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**WORKPLACE HEALTH, SAFETY
AND COMPENSATION
REVIEW DIVISION**

**Annual Activity Report
2012-2013**

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MESSAGE FROM THE CHIEF REVIEW COMMISSIONER

As the newly appointed Chief Review Commissioner of the WHSCRD, I am honoured by the opportunity to serve as leader of a team of dedicated and professional staff and Review Commissioners.

Throughout this reporting period, the WHSCRD has experienced many challenges in terms of managing its caseload in a timely manner. As a result of organizational changes introduced in 2012, the WHSCRD features an expanded, highly trained and competent Panel of Commissioners, including a full time Chief Review Commissioner. Thanks to these and other recent initiatives, the WHSCRD believes it is well positioned to move forward and efficiently manage its caseload. Maintaining service at a responsive level, while ensuring optimum delivery of appeal services, is viewed by the WHSCRD as critical for injured workers and employers.

While actively managing a total caseload of 628 cases, the WHSCRD also coordinated the rescheduling of approximately 100 hearings which were either postponed or eventually withdrawn outright. This speaks to the need for improved collaboration amongst the hearing participants. The WHSCRD's objective of providing optimum appeal services requires the cooperation and collaboration of all workplace partners, particularly in the areas of intake management and scheduling applications. Cooperation in addressing preliminary issues in a timely manner, and availability to attend hearings is regarded by the WHSCRD as indispensable if timelines are to be reduced and service levels enhanced. Staff, Commissioners, and I look forward to working with the workplace parties to foster more effective working relationships in these areas.

I want to acknowledge and thank Bruce Peckford for his service as Chief Review Commissioner for the past three years. His dedication to the review process is undeniable and I look forward to his ongoing contribution in his continued role as a Review Commissioner.

I also extend my gratitude to the continued commitment of all Review Commissioners and staff of the WHSCRD for their ongoing contribution to the delivery of services to injured workers and employers. Particularly, I acknowledge the extraordinary, day to day efforts of staff as they assist injured workers and employers through the review process. I regularly receive feedback from clients on the professionalism of staff, their dedication and their willingness to assist. The WHSCRD staff are an invaluable asset to fulfilling the mandate of the WHSCRD and their contribution is greatly acknowledged.

As Commissioners and staff, we look forward to continuing to provide a high standard of client service and look forward to a productive year. We welcome continued cooperation and participation in the review process, and as we continue to fulfill the objective set out in the 2011-14 Activity Plan.



Marlene A. Hickey
Chief Review Commissioner

OVERVIEW

INTRODUCTION

The WHSCRD is the final level of review within the workers' compensation system in Newfoundland and Labrador. The WHSCRD is responsible for the review of decisions of the Workplace Health, Safety and Compensation Commission (the Commission). The WHSCRD may review such issues as:

- ◆ Compensation and medical aid benefits;
- ◆ Rehabilitation and return to work services and benefits;
- ◆ Employers' assessments and industry classifications; and
- ◆ The obligations of an employer and a worker with respect to early and safe return to work and re-employment efforts.

REVIEW COMMISSIONERS

The WHSCRD has a Chief Review Commissioner and a Panel of Review Commissioners. Up to seven Review Commissioners, including the Chief Review Commissioner, may be appointed to the WHSCRD. Review Commissioners conduct hearings in St. John's, Gander, Grand Falls-Windsor, Corner Brook, Happy Valley-Goose Bay and Labrador City.

As of March 31, 2013, the WHSCRD's Panel of Review Commissioners consisted of Marlene Hickey as Chief Review Commissioner, with E. Bruce Peckford, Keith Barry, Lloyd Piercey and Peter Budgell as Review Commissioners.

WHSCRD STAFF

The WHSCRD currently employs twelve staff (92% female and 8% male) in its office located in the Dorset Building, at 6 Mount Carson Avenue in Mount Pearl, NL.

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 Service NL, Government of Newfoundland and Labrador. As per the *Report on the Program Expenditures and Revenues of the Consolidated Revenue Fund for the Year Ended 31 March 2013*, the expenditures for the WHSCRD in 2012-2013 were \$959,842.

OVERVIEW (CONTINUED)

MANDATE

The mandate of the WHSCRD is to review decisions of the Commission to ensure compliance with the *Act* and *Regulations*, as well as with the policies of the Commission. The WHSCRD is also mandated to direct appropriate remedies where necessary.

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.

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:

<i>Independence</i>	Each person will provide services to clients in a manner that is fair, equitable, and free of bias.
<i>Respect</i>	Each person will treat clients and each other with courtesy and understanding while recognizing other views and opinions.
<i>Professionalism</i>	Each person will demonstrate the highest level of conduct by serving clients in a manner that is timely, competent and objective.
<i>Quality</i>	Each person will endeavour to consistently provide services to clients in an ethical and proficient manner.

OVERVIEW (CONTINUED)

LEGISLATION

The *Workplace Health, Safety and Compensation Act*, RSNL1990 CHAPTER W-11, Part II – Appeals, Sections 21 to 37 provide the legislative provisions for the WHSCRD.

