



Hazardous Materials Information
Review Commission

Conseil de contrôle des renseignements
relatifs aux matières dangereuses

Hazardous Materials Information Review Commission

2008-2009

Departmental Performance Report

The Honourable Leona Aglukkaq
Minister of Health
Government of Canada

Canada

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Section I Overview

President's Message

I am pleased to submit the Departmental Performance Report 2008-2009 for the Hazardous Materials Information Review Commission (HMIRC). This report reaffirms the Commission's commitment to both Canadian worker health and safety and Canadian chemical industry competitiveness through a high standard of service delivery and innovation.

The four priorities set by HMIRC for 2008-2009 were improved client service, modernized legislation, international harmonization and management excellence. These priorities were intended primarily to address the streamlining of operations in order to increase service capacity and efficiency, but also to support the implementation of international standards for hazard communication and to strengthen administrative functions within the Commission.

During the year the Commission successfully implemented a Backlog Elimination Plan and met the target of 500 claims processed for the first year. This plan was initiated with a presentation of HMIRC's 2007-08 Program Integrity Business Case to Treasury Board Secretariat. Once the funding agreement with Health Canada was finalized, HMIRC was able to implement strategies to recruit new scientific staff, to introduce a shorter, more intensive orientation/training program, and to develop specialized and coordinated tools to assist claim processing, including an integrated data management system. These activities address not only the claims backlog, but will also contribute to sustainable workload management in the future.

Various legislative activities in 2008-2009 had great significance for HMIRC. One of the highlights was the coming into force of a revised *Hazardous Materials Information Review Act* and Regulations in October 2008. This was the culmination of many years of analysis and consultation with stakeholders through the Commission's tripartite governing body, the Council of Governors. These amendments have now been operationalized, resulting in a more efficient and collaborative claim process which benefits both workers and industry and contributes directly to the achievement of the Commission's strategic outcome.

In the coming years the evolution of the *Hazardous Products Act* and related regulations, due to both domestic and international elements, will affect the work of the Commission. This legislation contains federal supplier obligations under the Workplace Hazardous Materials Information System (WHMIS) and requires companies that wish to protect their trade secrets to submit claims for exemption to the Commission. The Commission has closely followed the developments of the Globally Harmonized System for the Classification and Labelling of Chemicals (GHS) because of the impact these standards will have on its work. While the protection of confidential business information will remain unchanged, the preparation of hazard communication products, such as the Material Safety Data Sheets (MSDS), will certainly be affected. Canada has already

committed to GHS implementation; it will be up to the Commission to redefine its processes when the time comes. HMIRC will be working proactively and collaboratively with Health Canada and other partners to ensure enhanced competition and improved worker health and safety.

The Commission was pleased by Treasury Board's acknowledgement of its organizational excellence; following the 2007-2008 Round V Management Accountability Framework review, HMIRC received strong ratings in the categories of corporate performance and workforce development. Additional resources for corporate services have significantly strengthened the Commission's planning and reporting capacity. Internal controls in financial systems have been enhanced and key positions filled by staff bringing much needed expertise to these areas. This has allowed HMIRC to coordinate its management activities in a strategic, results-based direction.

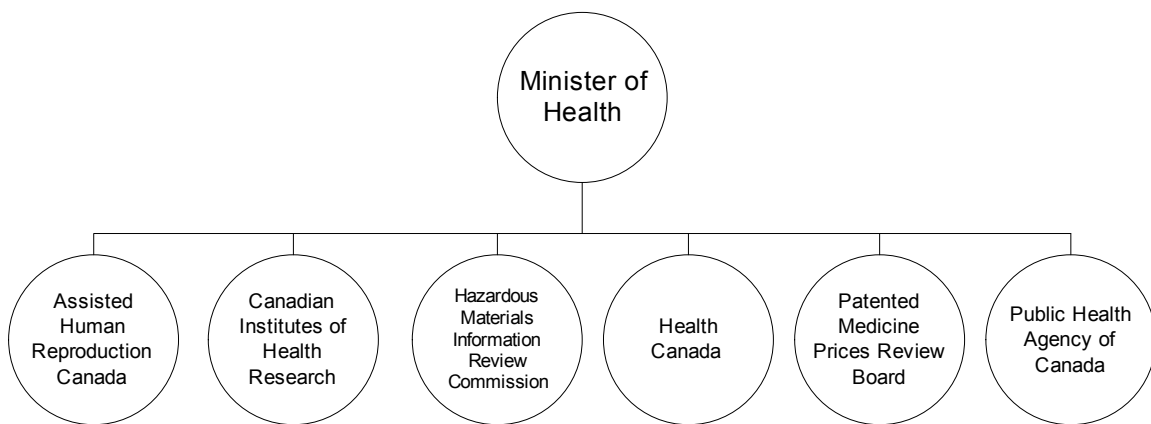
I am proud of the accomplishments and the hard work of HMIRC staff. The Council of Governors' support and guidance continue to make a tangible contribution to the organization's effectiveness. I am convinced this collaborative partnership has well-positioned the Commission for continued success.

