfully concluded, the Commission remains committed to making continuous improvements. In that spirit, both the claims form and the claims process were reviewed, and both will be further enhanced in the next fiscal year. The new electronic claims form will include several interactive elements that will simplify the process for claimants by clarifying what information is needed, organizing claimant input and adjusting to accommodate lengthy input. The new form is also expected to help speed up the processing of claims.

Throughout the year, Commission staff remained committed to excellence in service to prospective claimants seeking information about the claims process and the review of MSDSs. The Commission responded promptly to queries directed to its area of expertise. The Commission was also expedient in responding to queries received from the general public and professionals alike world-wide, involving our partners in occupational health and safety when necessary.

The Commission worked with Health portfolio partners on several executive-level committees. By strengthening ties with the offices of both the Minister and the Deputy Minister of Health, the Commission was able to facilitate the Order in Council appointment process for the Council of Governors. Through extensive interaction with the Minister's office, all positions on the Council of Governors that require the Minister of Health's approval have been filled—for the first time in 10 years.

● MANAGING RESOURCE CHALLENGES

As a small agency, the Commission faces several resource challenges in meeting its mandate: the specialized technical skill sets required of its scientific staff, the scarcity of those skill sets and limited resources to attract talent.

In 2006-07, the Commission took several steps to attract recruits and also prevent critical staff shortages in the future.

A new human resources plan that aligns future human resources needs and expertise with the Commission's long-term business and strategic plan was developed. This plan includes specific strategies to address key Commission needs. The areas of focus chosen for the next two years were recruitment and retention, continuous learning, and workload management.

The Commission has established a partnership with its Health portfolio partners to start building a pool of suitable candidates who can be recruited on short notice. For the Commission's new recruits, a coaching program is in place which pairs up new staff members with experienced employees. This approach has proven to be effective in bringing new employees up to a fully functioning level.

The Commission has also put in place an infrastructure in support of management that includes risk-based plans, templates and communications tools to increase management accountability for and employee awareness of human resources modernization. This has allowed line managers to be more actively involved in human resource planning, continuous learning and development.

● MONITORING IMPLEMENTATION OF THE GLOBALLY HARMONIZED SYSTEM

The Commission continued to monitor Canada's implementation of the Globally Harmonized System for the Classification and Labelling of Chemicals (GHS), an international initiative issued in 2002 after several years of negotiations, which is scheduled to be implemented worldwide in 2008.

The Commission is involved in several aspects of the GHS as a member of: the tripartite WHMIS Current Issues Committee, which ensures a common understanding of the GHS as it evolves and establishes a Canadian position on these developments across all WHMIS stakeholders; the technical tripartite working group associated with the Current Issues Committee, which is developing consensus approaches for the implementation of the GHS; and the Intergovernmental WHMIS Coordinating Committee, which establishes consensus among the multiple government jurisdictions responsible for WHMIS on the implications for governments arising from the GHS. As progress is made on implementing the GHS in Canada, the Commission can contribute its expertise and experience in MSDS compliance for the benefit of all WHMIS stakeholders.

The Commission has also begun to monitor changes in the trade secret protection mechanisms in other countries and to determine how related GHS provisions are being implemented. By keeping abreast of the evolution of trade secret protection mechanisms globally, the Commission will be able to share best practices from the Canadian experience. It will also be able to ensure that, consistent with the Canadian approach, international efforts to harmonize trade secret protection mechanisms maintain a balance between the protection of worker health and safety, and the need for suppliers to protect their trade secrets.

● IMPROVING THE FOCUS OF OUTREACH AND STAKEHOLDER LIAISON

Outreach activities in 2006-07 focused on the Commission's Web site, the primary outreach and communications tool for both claimants and stakeholders. In 2006-07, the site recorded 36,180 visitors, an average 34% increase in traffic over the previous year.

Increased interest in the Web site and pending legislative changes prompted a comprehensive Web site review. Commission staff began preparing for three major updates scheduled for the coming year. First, a Web site is being developed to reflect the implementation of the new legislative amendments. Second, plans were made to improve how claimants access information on the site. And finally, planning began on how to bring the site into compliance with the Common Look and Feel Standards for the Internet (CLF2). The sites of all federal agencies must meet the new standard by December 31, 2008.

The Commission participated in several industry trade shows in 2006-07, including two conferences sponsored by the Industrial Accident Prevention Association, the Salon professionnel—Le Grand Rendez-vous, santé et sécurité au travail in Montreal and the Society of Toxicology conference in Charlotte, North Carolina. Such events are key opportunities for the Commission to promote its mandate, role and activities.

In 2006-07, the Commission reinforced its links with several organizations that have WHMIS-related mandates, including the Canadian Centre for Occupational Health and Safety (CCOHS) and the National Office of WHMIS (NOW) of Health Canada. The Commission, CCOHS and NOW jointly sponsored a national symposium on WHMIS-related issues where the Commission presented a paper on its mandate and MSDS violations.