LINES OF BUSINESS

The WHSCRD offers the following services to its clients:

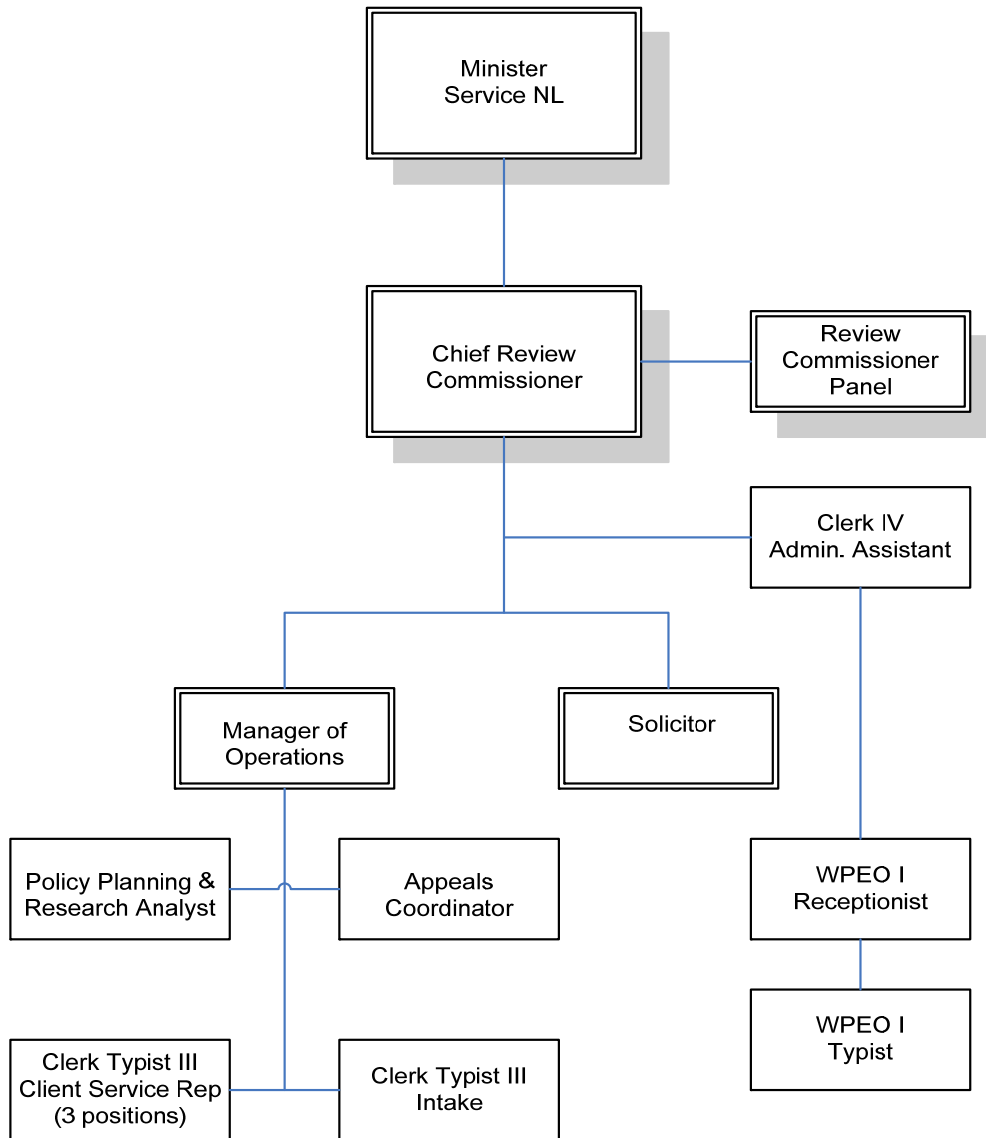
Review of Commission Decisions

- The WHSCRD processes review applications submitted 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 concluding with a final written decision.

Information Services

- The WHSCRD provides information services to its clients through web-based distribution of its decisions; researching workers' compensation issues and collecting and maintaining statistical information relative to the review process.

ORGANIZATIONAL CHART



HIGHLIGHTS AND ACCOMPLISHMENTS

The WHSCRD is committed to a vision of delivering quality services where workers and employers participate in an independent, timely and fair review process anchored in a culture of exceptional client service. Additionally, the 2011-2017 Mission Statement focuses on an expanded client service framework that delivers the highest level of client service possible. In keeping with its Vision and Mission Statement, the WHSCRD has completed the following initiatives in 2012-2013:

Organizational Structure

As a part of its commitment towards quality services, the WHSCRD conducted a review of its organization and processes to identify areas requiring additional dedicated staff to provide enhanced client service and support for Review Commissioners. Following this review, a proposal for organizational re-structuring was approved to create a new structure and new positions:

- In 2012-2013, a full-time Chief Review Commissioner position was established. In addition to functioning as a Review Commissioner, the position of full-time Chief also has responsibility for the strategic direction, leadership, and the overall accountability of the WHSCRD.
- Two new positions of Manager and Appeals Officer were also filled in 2012-2013. The Manager oversees the administrative functions of the WHSCRD to ensure collaboration and communication with workers and employers on matters arising from their application and in preparation for the hearing. The Appeals Officer provides support to workers and employers as they navigate through the review process. Both positions also provide pre-hearing and post-hearing support to Review Commissioners.