Sharon A. Watts
President and CEO

Summary Information

Health Portfolio Overview

The Minister of Health, through the work of the Health Portfolio, is responsible for maintaining and improving the health of Canadians. In addition to the Hazardous Materials Information Review Commission (HMIRC), the Portfolio consists of Health Canada, the Public Health Agency of Canada, the Canadian Institutes of Health Research, the Patented Medicine Prices Review Board and Assisted Human Reproduction Canada. Each member of the Portfolio prepares its own Departmental Performance Report.



The Health Portfolio consists of 12,158 full-time equivalent employees, with an annual budget of 4.7 billion.

Raison d'être

HMIRC is an independent, quasi-judicial organization which provides a mechanism to protect the trade secrets of companies that manufacture, supply and/or use hazardous materials, and to accurately inform Canadian workers who handle such materials about the intrinsic health and safety hazards.

Mandate

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

- Register claims for trade secret exemptions and issue registry numbers.
- Adjudicate and issue decisions on the validity of claims for exemption on the basis of prescribed regulatory criteria.
- Make decisions on the compliance of MSDSs and labels with WHMIS requirements.
- Convene independent boards with representatives of labour, suppliers or employers to hear appeals from claimants or affected parties on decisions, undertakings and orders.

Mission

The Commission's mission is to:

- Ensure a balance between industry's right to protect confidential business information and the right of workers to know about the hazardous materials they deal with in the workplace;
- Provide a trade secret mechanism within WHMIS; and
- Resolve complaints and disputes impartially, fairly and promptly through statutory or alternate means.

Vision

The Commission's vision is to:

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

Cooperative partnerships



HMIRC works collaboratively and cooperatively with a broad range of WHMIS stakeholders:

- federal, provincial and territorial government agencies
- labour organizations and workers
- chemical suppliers and employers

As an independent agency, the Commission is a model of industry, labour and government consultation, consensus and cooperation. The Commission makes a tangible contribution to worker health and safety and is a strategic partner to both the industry and employers. Through its work, the Commission supports the Government of Canada's priority of "healthy Canadians" by ensuring that workers in Canada have complete and

accurate information to take the appropriate actions to minimize the health risks they encounter in their workplace. HMIRC's 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.

Responsibilities

The Commission enables chemical companies to protect their trade secrets and, at the same time, ensures that accurate health and safety information about hazardous chemicals is available to workers in order to reduce workplace-related illness and injury. The Commission's activities are key components of WHMIS, which was created in the late 1980s through a consensus of labour, industry and government. The success of WHMIS depends on cooperation among all these partners. All three groups play an integral part in ensuring that the information workers need to know about hazardous chemical products is available.

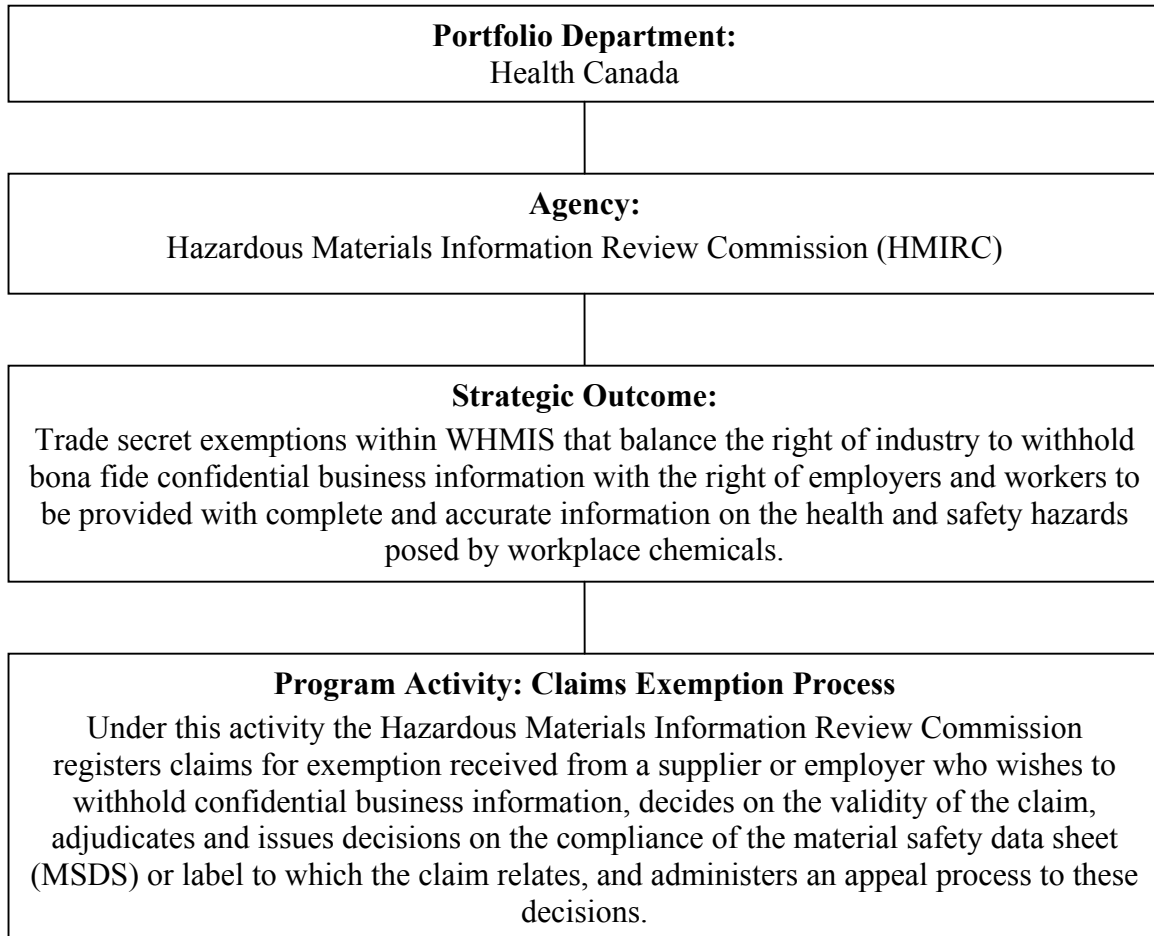
WHMIS requires that manufacturers and suppliers provide employers with information on the hazards of materials produced, sold, or used in Canadian workplaces. The employers, in turn, provide that information to employees through product labels, worker education programs, and MSDSs. A product's MSDS must fully disclose all hazardous ingredients in the product, its toxicological properties, any safety precautions workers need to take when using the product, and treatment required in the case of exposure.

