

# WORKPLACE HEALTH, SAFETY AND COMPENSATION REVIEW DIVISION



## THREE YEAR ACTIVITY PLAN 2011-2014



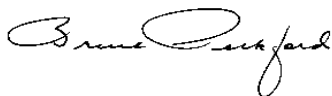
## MESSAGE FROM THE CHIEF REVIEW COMMISSIONER

Pursuant to the *Transparency and Accountability Act*, I am pleased to present the 2011-2014 Activity Plan for the Workplace Health, Safety and Compensation Review Division (WHSCRD). The WHSCRD and its Chief Review Commissioner are accountable for the preparation of this plan and the achievement of its objectives.

As a Category 3 entity, this performance-based Activity Plan is in keeping with the mandate provided under the *Workplace Health, Safety and Compensation Act* and the strategic directions set out by the Minister of Human Resources, Labour and Employment. The WHSCRD is an independent, quasi-judicial body, responsible for reviewing final decisions of the Workplace Health, Safety and Compensation Commission (WHSCC). It reports to Government through the Minister of Human Resources, Labour and Employment. The WHSCRD contributes to the strategic directions identified by the Minister, through its vision of providing exceptional client service throughout the workers' compensation review process.

The WHSCRD's 2008-2011 Mission Statement highlighted the requirement for a client service framework to assist clients in their participation within the review process. The WHSCRD's focus for the upcoming planning cycles will be on the implementation of service standards to enhance the decision-making process and to provide the highest level of services to its clients.

I look forward to working with Review Commissioners and staff on this Plan and encourage all interested parties to provide continuous feedback as we move forward with the implementation of the 2011-2014 Activity Plan.



**E. Bruce Peckford**  
Chief Review Commissioner, Acting

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## 1.0 OVERVIEW

The WHSCRD was established in 1994 by a legislative amendment to the *Workplace Health, Safety and Compensation Act* (the *Act*) and is the final level of review within the workers' compensation system in the Province. The WHSCRD is an independent, quasi-judicial body, consisting of a Panel of Review Commissioners which includes a Chief Review Commissioner. The WHSCRD is responsible for reviewing decisions of the WHSCC to ensure that those decisions were made in accordance with the *Act*, *Regulations* and the policies as approved by the WHSCC Board of Directors. The following are examples of the types of issues that may be reviewed by the WHSCRD:

- entitlement to wage loss benefits;
- provision of medical aid;
- the assignment of an employer to a particular group or industry rating;
- a worker's estimated earning capacity;
- an employer's assessment rating;
- the obligations of an employer and a worker in relation to the return to work and rehabilitation provisions of the *Act*.

The WHSCRD is independent of the WHSCC. Its offices are located in Mount Pearl, NL where nine staff coordinate the caseload work for the Chief Review Commissioner and Review Commissioners.

The WHSCRD has an annual caseload of approximately 450 cases and hearings are conducted by Review Commissioners in various centres throughout the Province; St. John's, Gander, Grand Falls-Windsor, Corner Brook, Labrador City and Happy Valley-Goose Bay. Upon completion of the hearing process, a Review Commissioner will provide a written decision in relation to the application and the decision of the WHSCC under review. Decisions of the WHSCRD are final and conclusive and may only be reviewed by the courts under limited and specific grounds.

### **Financial Information**

Funding for the operations of the WHSCRD is provided by the *Injury Fund* pursuant to s.25 of the *Act*. The WHSCRD's budgetary allocations, however, are contained within the overall budget for the Department of Human Resources, Labour and Employment. As per the *Estimates of the Program Expenditure and Revenue of the Consolidated Revenue Fund 2011-12*, the annual budget for the WHSCRD in 2011-12 is \$1,089,200. This funding covers such areas as salaries, transportation and communication, professional services, accommodations, etc.

## 2.0 MANDATE

The mandate of the WHSCRD is to review decisions of the WHSCC to ensure compliance with the *Act* and *Regulations*, as well as with the policies of the WHSCC. The WHSCRD is also mandated to direct appropriate remedies where necessary. Specifically, PART II – APPEALS, Sections 21 to 37 of the *Act* provide the legislative provisions for the WHSCRD and are contained in Appendix B.

## 3.0 LINES OF BUSINESS

The WHSCRD offers the following services to its clients:

- 1. Review of decisions of the WHSCC.** The WHSCRD processes review applications made by injured workers, their dependents and employers in the Province, as well as coordinates a review process that includes a hearing before a Review Commissioner.
- 2. Information Services.** The WHSCRD provides information services to its clients by providing web-based distribution of its decisions; researching workers' compensation issues and collecting and maintaining statistical information relative to the review process.