Application and Intake

- As an integral component towards fulfilling WHSCRD's Mission Statement of providing an expanded client service framework, the WHSCRD conducted an analysis of its application and intake procedures. The objective of the analysis was to identify areas where Request for Review applications could be processed more efficiently. As a result, the WHSCRD implemented new internal intake methods to ensure Request for Review applications are validated, accepted and ready to proceed as soon as hearing dates become available. These improved methods for validating Request for Review applications enable the WHSCRD to identify and address any jurisdictional or issue concerns at an earlier stage in the case management process to avoid unnecessary processing delays for clients. The WHSCRD began the new intake process in January 2013 and will refine its procedures on an ongoing basis.

HIGHLIGHTS AND ACCOMPLISHMENTS (CONTINUED)

Professional Development

- The WHSCRD recognizes that as single adjudicators it is necessary for Review Commissioners to come together as a group to participate in ongoing professional development. In 2012-2013, Review Commissioners participated in a two-day training program which included discussion on administrative law, Commission programs and matters relevant to their adjudicative function.
- Policy staff of the WHSCRD participated in Government's PolicyNL initiative in early 2013. This event consisted of a series of workshops where Government's policy professionals discussed the common challenges faced within policy development. The means and tools to enable policy professionals to address those challenges were also explored within the workshops.
- The WHSCRD encourages its employees to become engaged in developing the necessary competencies to deliver exceptional client services while providing support to Review Commissioners. As part of the ongoing Organizational Development and Training Strategy, employees of the WHSCRD continued to develop their learning plans and participated in professional development opportunities offered by the Center for Learning and Development.

2011 – 2017 MISSION

The Mission Statement identifies the WHSCRD's priority areas of focus for two planning cycles (2011-2014 and 2014-2017) and supports Government's strategic direction of service excellence. The Mission statement focuses on expanding the WHSCRD's client service framework through the implementation of service standards that provide the highest level of service possible to workers and employers of the Province, while maintaining a fair and impartial review process.

In its previous 2008-2011 Activity Plan, the WHSCRD implemented a client service framework to provide workers and employers with the supports and tools to effectively participate in the review process. In keeping with this theme, the WHSCRD will further expand its client service framework to provide enhanced service standards responsive to clients' needs.

The following statement identifies the measures and indicators to assist the WHSCRD and others to monitor progress and evaluate success.

Mission: 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.

2012-2013 OBJECTIVE

The WHSCRD acknowledges that professional development is essential in achieving and maintaining the expected standards of quality decision-making. It is important that Review Commissioners receive sufficient training to develop and maintain their decision-making and decision-writing competence, as they are required to demonstrate an understanding of the critical issues under review within their decisions. Beyond the general training requirements for existing Review Commissioners, adequate training for newly appointed Review Commissioners is also necessary to ensure they have a solid foundation in their new adjudicative role.

A professional development program for both new and senior appointees that promotes a standard of competency for all Review Commissioners is, therefore, essential to provide decisions that are well-reasoned, clear and succinct.

The following measure and related indicators outline the WHSCRD's endeavours for 2012-2013:

Objective: 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 OUTCOMES

Recognizing that Review Commissioners require a comprehensive skill set to effectively perform their adjudicative function, the WHSCRD implemented a professional development program that reflects a diverse collection of professional development opportunities for enhancing Review Commissioners' expertise, including orientation and training for new Review Commissioners. The program consists of:

- a competency-based learning plan process that provides guidance for Review Commissioners as they pursue their professional development opportunities;
- the identification of professional development opportunities for Review Commissioners through outsourced professional development seminars and conferences, as well as through in-house training sessions;
- a training model designed for all Review Commissioners; and
- an orientation program for newly appointed Review Commissioners.

The following table includes the associated indicators to assist both the WHSCRD and the public in monitoring and evaluating its progress and accomplishments for 2012-2013:

INDICATORS	PROGRESS AND ACCOMPLISHMENTS
Professional development opportunities for Review Commissioners are identified.	<ul style="list-style-type: none">• A jurisdictional scan of appeal entities was conducted to identify training methods for other appeal tribunal members. It was determined that while larger entities may have customized in-house training programs, professional development is generally provided through consultant designed courses, attendances at outside conferences and seminars, in conjunction with in-house workshops on specific topics of interest.• Research was conducted on available external training and development opportunities for Review Commissioners. Various options were identified which are offered through groups such as the Society of Ontario Adjudicators and Regulators (SOAR), the Foundation of Administrative Justice (FOAJ), the Canadian Institute for the Administration of Justice (CIAJ), and the Council of Canadian Administrative Tribunals (CCAT). While several of these training programs were originally designed for specific jurisdictions, some programs may be customized to provide training for WHSCRD Review Commissioners.