When a supplier introduces a new or improved product and wants to protect the identity of one or more of the ingredients or the concentration, the company applies to HMIRC for an exemption from the requirement to list all hazardous ingredients on the product's MSDS. Once the application is complete, HMIRC registers the claim and the product can be made available in the marketplace. The Commission then issues a decision on the validity of the claim and, to protect worker safety, verifies the compliance of the MSDS and, in some cases, the label with the *Hazardous Products Act* and *Controlled Products Regulations*, and with provincial and territorial occupational health and safety acts. The Commission offers voluntary compliance undertakings which, if not accepted, lead to the issuance of orders for any changes that are necessary to the MSDS or product labels.

The *Hazardous Materials Information Review Act* and associated regulations, as applied by HMIRC, provide a mechanism to protect the rights of business and workers. When required, the Commission convenes independent boards to hear appeals from claimants or affected parties challenging decisions and orders.

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

Strategic Outcome and Program Activity Architecture (PAA)



Summary of Performance

2008-09 Financial Resources (\$ thousands)

Planned Spending	Total Authorities	Actual Spending
3,565	5,275 ¹	4,921

¹ Variance due to transfer of \$1.7 M from Health Canada through Supplementary Estimates A to address its backlog.

2008-09 Human Resources (Full-time equivalents)

Planned	Actual	Difference
35	52	17 ²

² Variance due to additional staffing to address the backlog.

Strategic Outcome: Trade secret exemptions are provided in a way that balances the right of industry to protect their confidential business information with the right of workers to receive accurate information concerning the health and safety hazards posed by chemicals in the workplace.

Performance Indicators	Targets	2008-09 Performance
Number of appeals as a percentage of total claims processed	Zero	One appeal received (representing less than 1 % of total claims processed)

(\$ thousands)

Program Activity	2007-08 Actual Spending	2008-09				Alignment to Government of Canada Outcomes
		Main Estimates	Planned Spending	Total Authorities	Actual Spending	
Claims Exemption Process	3,621	3,565	3,565	5,275	4,921	Healthy Canadians
Total	3,621	3,565	3,565	5,275³	4,921	

³ Variance between Planned Spending and Total Authorities is supplementary funding to address the backlog

Contribution of Priorities to Strategic Outcome

The 2008-2009 Report on Plans and Priorities identified the following priorities for the Hazardous Materials Information Review Commission (HMIRC):

- Priority 1 - Efficient client service delivery
- Priority 2 - Modernized legislation
- Priority 3 - International Harmonization
- Priority 4 - Management Excellence