## 4.0 VALUES

Values are the guiding principles which describe the culture of an organization. The culture of the WHSCRD is one which promotes exceptional client service in an environment where employees are supported in their professional and individual pursuits.

The following core values will guide our behavior and judgment in our interactions with clients on a daily basis:

***Independence*** Each person will provide services to clients in a manner that is fair, equitable, and free of bias.

***Respect*** Each person will treat clients and each other with courtesy and understanding while recognizing other views and opinions.

***Professionalism*** Each person will demonstrate the highest level of conduct by serving clients in a manner that is timely, competent and objective.

***Quality*** Each person will endeavour to consistently provide services to clients in an ethical and proficient manner.

## 5.0 PRIMARY CLIENTS

The WHSCRD provides services to many people and organizations involved in the workers' compensation review process. The primary clients of the WHSCRD are injured workers, their dependents and employers. Our clients also include their representatives such as union officials, consultants, lawyers and MHA's.

## 6.0 VISION

The Vision of the WHSCRD is an environment where workers and employers participate in an independent, timely and fair review process anchored in a culture of exceptional client service.

## 7.0 MISSION

The Mission Statement identifies the priority area of focus of the WHSCRD for two planning cycles (2011-2014 and 2014-2017). It follows the context of the strategic directions of the Minister of Human Resources, Labour and Employment, by focusing its activities on providing the highest level of service possible to workers and employers of the Province, while maintaining a fair and impartial review process. This Mission Statement supports the Minister's strategic direction of service excellence through timely access to programs and services delivered by skilled and knowledgeable individuals.

In the 2008-2011 Activity Plan, the WHSCRD implemented a client service framework to provide workers and employers with effective tools to participate in the review process. In keeping with its planning objectives to provide an optimum framework for review participants, the WHSCRD will center its efforts internally in the next two planning cycles by examining its administrative supports to develop and implement service standards responsive to clients' needs.

The following Mission Statement identifies the measures and indicators that will assist the WHSCRD and others to monitor progress and evaluate success:

**Mission Statement: By 2017, the WHSCRD will have expanded its client service framework through the creation and implementation of service standards.**

**Measure: Client service framework is expanded.**

**Indicators:**

- **Service standards needs are identified.**
- **Quality decision-making process initiated.**
- **Service standards are implemented.**

## 8.0 OBJECTIVES

Timely access to programs delivered by skilled and knowledgeable staff has been identified as a key priority in consideration of the Minister's strategic direction. In this regard, the WHSCRD has identified the following objectives to be responsive to the needs of clients while meeting its legislative requirements.

The WHSCRD is continuously working towards improving its processes, enhancing productivity, and providing clients with timely and accurate information and decisions. Through the implementation of an organizational development and training strategy, the WHSCRD's employees will become engaged in developing the necessary competencies to deliver exceptional client services while providing support to Review Commissioners. Ongoing professional development for Review Commissioners in the areas of decision-writing and decision-making, as well as the development of a *Decision Standards Guide*, will ensure that quality decisions are provided to WHSCRD clients. By focusing on these objectives, the WHSCRD will support the Minister's strategic direction in the area of service excellence.

The following objectives reflect the results expected in the three-year timeframe that are within the mandate and financial resources of the WHSCRD. Measures and indicators are provided for each year's objective to assist in monitoring and evaluating progress.

### **Objective 1: Organizational Development and Training**

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Organizational development and training is a fundamental component in fulfilling the WHSCRD's Mission with respect to service standards. The decision-making process is regarded as a high priority and the role of Review Commissioners is seen as paramount within the review process. Consequently, initiatives that further support Review Commissioners are viewed as building blocks in the creation of an adequate support system. In light of this recognition, the WHSCRD will build an organizational development and training strategy for its employees. The strategy will further develop the competencies of WHSCRD's employees equipping them with the skill sets required to support Review Commissioners, while continuing to deliver exceptional client services.

**Objective 1:** By March 31, 2012, the WHSCRD will have initiated an organizational development and training strategy, ensuring the necessary skill sets and competencies exist to effectively support the decision-making process.

**Measure:** Organizational Development and Training Strategy initiated.



**Indicators:**

- Areas are identified where the decision-making process may be enhanced through professional development opportunities for employees.
- Employees' skill sets are properly matched with operational requirements.
- Centre for Learning and Development is consulted.
- Employees are engaged by developing individual learning plans.
- Organizational development and training strategy is developed.