OBJECTIVE OUTCOMES (CONTINUED)

INDICATORS	PROGRESS AND ACCOMPLISHMENTS
A training model for Review Commissioners is designed	<ul style="list-style-type: none"><li data-bbox="651 363 1427 726">• A review and analysis of the review process was conducted to identify key areas where training and development opportunities would enhance Review Commissioners' knowledge and skill sets. Based on the outcome of the review and analysis, a competency-based learning plan process for Review Commissioners was developed. The learning plan process encourages Review Commissioners to become actively engaged in their training and development and provides guidance as they pursue professional development opportunities.<li data-bbox="651 762 1427 940">• A training model for Review Commissioners has been designed based on the analysis of the adjudicative function of Review Commissioners, the identification of professional development opportunities, and the development of the competency-based learning plan.<li data-bbox="651 976 1427 1297">• The training model consists of two-day workshops provided in-house on semi-annual basis. The model provides training on relevant topics such as the principles of administrative law, workers' compensation statutory framework, the hearing process, decision-making and decision-writing. Also included in the model are professional development and training opportunities provided by external sources that are available to Review Commissioners as they arise.
A formal orientation program is developed for newly appointed Review Commissioners.	<ul style="list-style-type: none"><li data-bbox="651 1339 1427 1841">• An in-depth understanding of the workers' compensation system is necessary for newly appointed Review Commissioners. Drawing on its extensive experience in orientation and training appointees, the WHSCRD has developed a formal orientation program for new Review Commissioners. The program consists of five modules delivered over a 10 day period. These modules thoroughly cover a wide range of topics such as: the role and jurisdiction of a Review Commissioner, the founding principles of the workers' compensation system, the life cycle of a workers' compensation claim including benefits and services to both workers and employers, the principles of administrative law, the hearing process, and the decision-making and decision-writing processes.

2013-2014 OBJECTIVE

As we have been examining the decision-making process, we find it necessary to modify the following overview of the Quality Assurance objective previously stated in the 2011-2014 Activity Plan:

Quality Assurance

The WHSCRD is continuously monitoring the content and structure of its decisions. In light of recent Supreme Court decisions speaking to the duty of administrative tribunals to provide adequate reasons, the WHSCRD has identified certain objectives. These include the necessity to incorporate the correct legal principles into decisions, while ensuring that the language of decisions remains as understandable and accessible as possible. It is also a priority to confirm the specific issues under review and ensure the main arguments of the parties, expressed during the process, are clearly identified and addressed in the decision. A third priority is to clearly establish how the relevant evidence was weighed in accordance with the *Act*, regulations and policies and to plainly identify any errors made by the WHSCC in its decision. A fourth priority is to specifically engage the considerations under Section 28 of the *Act* when determining whether to remit a matter to the WHSCC, or to make a final decision on the matter and to reflect these considerations in the concluding section of the decision.

The overall objective is to render simpler, more concise decisions which involve less restatement and repetition of file material and argument and more targeted analysis of those factors which bear on the actual reasons delivered. This will hopefully produce shorter decisions which are easier to read, but which concentrate more explicitly on the critical issues. The expectation is that this will lead to more informative decisions for the workplace parties, a more transparent and intelligible format for reviewing Courts, and where applicable, clearer and less ambiguous directions to the WHSCC.

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 clear and consistent.

Objective: 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.

OPPORTUNITIES AND CHALLENGES AHEAD

The following will be the areas of focus for the WHSCRD in the upcoming year, in keeping with WHSCRD's mission of an expanded client service framework responsive to clients' needs:

Client Support

- The WHSCRD endeavours to provide injured workers and employers with quality adjudication on a timely basis. Through the newly created positions of Manager and Appeals Officer, the WHSCRD will provide improved support to clients with respect to the proper completion of appeal applications, understanding their file documents and communicating the processes of the WHSCRD. These positions will also assist in providing advice and direction to clients post-decision with respect to appeal options and decision implementation.

Processing of Appeals

- This fiscal year saw an increased emphasis on the efforts of the efficient processing of appeals by the implementation of a new intake process which began in January 2013. Making inroads in reducing the number of unscheduled appeals and the timely processing of cases will continue to remain a focus for the WHSCRD, as it refines intake procedures on an ongoing basis. Additional strategies may also be implemented for the efficient processing of cases already accepted, such as identifying cases which can have a document-only review to expedite the process, and conducting more teleconference hearings to reduce travel time and increase the availability of hearing dates.

Information Services

- The WHSCRD previously drafted a Client Service Manual designed to enhance clients' understanding of the review process and to ensure that its procedures are fair, consistent and transparent. The Client Service Manual was originally drafted in 2011; however, with the recent organizational redesign and changes to the intake process, the WHSCRD is currently reformatting the Manual and anticipates its release in the next fiscal year.
- The WHSCRD will continue to inform and assist claimants and review participants by updating its communication tools to provide information on the review process and the outcome of appeals through its website at: www.gov.nl.ca/whscrd.