Strategic Outcome: Trade secret exemptions are provided in a way that balances the right of industry to protect their confidential business information with the right of workers to receive accurate information concerning the health and safety hazards posed by chemicals in the workplace.	
Hazardous Materials Information Review Commission's priorities contributed to the strategic outcome by initiating efficiencies in the claim process and the provision of accurate worker safety; participating in the review and revision of relevant legislation and planning for the implementation of the international chemical safety standard; enhancing corporate services and program management.	
Program Activity: Claims Exemption Process	
Expected Results: <ul style="list-style-type: none"> - Manufacturers and employers receive their registration number within 7 days to allow them to sell their products without delay - Protection of trade secrets for claimants and protection of health and safety of workers - Timely completion of appeals to ensure availability of accurate MSDSs in the workplace 	
Operational priorities: Priorities 1,2,3	2008-09 Performance (Ongoing) Status: Met All
Efficient client service delivery	The 2008-2009 backlog target was achieved. Additional scientific staff was recruited and trained using a shorter, intensive orientation program and more formalized one-on-one coaching. New operational tools were developed and implemented which produced outputs such as Advice Documents faster. An integrated database was developed to provide evaluators with instant access to various sources of information required for the assessment of claims.
Modernized legislation	Amended HMIRC legislation came into force which streamlines the claim process and increases claimant engagement before a decision is rendered. Enhanced operational processes based on new legislation were designed and introduced in a manner providing a smooth transition for claimants. HMIRC participated in review and revision activities regarding the <i>Hazardous Products Act</i> related to Canada's implementation of the GHS.

International harmonization	The Commission collaborated with Health Canada and other federal departments and provincial/territorial governments to plan for GHS implementation. A comparative international framework of trade secret mechanisms was produced.
Management priorities: Priority 4	2008-09 Performance (Ongoing) Status: Met All
Management excellence	A comprehensive business case for funding to support a three-year backlog elimination plan and long term sustainability to prevent the backlog from recurring was approved and implemented. A CFO model for the finance function was developed. A more comprehensive financial delegation instrument was implemented. The Commission received a positive MAF assessment in most areas of management. Strategic partnerships continued with other departments in order to maximize resources and efficiencies. The integration of strategic and business plans with human resources planning was advanced. Completed 100% of employee learning plans.

Risk Analysis

Operational Context

Labour, industry and government agree on the importance of preventing illnesses and injuries from hazardous materials in Canadian workplaces. In order to help achieve this goal the Workplace Hazardous Materials Information System (WHMIS), a combination of laws, regulations and procedures, was created in 1987. WHMIS requires suppliers, including manufacturers, importers and distributors, and employers to provide health and safety information about the chemicals produced or used in Canadian workplaces. As part of the WHMIS initiative, the *Hazardous Material Information Review Act* and its regulations also came into force. This legislation established the Hazardous Materials Information Review Commission (HMIRC), an independent agency with a quasi-judicial role. The Commission provides the mechanism in Canada which balances the benefit to workers in receiving accurate and complete health and safety information with the benefit to chemical suppliers and employers in protecting confidential business information to foster competitiveness.

Risks and Opportunities

Quality service delivery is essential to the Commission's mandate in order to maintain the confidence of all stakeholders and to fulfill its strategic outcome. As previously reported, a backlog of claims to process has put service delivery at risk. Beginning in 2008-09,

however, a three year Backlog Elimination Plan has been in place and funding secured. The Plan has successfully met its target of 500 total claims processed for this year. All elements of the related strategy have been realized – the introduction of several tools to improve the efficiency of the claim process, the development of an integrated data management system, and an active scientific staff recruitment combined with a shorter, more intensive orientation/training program. These enhancements will contribute to worker safety and the competitiveness of industry in Canada.

Since the introduction of amended HMIRC legislation in the second half of 2008-09, indications have been very positive regarding its affect on operations. These amendments took effect in October 2008. The intent of these changes was to streamline the claim and appeal process and to speed up the provision of accurate and complete worker health and safety information. Through the Council of Governors, labour, industry, employers and federal/provincial/territorial government representatives were united in their support for these legislative amendments.