**Objective 2: Review Commissioner Professional Development**

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The WHSCRD processes workers' compensation cases involving complex issues and often voluminous evidence. These cases require in-depth analysis on the part of Review Commissioners to produce written decisions that are well reasoned, succinct and persuasive. As a result of the multifaceted nature of cases coming before Review Commissioners, there is a need for adequate supports to ensure clarity and consistency of written decisions. Review Commissioners' reasons are required to be clearly presented and must demonstrate the application of an appropriate analysis and decision-making approach. Newly appointed Review Commissioners also require a program of formal orientation and training in WHSCC legislation, administrative law and decision-writing, to prepare for their role as Review Commissioners. There is a need, therefore, to provide ongoing support and professional development for Review Commissioners in the areas of decision-making and decision-writing, in order to provide quality decisions for WHSCRD clients.

**Objective 2:** By March 31, 2013, the WHSCRD will have developed a professional development program for Review Commissioners to enhance its decision-making process.

**Measure:** Professional development program for Review Commissioners is developed.

**Indicators:**

- Professional development opportunities for Review Commissioners are identified.
- A training model for Review Commissioners is designed.
- A formal orientation program is developed for newly appointed Review Commissioners.

### Objective 3: Quality Assurance

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The WHSCRD is committed to delivering exceptional services to its clients, ensuring they participate in an impartial and efficient review process. Within the review process clients' positions must be fairly considered. It is important, therefore, that clients receive a well-reasoned decision which clearly explains the consideration and outcome of their review. Decisions should correctly identify the appropriate issues under review, demonstrate a proper weighing and analysis of the evidence, reflect consideration of applicable legislation and policies, and provide well-written reasons explaining the basis on which the decision was made. As a result, there exists an opportunity for the WHSCRD to develop quality standards surrounding the decision-making process to provide clients with decisions that are consistent and clear.

**Objective 3:** By March 31, 2014, the WHSCRD will have developed a *Decision Standards Guide* to improve the quality of decisions.

**Measure:** *Decision Standards Guide* is developed.

**Indicators:**

- Quality standards for the decision-making process are identified.
- A writing style template is developed.
- The *Decision Standards Guide* is drafted.

## 9.0 APPENDIX A: STRATEGIC DIRECTIONS

Strategic directions are the articulation of the desired physical, social or economic outcomes and normally require action by more than one government entity. The *Transparency and Accountability Act* requires departments and public bodies to take into account these strategic directions in the preparation of their performance-based plans.

The strategic directions relevant to the entities reporting to the Minister responsible for Human Resources Labour and Employment were considered and those relevant to the WHSCRD are identified below. Each strategic direction is comprised of a number of components, or focus areas. Those focus areas that are relevant to the WHSCRD will be addressed through various planning processes, which are indicated in the table provided.

**Title:** Service Excellence

**Strategic Direction:** Timely access to responsive programs and services delivered by skilled and knowledgeable staff. This outcome supports the policy direction of Government by:

Strategic Direction: Service Excellence	This Direction is addressed:	
	By other entities reporting to the Minister	In this Entity's Activity plan
Service realignment and Coordination	√	
Enabling and enhancing service delivery through technology	√	
Awareness and Access	√	
Quality Assurance		√
Professional Development and life long learning		√
Organizational Development and Training		√
Employee engagement		√

## 10.0 APPENDIX B: LEGISLATION

The following is reprinted from:

### RSNL1990 CHAPTER W-11

### WORKPLACE HEALTH, SAFETY AND COMPENSATION ACT

#### PART II APPEALS

#### Definitions

##### 20.7 In this Part

- (a) "policy" means policy established by the board of directors under subsection 5(1); and
- (b) "review commissioner" means a review commissioner appointed under section 22 and may include the chief review commissioner.

2001 c10 s7

#### Review division

21. There shall be established a review division responsible for the review of decisions of the commission in accordance with this Part.

1994 c12 s4

#### Workers' compensation review commissioner

22. (1) The Lieutenant-Governor in Council shall on the recommendation of the minister appoint to the review division a panel of persons to act as review commissioners.

(2) A panel appointed under subsection (1) shall not exceed 7 persons, 1 of whom shall be appointed by the Lieutenant-Governor in Council as chief review commissioner.

(3) The terms of office, remuneration, benefits and expenses of the review commissioners shall be determined by the Lieutenant-Governor in Council.

(4) A review commissioner shall hold office during good behaviour for a term that the Lieutenant-Governor in Council may establish.

1994 c12 s4

### **Chief review commissioner**

**23.** The chief review commissioner of the panel appointed under section 22 shall review a matter brought before him or her under subsection 28(1) or shall refer that matter to another review commissioner of the panel.

1994 c12 s4

### **Officers and employees**

**24.** (1) There may be employed, in the manner provided by law, those officers, employees and advisors of the review division that are necessary to enable the review division to carry out its functions and the Lieutenant-Governor in Council may fix their terms of service.