OPPORTUNITIES AND CHALLENGES AHEAD (CONTINUED)

Client Tracking System (CTS)

- The Client Tracking System is an in-house software program developed to assist WHSCRD monitor Request for Review applications from intake to final decision, and to also provide statistical information. The WHSCRD, in conjunction with the Office of the Chief Information Officer (OCIO), began a series of upgrades to the system to enhance its performance and will continue the ongoing maintenance in the coming year.

Review Commissioner Professional Development

- Review Commissioners must be able to gather and analyze relevant information and apply the correct legislation and policies to provide decisions that are succinct, understandable, and consistent with the *Act* and policies. These skills can be improved through training and education to develop and maintain Review Commissioner's expertise in the decision-making process. Accordingly, the WHSCRD will continue to pursue an extensive professional development program for its Review Commissioners, both in-house and externally, where resources permit.

Decision Standards Guide

- The WHSCRD is committed to excellence in decision-making. The key to quality decisions is in presenting sound reasoning while providing sufficient information to adequately explain the result. Decisions should identify the appropriate issues under review as well as demonstrate consideration of the applicable portions of the *Act*, regulations and policies. Good decisions should therefore follow a consistent format to ensure that Review Commissioners' decisions meet these goals. The WHSCRD's objective for the next fiscal year will be to focus on the development of a decision standards guide that clearly outlines the standards for a quality decision-making process.

WHSCRD Caseload

- Although more cases were heard and decisions rendered in 2012-2013 than in the previous fiscal year, timeliness for scheduling cases did not improve. As of March 31, 2013, the WHSCRD's active caseload was approximately 320 cases. This number included 240 cases waiting to be scheduled.
- Hearings continued to take longer to schedule primarily due to the difficulty in scheduling multiple parties and the number of Review Commissioners available to hear the cases. With the newly implemented intake process, the creation of the full-time Chief Review Commissioner position, and the anticipated appointment of new Review Commissioners, the WHSCRD expects that the backlog of cases waiting to be heard will be resolved by the end of the current fiscal year.

2012-2013 NOTEWORTHY DECISIONS

Decision 12050 – *Return to Work Hierarchy– Early and Safe Return to Work – Accommodation*; A worker subject to a collective agreement suffered a compensable injury. No re-employment obligation attached to the worker under Section 89.1 of the *Act*. The employer made numerous attempts to accommodate the worker, and finally concluded that it could not maintain the worker in her pre-injury position. The worker argued that she could have been maintained in the pre-injury position with further accommodation. The worker also argued that it was an error for the Commission to permit the employer to reassign the worker to another position, as it would represent a violation of the return to work priority table contained in Policy RE-18: *Hierarchy of Return to Work and Accommodation*.

Held: The Commission made no error in enforcing the Return to Work Hierarchy. The priorities contained in Policy RE-18 are statements of priority in the return to work planning process. The employer did incorporate these priorities into its planning, but the attempted accommodation failed in spite of these attempts. The employer was not subject to a re-employment obligation under Section 89.1, and the statutory duty it was required to meet was the duty of co-operation in the early and safe return to work process (ESRTW) under Section 89.2. The statutory requirements under Section 89.2 are not identical to the priorities in Policy RE-18, and while the employer attempted to accommodate the worker in a manner consistent with the priorities in Policy RE-18, it did not violate its statutory obligations under the *Act* by eventually offering the worker another position which was within her demonstrated tolerances. The Commission made no error by approving the offer.

Decision 12050

April 24, 2012 (Barry)

Decision 12079 – *Medical Aid – Physiotherapy – Massage Therapy – Extensions*; A worker was receiving physiotherapy and massage therapy and requested extensions of both. In denying the physiotherapy extensions, the Commission relied heavily on Policy HC-01: *Physiotherapy Services Private Clinics*, which requires information from the service provider documenting that “*functional improvement has occurred and further functional improvement is likely, and the continued treatment will result in the worker remaining in, or returning to the workforce.*” The Commission concluded that no improvement had taken place as a result of the treatment, and denied the request under Policy HC-01. In denying the massage therapy extensions, the Commission relied upon Procedure 69.00, which establishes a six-treatment cap on massage treatments per claim, but also allows the case to be decided on its individual merits. The Commission denied the extension, because the extension would result in the worker exceeding the six-treatment cap.

Held: The review was allowed on both issues. Policy HC-13: *Health Care Entitlement* contains the general adjudicative criteria for medical aid claims. Policy HC-01 contains some adjudicative criteria, but also other provisions which govern the Commission’s relationship with the service provider, including reporting and documentation requirements.

2012-2013 NOTEWORTHY DECISIONS (CONTINUED)

Policy HC-13 does not require that the treatment produce further improvement and a demonstration that the treatments would assist the worker to remain in the workplace. One of the four general criteria in Policy HC-13 is that the proposed treatment, “*improve or maintain the worker’s functional abilities.*” The Commission did not address the worker’s argument that physiotherapy was required for her to maintain her ability to remain in the workplace, but in any case, there was evidence that functional improvement had occurred, so the Commission’s decision was set aside.