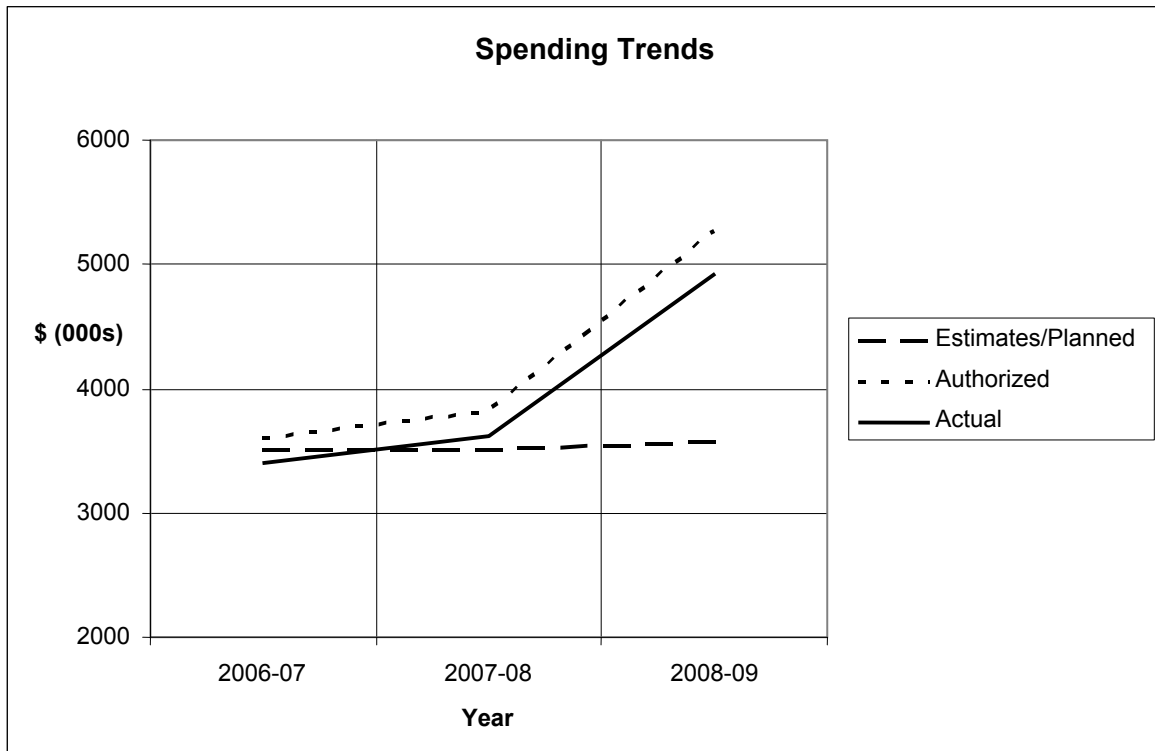
Another piece of legislation, the *Hazardous Products Act* (HPA), is evolving and the impact on WHMIS components, including the Commission, is uncertain. HMIRC is closely monitoring these developments in partnership with Health Canada.

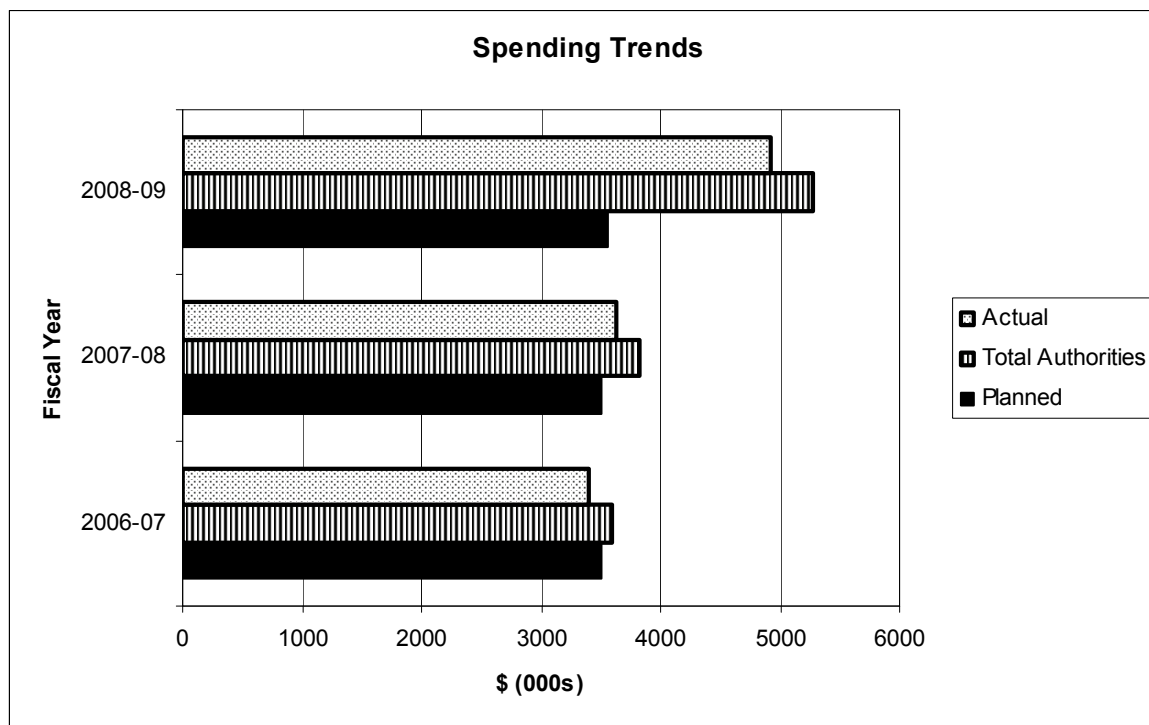
The issues surrounding the implementation of a new international hazard communication standard, the Global Harmonization System (GHS), is still being studied by committees within Health Canada and other departments. HMIRC has representatives on these committees and is closely following the situation. Although Canada is committed to implementation, the date has yet to be determined. The GHS is certain to cause changes in HMIRC operations, notably in the work on the MSDSs, but the amount of change is still unknown.

The strain to meet central agency reporting requirements has been diminished through successful recruitment of support staff and additional permanent funding to Corporate Services. The additional resources should contribute to an overall improvement in the long term in integrated and collaborative planning activities, accountability, and program management. Areas identified in the Commission's MAF 2007-2008 assessment, including internal audit and evaluation, should be addressed before the next triennial round. These specialized functions, however, will continue to pose a challenge for small agencies which are necessarily staffed with generalists because there is not enough work or resources to support fulltime FTEs in these areas.