(2) Notwithstanding subsection (1), those officers and employees employed with the appeal tribunal existing under Part II on June 30, 1994 who are considered by the minister to be necessary for the operations of the review division existing under Part II on July 1, 1994 shall be considered to have been employed in accordance with subsection (1).

(3) The Lieutenant-Governor in Council may determine the remuneration for services and allowances for travelling and other expenses that shall be paid to the officers, employees and advisors employed under subsection (1).

1994 c12 s4

### **Action barred**

**24.1** An action or other proceeding does not lie against the chief review commissioner, the other review commissioners and the officers, employees and advisors of the review division for anything done or omitted to be done in good faith in the course of exercising a power or carrying out a duty under this Act.

2006 c19 s2

### **Expenses**

**25.** Expenses incurred in the administration of the review division, including those under section 24, shall be paid out of the Consolidated Revenue Fund and that fund shall be reimbursed by money from the injury fund.

1994 c12 s4

## **Review by review commissioner**

**26.** (1) Upon receiving an application under subsection 28(1) a review commissioner may review a decision of the commission to determine if the commission, in making that decision, acted in accordance with this Act, the regulations and policy established by the commission under subsection 5(1) as they apply to

(a) compensation benefits;

(a.1) rehabilitation and return to work services and benefits;

(b) an employer's assessment;

(c) the assignment of an employer to a particular class or group;

(d) an employer's merit or demerit rating; and

(e) the obligations of an employer and a worker under Part VI.

(2) An order or decision of a review commissioner is final and conclusive and is not open to question or review in a court of law and proceedings by or before a review commissioner shall not be restrained by injunction, prohibition or other process or proceedings in a court of law or be removable by *certiorari* or otherwise in a court of law.

1994 c12 s4; 2001 c10 s8

## **Review commissioner bound by policy**

**26.1** A review commissioner shall be bound by this Act, the regulations and policy.

2001 c10 s9

## **Rules**

**27.** (1) The review division may, subject to the approval of the Lieutenant-Governor in Council, in relation to the review of decisions as referred to in section 26, prescribe rules of procedure and evidence and may order the type and nature of information to be provided by a person to a review commissioner before or during a review and that person shall provide the information to the review commissioner.

(2) For the purpose of the review of a decision as referred to in section 26, a review commissioner has the powers that are conferred on a commissioner under the *Public Inquiries Act*, and a review commissioner is considered to be an "investigating body" for the purpose of the *Public Investigations Evidence Act*, and there shall be full right to examine and cross-examine witnesses called to bring forward evidence in response and reply, and section 3 of the *Public Inquiries Act* shall apply to those witnesses.

## **Application to review commissioner**

**28.** (1) A worker, dependent or an employer, either personally or through an agent acting on their behalf with written consent, may apply to the chief review commissioner for the review of a decision as referred to in subsection 26(1), within 30 days of receiving the written decision of the commission.

(1.1) The chief review commissioner may accept an application after the time set in subsection (1) upon review of a written application for an extension of time by the person requesting the review, but no application for review of a decision shall be accepted beyond one year from the date the commission's decision was communicated to the person making the application.

(1.2) An application under subsection (1) shall be in writing and shall identify how the decision is contrary to this Act, regulations and policy.

(1.3) Where an application does not comply with subsection (1.2) a review commissioner shall refuse to review a matter until the applicant complies with subsection (1.2).

(1.4) Where an applicant does not comply with subsection (1.2) within 30 days of receiving notification from the review division of the non-compliance, the decision of the commission shall not be reviewed under this Part.

(2) A review commissioner shall not review a decision under subsection (1) except in accordance with subsection 26(1).

(3) The commission shall have standing and may be heard and make representations itself or through an agent acting on its behalf on a matter being reviewed by a review commissioner and at further proceedings arising out of that matter.

(4) A review commissioner to which a matter has been referred for review shall

- (a) notify the person seeking the review and the commission of the time and place set for the review; and
- (b) review the decision of the commission and determine whether it was in accordance with this Act, the regulations and policy.

(4.1) Where a review commissioner determines that the decision of the commission was in accordance with this Act, the regulations and policy, he or she shall confirm the decision of the commission.

(4.2) Where a review commissioner determines that the decision of the commission was not in accordance with this Act, the regulations and policy, he or she shall identify how the decision of the commission was contrary to this Act, regulations and policy, specify the contravened provision, set aside the decision of the commission and

- (a) make a decision which is in accordance with this Act, regulations and policy; or
- (b) where it is appropriate to have a new decision from the commission, refer the matter to the commission for a new decision with or without direction on an appropriate remedy.