With respect to the Massage Treatments, the Commission rigidly relied on the six-treatment cap in Procedure 69.00, despite the fact that the Procedure does contain a provision that each case may be judged on its individual merits. Section 19(4) of the *Act* also requires that the real merits and justice of each case be considered. The Commission, in relying strictly on the six-treatment cap, declined to exercise its considerable discretion under Section 84 and 85, and failed to take all the circumstances of the case into account. It thereby committed an error in ‘fettering’ its discretion under Part V of the *Act*.

Decision 12079

June 6, 2012 (Budgell)

Decision 12092 – *Recurrence - Earnings at the Time of the Recurrence - Calculation - Out of Province Earnings*; A worker sustained a compensable injury in Newfoundland and Labrador. The worker subsequently regained functional capacity and moved to another province. While living and working in the other province, she sustained a recurrence of her compensable Newfoundland and Labrador injury. There was no evidence that the out-of-province employment contributed to the recurrence, and the existing evidence suggested that the worker’s deterioration was a natural consequence of the worker’s compensable Newfoundland and Labrador injury. The worker applied for restoration of earnings loss benefits and was denied on the basis that she had no Newfoundland and Labrador earnings at the time of the injury, as required by Policy EL-01: *Earnings Loss: Benefit Calculation*. Since all the worker’s income was earned in the other province, none of those earnings were eligible for inclusion.

Held: The review was allowed. In the case of a recurrence, there is no requirement that the worker’s earnings necessarily have to be derived from employment in Newfoundland and Labrador. Section 77 of the *Act* only speaks to the time of the eligible earnings, not the geographical location. Furthermore, Section 50 of the *Act* permits a worker who has sustained a compensable injury in Newfoundland and Labrador to relocate following an injury without forfeiting the right to compensation under the *Act*. The Commission’s interpretation of Policy EL-01, as it applied to the worker’s recurrence, was inconsistent with Section 50 and not warranted by Section 77.

2012-2013 NOTEWORTHY DECISIONS (CONTINUED)

The worker's out of province earnings were eligible for recurrence purposes and should have been taken into account. Premiums had already been paid in Newfoundland and Labrador on the employment which produced the compensable injury, so the inclusion of the out of province earnings upon recurrence did not violate the insurance principle. Nothing in the out of province employment contributed to the recurrence.

Decision 12092

July 13, 2012 (Piercey)

Decision 12202 – Earnings Loss Benefits - Calculation – Long-Term Earnings Base – Equitable Rate; A worker suffered a compensable injury and was found to be entitled to earnings loss benefits. The Commission established a provisional rate under Section 80. Subsection 80(1) permits the Commission to calculate the worker's earnings loss benefits by reference to the worker's earnings over the twelve months before the injury, or the rate of remuneration the worker was receiving at the time of the injury, whichever "*in the opinion of the Commission, seems more equitable.*" After thirteen weeks, subsection 80(7) allows the Commission to review the worker's average annual earnings preceding the injury, and adjust the amount of compensation payable to the worker "*notwithstanding s.80(1) so that the compensation is more equitably based on his or her average annual earnings.*" The worker was argued that the Commission's recalculation following the thirteen week rate review resulted in a rate which was less equitable because it artificially understated his earnings at the time of injury.

Held: The review was allowed. The Commission conducted the thirteen week rate review and automatically applied a rate based on the average annual earnings without consideration of whether it was more equitable to do so, notwithstanding Subsection 80(1). The Commission's reasons suggested that the Commission applied the revised rate because the *Act* permitted it to do so, but without any comment on why the resulting rate was thought to be more equitable. The matter was remitted to the Commission for a decision in accordance with the *Act*, regulations, and policies, including reasons why the revised rate was considered "*more equitable.*"

Decision 12202

December 19, 2012 (Peckford)