The Commission continues to experience problems in the recruitment and retention of staff in spite of an aggressive human resources strategy. This is due mainly to the limited opportunities for permanent employment and advancement within a small agency context. Despite this situation, HMIRC will continue to focus on maintaining its workforce capacity.

Expenditure Profile





Voted and Statutory Items
(\$ thousands)

Vote # or Statutory Item (S)	Truncated Vote or Statutory Wording	2006-07 Actual Spending	2007-08 Actual Spending	2008-09 Main Estimates	2008-09 Actual Spending
30	Operating expenditures	3,025	3,231	3,097	4,452
(S)	Contributions to employee benefit plans	376	390	468	469
	Total	3,401	3,621	3,565	4,921 ⁴

⁴The difference between Main Estimates and Actual Spending is supplementary funding to address the backlog.

In 2007-08, HMIRC developed a plan to eliminate its backlog of claims for exemption over a three year period (2008-2011) and to prevent it from recurring. However, due to its very small A-Base, which in fiscal year 2007-08 totaled \$3.5 M, the Commission sought supplementary funding for each of the three years, as well as ongoing funding, for 2011-12 and beyond, to implement the plan.

In January 2008, Health Canada (HC) and HMIRC, in consultation with the Treasury Board Secretariat, and with concurrence of the Minister of Health, agreed that Health Canada would transfer \$1.7 M to HMIRC to begin the work required to address the backlog through the 2008-09 Supplementary Estimates A. The Annual Reference Level

Update was identified as the appropriate mechanism for transferring supplementary funding of \$2 M each year for 2009-2010 and 2010-2011, as well as \$850K for 2011-2012 and ongoing.

The Commission's spending trend in 2008-09 illustrated in the graphs and table above reflects this supplementary funding and the resulting increase in spending.

Section II Analysis of program activity by strategic outcome

Strategic Outcome

Trade secret exemptions are provided in a way that balances the right of industry to protect their confidential business information with the right of workers to receive accurate information concerning the health and safety hazards posed by chemicals in the workplace.

Program Activity by Strategic Outcome

Program Activity: Claims Exemption Process					
2008-09 Financial Resources (\$ thousands)			2008-09 Human Resources (FTEs)		
Planned Spending	Total Authorities	Actual Spending	Planned	Actual	Difference
3,565	5,275	4,921	35	52	17

Expected Results ⁵	Performance Indicators ⁵	Targets ⁵	Performance Status	Performance Summary
Claimants are able to sell their products without disclosing confidential business information within an appropriate amount of time	Percentage of claims registered within 7 days	100%	Met all	100% of claims <i>containing all the necessary information</i> (275) were verified and registered within 7 days, in compliance with the HMIRC service standard. ⁶

Expected Results ⁵	Performance Indicators ⁵	Targets ⁵	Performance Status	Performance Summary
Workers are provided with corrected health and safety information within an appropriate amount of time	Percentage of claims for which the elapsed time between the registration of the claim and the issuance of the decision and order in within the target period	90% within 548 days	Not met ⁷	21% ⁷
Disputes are resolved prior to appeal	Percentage of disputes resolved prior to appeal	100%	Almost met	One appeal received (representing less than 1 % of total claims processed). This was the first appeal in 8 years.

⁵ Note, these expected results, performance indicators and targets have been updated to reflect those established in the MRRS in spring 2008, and not those appearing in the RPP 2008-2009.

⁶ Of the 347 total new and refiled claims processed in 2008-09, 72 (18%) were verified and registered in a period of more than 7 days because they required additional information.

⁷ It should be noted that the current year's result of 21% included a large proportion of backlog claims which extended beyond the 548 day target.

Benefits for Canadians

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 and territorial governments. An essential part of any occupational health and safety program is ensuring that those employed in workplaces requiring the use of hazardous materials have the information they need to use those materials in a safe manner to minimize any risk of injury and any threat to their health, either in the short term or in the long term. This is particularly applicable to the Commission's mandate, which provides the WHMIS trade secret exemption mechanism on behalf of the federal government and also on behalf of the provinces and territories. The Commission's work continues to support improved occupational health and safety for Canadian workers, a key element to achieving a healthy Canadian population.

The Commission also continues to provide a mechanism for protecting the trade secrets of those companies which manufacture, supply and/or use hazardous materials. This part of the Commission's work supports the Government of Canada's strategic outcome of a fair and secure marketplace, which is directed at ensuring that the marketplace continues to foster competitive conditions to attract investment, encourage innovation, and protect the public interest. The Commission's mandate protects *bona fide* trade secrets and allows the marketplace to function competitively while at the same time, the Commission protects the public interest by ensuring that workers required to use hazardous materials have the information they need to use those materials safely.