APPENDIX 1: FINANCIAL SUMMARY



Revenue (in thousands of dollars)

Revenue from claims for exemption	591
Revenue from appeals	–
<i>Total revenue</i>	<i>591</i>

Expenditures (in thousands of dollars)

Salaries and wages	2,459
Other operating	566
<i>Total expenditures</i>	<i>3,025</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 up to 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.

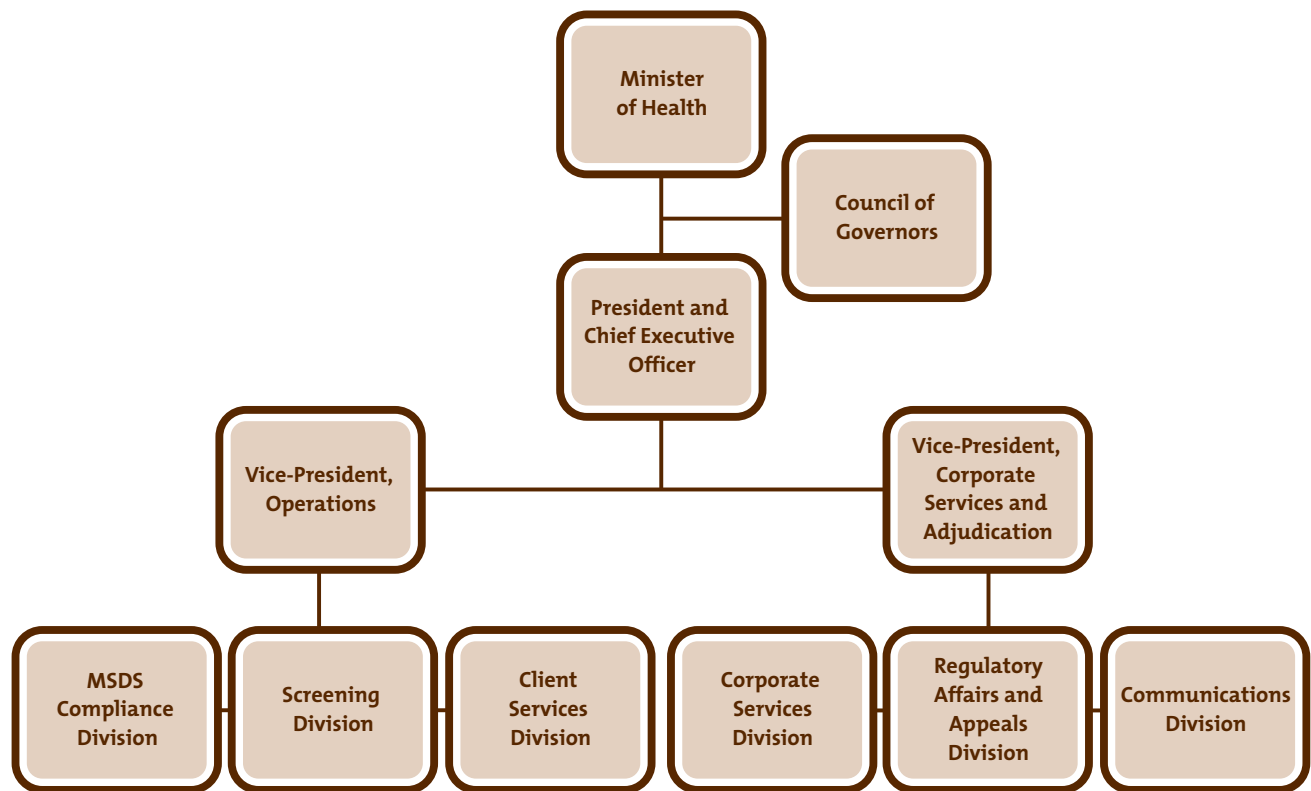
The provincial and territorial Council members concurrently represent occupational health and safety government organizations, and thus the composition of the Council reflects the nation-wide occupational health and safety network. The Commission's enabling statute requires that the

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, 2007)

Chair and Quebec

Dr. Yves Brissette
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

Mr. William Gombos
Emerson Electric Canada Limited

Government of Canada

Vacant

British Columbia

Ms. Nancy Harwood
WorkSafeBC

Alberta

Mr. Dan T. Clarke
Alberta Human Resources and Employment

Saskatchewan

Ms. Rita Coshan
Saskatchewan Labour

Manitoba

Mr. Dennis Nikkel
Manitoba Labour and Immigration

Ontario

Mr. Alec Farquhar
Ontario Ministry of Labour

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
Department of Labour of Newfoundland
and Labrador

Yukon

Mr. Kurt Dieckmann
Yukon Workers' Compensation Health and
Safety Board

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>.)