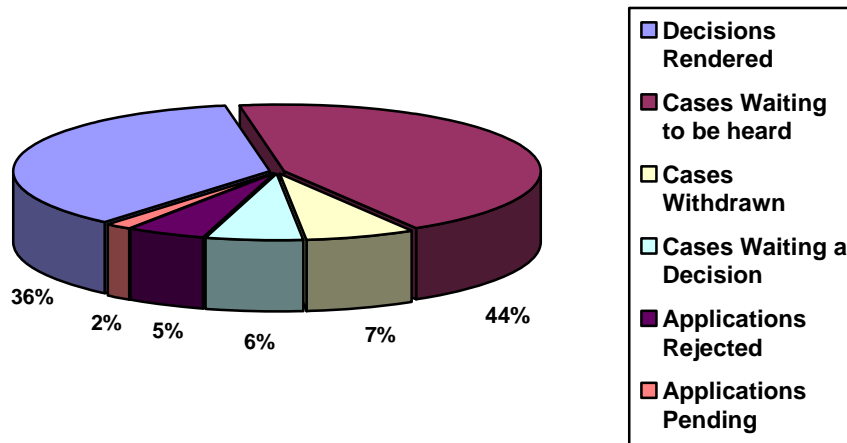
2012-2013 CASELOAD ACTIVITY

- ◆ The WHSCRD's caseload remains consistent with previous years. There were 319 Request for Review Applications filed in 2012-2013, representing a slight decrease from the preceding year by sixteen cases.
- ◆ Workers and their dependents filed 285 Request for Review Applications which represents 89% of the applications filed. Employers filed 34 (11%) Request for Review Applications.
- ◆ Request for Review applications may involve more than one issue and it may be necessary for the WHSCRD to provide a decision on each issue. There were 227 decisions rendered involving 285 issues under review.
- ◆ The top three issues under review for workers were: Extended Earnings Loss 24%, Health Care Services 14%, and Claim Denied 14%.
- ◆ Review Commissioners found that approximately 29% of the Commission's decisions, which were subject to review, were either not consistent with the *Act*, the *Regulations* and policies of the Commission, or required additional review by the Commission. In these cases, Review Commissioners allowed the appeals or referred the cases back to the Commission for further review or investigation.
- ◆ Approximately 92% of workers and 58% of employers were represented throughout the review process, based on 227 cases finalized in 2012-2013.
- ◆ The WHSCC has standing and may appear at review hearings any time. The WHSCC participated in 28% of hearings either through the attendance of a WHSCC Hearings Officer or by their Legal Counsel.
- ◆ There were 218 hearings conducted this fiscal year. Staff of the WHSCRD coordinated work for an additional 101 hearings which were either postponed, rescheduled or subsequently withdrawn by the parties.
- ◆ There were 18 reconsideration requests filed in 2012-2013 which represents a decrease in requests from the previous year by 24%.

2012-2013 STATISTICAL OVERVIEW

Caseload Breakdown	2012-2013	2011-2012
Appeals Carried Forward	309	205
New Applications	319	335
Total Caseload	628	540
Decisions Rendered	227	179
Cases Waiting to be Heard	278	253
Cases Withdrawn	43	40
Cases Awaiting a Decision	38	42
Applications Rejected	31	12
Applications Pending	11	14

Caseload Breakdown (Percentage)



Due to rounding the total percentages may not equal 100%.

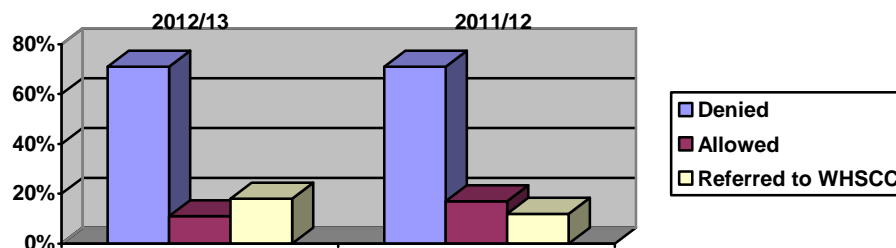
2012-2013 STATISTICAL OVERVIEW (CONTINUED)

Monthly Hearings & Decisions	2012-2013		2011-2012	
	Hearings	Decisions	Hearings	Decisions
April	21	25	24	16
May	18	10	9	20
June	18	21	14	16
July	12	19	10	5
August	19	22	16	11
September	18	15	17	27
October	13	20	28	14
November	18	20	20	9
December	17	14	16	17
January	18	24	8	18
February	22	18	22	11
March	24	19	23	15
Total	218	227	207	179

Decisions by Type	2012-2013		2011-2012	
Denied	162	71%	126	71%
Allowed	25	11%	31	17%
Referred to WHSCC	40	18%	22	12%
Total	227	100%	179	100%

Due to rounding the total percentages may not equal 100%.

Decision Breakdown (Percentage)



2011-2012 STATISTICAL OVERVIEW (CONTINUED)

Hearings by Region	2012-2013	2011-2012
St. John's	146	130
Gander	24	16
Grand Falls-Windsor	21	21
Corner Brook	22	40
Labrador	5	0
Total Hearings	218	207

Representative Profile by Type	2012-2013	2011-2012
Worker Self	26	21
Worker Consultant	7	8
Employer Self	19	23
Employer Consultant	26	15
Legal Counsel	5	14
Union	39	28
Members of the House of Assembly	122	85
WHSCC	100	66
Other (Relative, Friend, etc.)	11	12
Total Representatives	355	272

Note: More than one representative may be involved the review process, therefore, the number of representatives may not correlate with the number of hearings held or decisions rendered.

Reconsideration Requests by Client	2012-2013			2011-2012		
	Requests	Allowed	Denied	Requests	Allowed	Denied
Employer	1	0	1	0	0	0
Worker	11	0	11	12	0	12
WHSCC	6	0	6	12	6	6
Total	18	0	18	24	6	18

2012-2013 STATISTICAL OVERVIEW (CONTINUED)