Performance Analysis

The claim exemption process, the Commission's program activity, has shown a clear improvement over the past year. Claims were processed more efficiently and the backlog of claims was systematically reduced (See Table 1, 2 and Figure 1). This can be attributed to the successful implementation of several initiatives, including revised HMIRC legislation to streamline operations, additional financial resources to hire more scientific staff, a shorter intensive training program for these recruits, and new reference tools. The MSDS review checklist introduced at the start of the claim application process is one example of new procedures intended to increase efficiency and expediency. The importance of this activity is evident in the first performance indicator selected for this program activity, the goals of which are dependent to a large degree on claim applications being completed correctly. The Commission can build on this success by keeping stakeholders informed and engaged. HMIRC will need to continue to evaluate its information sources and communication formats for clarity and usefulness, as well as soliciting client feedback on a regular basis.

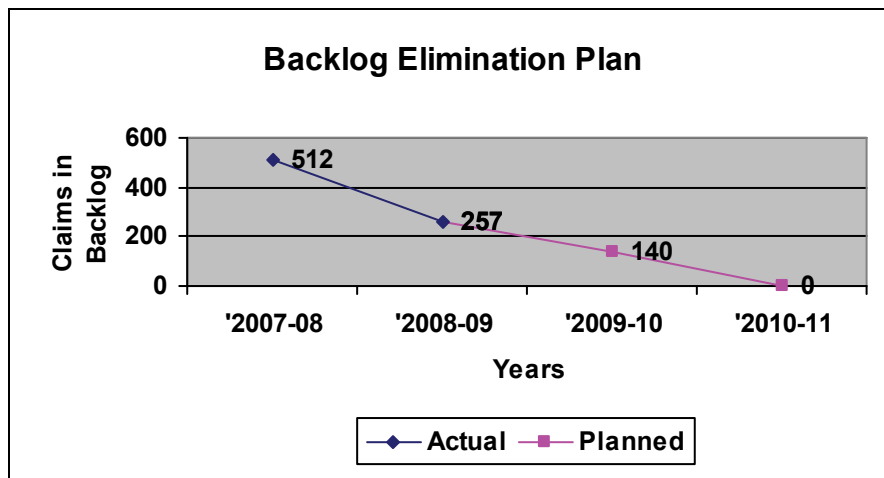
Table 1

Claim Processing 2008-09	
Backlog – March 31, 2008	512
Claims already in process	196
New Claims Registered	223
Refiled Claims	124
Claims Withdrawn	(68)
Claims Completed	(504)
Claims in Process at year end	(226)
Backlog – March 31, 2009	257

Table 2

Backlog Elimination – Year 1 of 3	
Backlog of Claims at March 31, 2008	512
Backlog of Claims at March 31, 2009	257
Backlog Reduction (%)	255 (49.8%)

Figure 1



Following established practice at the Commission, claims have been processed on a priority basis according to the degree of hazard present. This supports the goal to deliver important, necessary health and safety information to Canadian workers as fast as possible while protecting the chemical industry's confidential business information. In 2008-09, high-priority claims represented 50% of total claims processed. A review of identified MSDS violations indicates the type and percentage of hazardous elements which were identified and subsequently corrected in order to reach the workplace without delay (See Table 3). An MSDS which has been corrected by Commission staff to accurately reflect hazardous material information can have significant correlation and application to other MSDSs across WHMIS.

Table 3 - Number and Percentage of MSDS Violations corrected in 2008-2009

Violations Category	Number of Violations in 2008-2009	Percentage
Toxicological Properties	825	28.8
Hazardous Ingredients	571	20.0
First Aid Measures	339	11.8
Preparation Information	240	8.4
Physical Data	128	4.5
Hazard Classification	91	3.2
Fire or Explosion Hazard	112	3.9
Headings/Format, etc.	302	10.6
Reactivity Data	183	6.4
Preventive Measures	37	1.3
Product Information	33	1.2
Total	2861	100
Number of claims	504	
Average number of violations per claim	5.7	

The Commission is committed to shortening the time it takes to correct and improve health and safety information following registration. The goal is to issue a decision or order for at least 90% of claims within 548 days (1.5 years) after registration; however this target will not be reached until after the elimination of the backlog. It should be noted that the current year's result of 21% included a large proportion of backlog claims which extended beyond the 548 day target. Various strategies have been in place, however, beginning in 2008-09, to achieve this target in the next two years.

Lessons Learned

In the course of Commission's work in the last year, the importance of keeping claimants informed and prepared for changes has been obvious. Not only was it necessary to communicate the amendments to the *Hazardous Materials Information Review Act* and Regulations, but also to explain the significant procedural improvements this entailed.

The effective use and regular review of the communication tools available to HMIRC will enhance the claim exemption process. A case in point is the electronic application form which, following an initial launch in 2008-09, is now being revised using a new platform and based on feedback from staff and clients. It is necessary to be responsive and resourceful in promoting and facilitating the Commission's work.