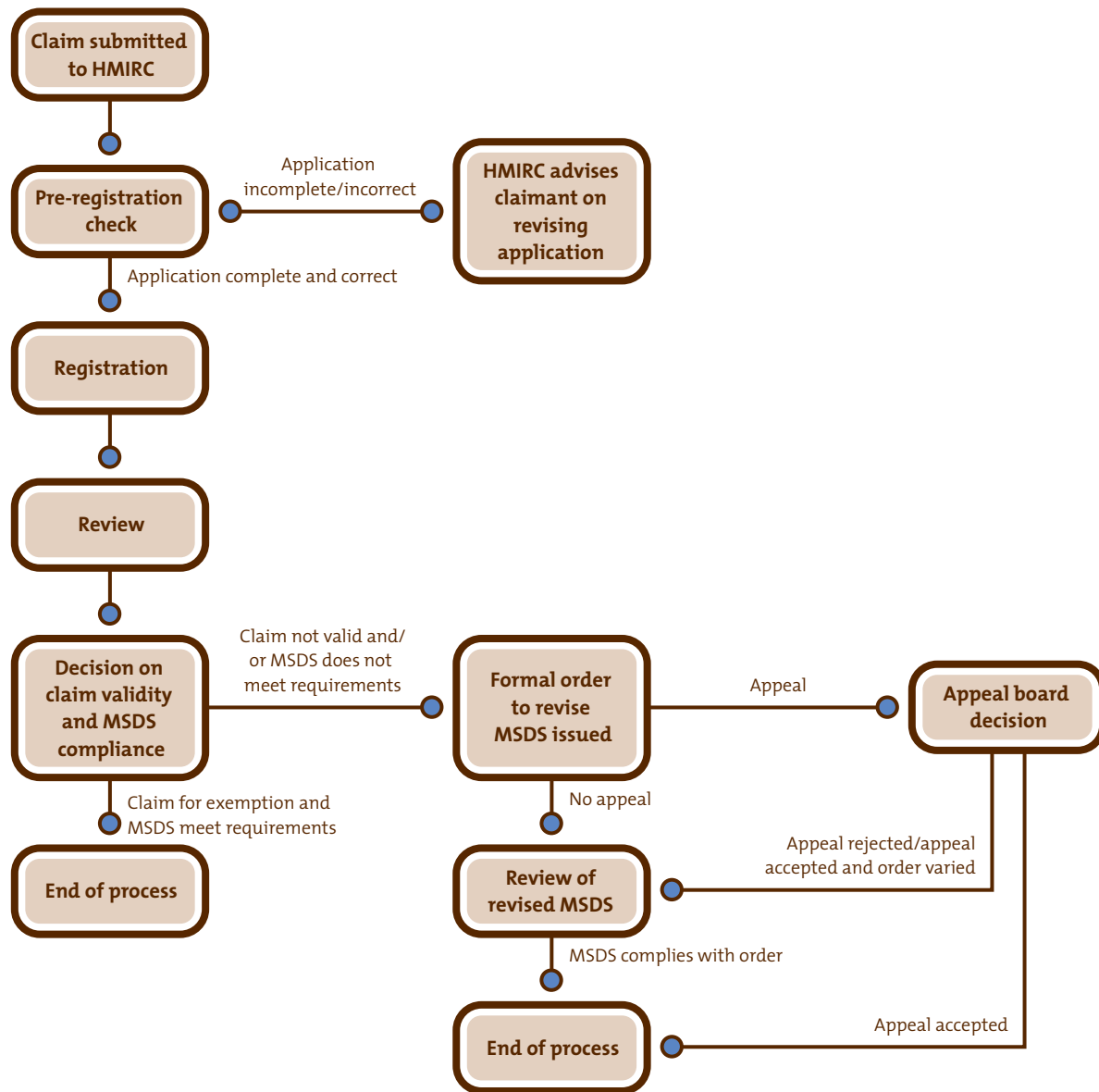
● PRE-REGISTRATION CHECK

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 registration number. The Commission sends a letter to the claimant indicating the registration number and the date of filing. This information is then placed on the MSDS in place of the claimed confidential business information.

Claim registration allows the company to import or sell its product while the decision making process continues.



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

● REVIEWING THE CLAIM

The registered claim then undergoes a more thorough review. Based on their assessment of the information submitted by the claimant and any submissions from those affected by the claim for exemption, one of the Commission’s screening

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

In each case, the Commission's scientific evaluators review the most recent scientific information relevant to each of the products and/or their ingredients, and their known health and safety hazards. They advise the screening officer, who then decides whether the MSDS 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 2006
- Reports on Plans and Priorities, 2000-01 to 2006-07
- Performance Reports, 1998-99 to 2005-06
- *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