(4.3) Where a matter is referred to the commission under subsection (4.2), the review commissioner shall not review a new decision except where a new application is made under subsection (1).

(5) A person who applies for a review under subsection (1) may appear before the review commissioner on his or her own behalf or be represented by counsel or an agent and may accompany and appear with the counsel or agent before the review commissioner.

(6) Where a person other than a person applying for a review under subsection (1), has an interest in a matter before the review commissioner, that person has the right to appear before the review commissioner either personally or to be represented by counsel or an agent and shall, after indicating in writing to the review commissioner an intention to appear, be notified of the time and place of the review of the matter.

(7) Where the person applying to the chief review commissioner under subsection (1), or a person referred to in subsection (6), fails to attend, in person or by counsel or agent, unless that failure to attend is due to circumstances beyond the person's control and that person has, by written notice, advised the review commissioner that the person wishes to attend and sets out, in the notice, the circumstances that prevent the attendance, the review commissioner may proceed to examine witnesses and to review and adjudicate on the matter being reviewed.

(8) A review commissioner shall communicate his or her decision, with reasons, to the person seeking the review, the commission and a person who appeared or made a submission on the review, within 60 days of the date of the application for review.

1994 c12 s4; 1998 c19 s8; 2001 c10 s10

### **Application for reconsideration**

**28.1** (1) A worker, dependent, employer or the commission may apply, in writing, to the chief review commissioner for a reconsideration of a decision of a review commissioner.

(2) An application under subsection (1) shall be made within 30 days of receipt of the decision that is the subject of the reconsideration being given.

(3) The chief review commissioner shall review the application and, where he or she determines that reconsideration is appropriate, shall reconsider the decision, or order that the decision be reconsidered by another review commissioner who did not make the decision.



(3.1) Where the decision to be reconsidered was made by the chief review commissioner, he or she shall refer the application to a different review commissioner who may in his or her discretion order that the decision be reconsidered, and conduct the reconsideration where one is ordered.

(4) A review commissioner shall communicate his or her decision, with reasons, on the application for reconsideration to the person seeking the reconsideration, the commission and a person who appeared or made a submission on the reconsideration

(a) within 45 days of the date of the application for reconsideration, where an oral hearing is not held; and

(b) within 60 days of the date of the application for reconsideration, where an oral hearing is held.

(4.1) Subsections 28(4.1) to (4.3) shall apply to the reconsideration process, with the necessary changes.

(5) The chief review commissioner shall notify all the parties to which the request for a reconsideration relates of the request within 10 days of receiving it.

1998 c19 s9; 2001 c10 s11

### **Conflict of interest**

**29.** A review commissioner may not review a matter under this Part if he or she has a direct personal interest in that matter or if the chief review commissioner determines there is a conflict of interest.

1994 c12 s4

### **Report under *Transparency and Accountability Act***

**30.** An annual report, as required by and in accordance with the requirements of the *Transparency and Accountability Act*, shall be submitted by the review division in accordance with that Act.

2009 c7 s3

### **Rep. by 1994 c12 s4**

**31.** [Rep. by 1994 c12 s4]

1994 c12 s4

### **Rep. by 1994 c12 s4**

**32.** [Rep. by 1994 c12 s4]

1994 c12 s4

**Rep. by 1994 c12 s4**

33. [Rep. by 1994 c12 s4]

1994 c12 s4

**Rep. by 1994 c12 s4**

34. [Rep. by 1994 c12 s4]

1994 c12 s4

**Stated case**

35. The commission may, of its own motion, or upon the application of a party and upon security being given as the commission directs, state a case in writing for the opinion of the Trial Division upon a question which in the opinion of the commission is a question as to the commission's jurisdiction or a question of law, and a similar reference may also be made at the request of the Lieutenant-Governor in Council, and the Trial Division shall hear and determine the questions arising in a case so stated and remit the matter to the commission with the opinion of the court on the matter.

1983 c48 s23

**Rules for appeal**

36. (1) The *Judicature Act* and the Rules of the Supreme Court, where they can be applied and are consistent with this Act, shall apply to a proceeding with respect to an appeal or stated case under section 35.

(2) A notice or other document required to be served on the commission may be served on the chairperson or, in his or her absence, the chief executive officer of the commission.

1987 c41 s24; 1994 c12 s4

**Notification of appeals, etc.**

37. The Trial Division has power, with respect to stated cases referred to in section 35, to direct that a person interested, or, where there is a class of persons interested, 1 or more persons as representatives of that class, shall be notified of the hearing and those persons are entitled to be heard.

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