The hiring process, in both corporate and operational areas, needs to be carefully considered and revised to make sure HMIRC maintains the complement of staff it needs. Too frequently in the past year highly-qualified candidates have been hired for term positions to address the claims backlog but have subsequently left for permanent positions elsewhere in the government. This means more hours spent on the training and development of staff than can easily be accommodated by a small agency. This situation will necessarily have an impact on the claims process in the long run. A human resources strategy will be developed that takes into account the specific nature of the restraints as well as the appeal of the Commission and makes it a workplace of choice.

Section III: Supplementary Information

Financial Highlights

(\$ thousands)

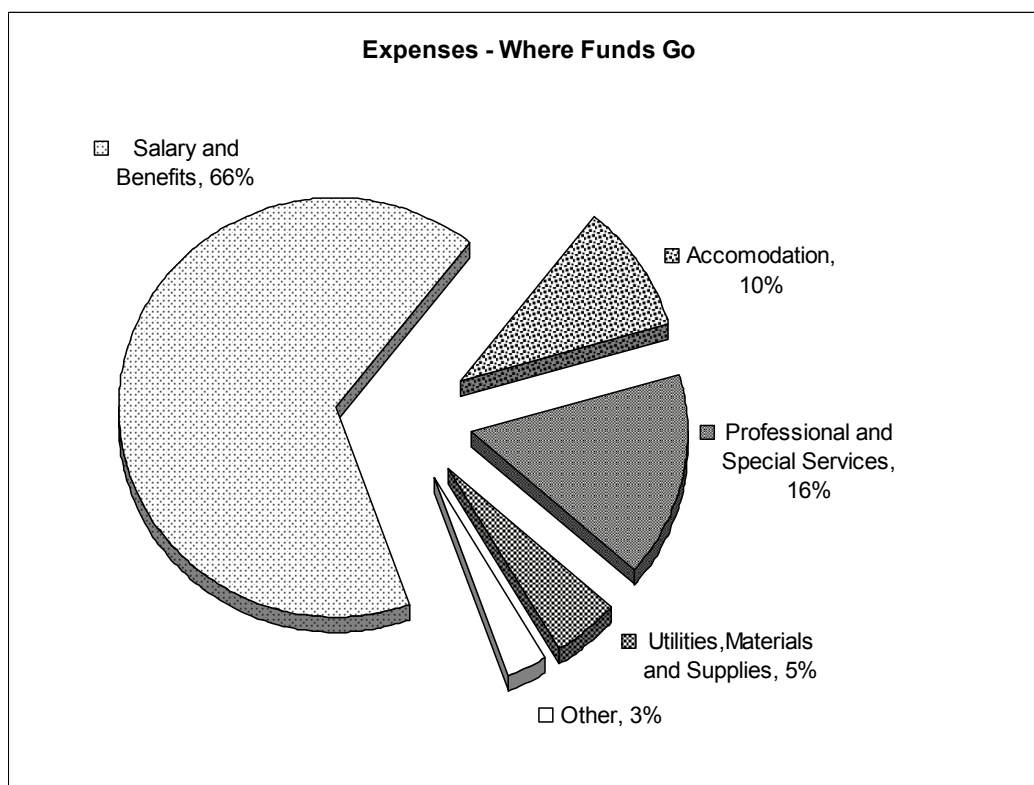
Condensed Statement of Financial Position	% Change	2009	2008
At End of Year (March 31, 2009)			
ASSETS			
Total Assets	-65%	40,638	117,160
TOTAL	-65%	40,638	117,160 ¹
LIABILITIES			
Total Liabilities	20%	1,501,958	1,250,872
EQUITY			
Total Equity	-29%	(1,461,320)	(1,133,721)
TOTAL	-65%	40,638	117,160

(\$ thousands)

Condensed Statement of Financial Position	% Change	2009	2008
At End of Year (March 31, 2009)			
EXPENSES			
Total Expenses	35%	5,826,696	4,328,424
REVENUES			
Total Revenues	15%	578,393	502,040
NET COST OF OPERATIONS	37%	5,248,303	3,826,384

¹ Assets are comprised mainly of accounts receivable for accrued salary recoveries for staff on loan to other departments.

Financial Highlights Chart



Salaries and benefits represent the largest proportion of the Commission's expenses. This expense was lower than expected in 2008-09 due to the difficulty of recruitment and retention of staff. Contracted professional and special services were required to fulfil necessary tasks.

Financial Statements

<http://www.hmir-c-crmd.gc.ca/publications/dpr-rmr/fs-ef-0809-eng.shtml>

List of Supplementary Information Tables

All electronic supplementary information tables found in the 2008-09 Departmental Performance Report can be found on the Treasury Board of Canada Secretariat's website at: <http://www.tbs-sct.gc.ca/dpr-rmr/2008-2009/index-eng.asp>.

Table 1: Sources of Respendable and Non-Respendable Revenue

Table 2: User Fees/External Fees

Other Items of Interest

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