Issues Reviewed by Decision	Outcome			
	Worker/Dependent Appeals	Objections	Allowed	Denied
Claim Denied	38	5	25	8
Compensation Denied	2	1	1	0
Compensation Rate	4	1	1	2
Dependency Benefits	3	0	3	0
Early & Safe Return to Work	4	0	4	0
Extended Earnings Loss Benefits	64	5	50	9
Health Care Services	38	8	23	7
Industrial Hearing Loss	9	0	8	1
Overpayment	3	0	3	0
Permanent Functional Impairment	26	1	22	3
Permanent Partial Disability	2	0	2	0
Proportionment	17	1	11	5
Pension Replacement	6	1	5	0
Recurrence	7	1	5	1
Reinstatement of Benefits	12	0	10	2
Reopening	18	0	15	3
Temporary Earnings Loss	1	0	1	0
Wage Loss Benefits	12	4	6	2
Total	266	28(11%)	195(73%)	43(16%)
Employer Appeals				
Cost Relief	3	0	2	1
Independent Operator	2	0	2	0
Objection to a Worker's Claim	11	2	9	0
Rate Code	3	0	3	0
Total	19	2(11%)	16(84%)	1(5%)
OVERALL TOTALS	285	30	211	44

Note: Review Applications may raise more than one issue for review, therefore, the above numbers may not correlate with the number of Review Applications filed or Decisions rendered. Due to rounding the total percentages may not equal 100%.

FINANCIAL STATEMENT

There is no regulatory requirement for the WHSCRD to submit a separate, audited financial statement.

Summary of Expenditures and Related Revenue for fiscal year ending March 31, 2013 (UNAUDITED)

	2012/2013	2012/2013	
	Actual	Estimates	
	\$	Amended	Original
	\$	\$	\$
8.1.01. Workplace Health, Safety and Compensation Review			
01. Salaries	632,166	715,700	715,700
02. Employee Benefits	3,635	3,700	2,500
03. Transportation and Communications	39,378	41,000	20,000
04. Supplies	18,978	21,300	22,500
05. Professional Services	152,788	180,000	200,000
06. Purchased Services	110,821	120,500	120,500
07. Property, Furnishings and Equipment	2,076	7,000	8,000
	<u>959,842</u>	<u>1,089,200</u>	<u>1,089,200</u>
02. Revenue - Provincial	(801,377)	(1,089,200)	(1,089,200)
Total: Workplace Health, Safety and Compensation Review	<u>158,465</u>	<u>-</u>	<u>-</u>

Source: Report on the Program Expenditures and Revenues of the Consolidated Revenue Fund for the Year Ended 31 March 2013

REVIEW COMMISSIONERS FOR 2012-2013

Marlene Hickey, Chief Review Commissioner

Ms. Hickey is a resident of Mount Pearl. She has been a member of the provincial public service since 1987. Ms. Hickey served as Director of the Workplace Health, Safety and Compensation Review Division since 1992 and also held the position of Director of Policy and Planning with the Labour Relations Agency from July 2005 to 2006. In 2006, she facilitated the efforts of the *Statutory Review Committee on the Workplace Health, Safety and Compensation Act*.

Keith Barry, Review Commissioner

Mr. Barry is a resident of St. John's. He is a retired provincial public servant, having served in various government departments over a 44-year career. Most recently, Mr. Barry served as Vice-Chair of the Public Service Commission. Prior to that he was the Director of Financial Administration for the Royal Newfoundland Constabulary and occupied various senior financial positions with the Fisheries Loan Board, Executive Council, etc. Mr. Barry was honoured with a fellowship with the Society of Management Accountants of Canada in 2004, and in 2006 was named Gonzaga Alumnus of the year.

Peter Budgell, Review Commissioner

Mr. Budgell is a resident of Bishop's Falls, NL. He has served as Manager of the Exploits Community Employment Corporation since 2000 as an advocate for providing employment opportunities for persons with developmental or cognitive delays. Mr. Budgell was employed with the Exploits Valley Integrated School Board working with youth regarding career exploration opportunities. Mr. Budgell is the former Provincial Director of NL Crohn's & Colitis Foundation of Canada. He also has a history of extensive community involvement through groups such as the Minor Hockey Association, Kinsman Club, Knights of Columbus, Exploits Youth Justice Committee and as a former Trustee with the Nova Central School Board.

E. Bruce Peckford, Review Commissioner

Mr. Peckford is a resident of St. John's. He is a retired provincial public servant who has held several senior positions with the public service, concluding with Deputy Minister of Social Services. He also held the position of Executive Director of Finance and Administration with the Workplace Health, Safety and Compensation Commission. In 2005, Mr. Peckford served as Chair of the *Statutory Review Committee on the Workplace Health, Safety and Compensation Act*. Mr. Peckford is the past Chair of the Eastern School District and the past Chair of the Historic Sites Association of Newfoundland and Labrador and a former Board member of the Canadian Cancer Society, Newfoundland and Labrador Division.

REVIEW COMMISSIONERS (CONTINUED)

Lloyd Piercey, Review Commissioner

Mr. Piercey is a resident of Fortune, NL. He has a Bachelor of Arts/Bachelor of Education with Memorial University of NL. Most recently he served as Special Assistant the former Member of Parliament for Random-Burin-St. George's. Mr. Piercey is a Past Academic Department Chairperson for Eastern College, Burin Campus and facilitated the exploration of training and work options for displaced fishery workers following the cod moratorium. He has also worked as an Adult Basic Education Instructor, Continuing Education Coordinator, at Eastern College and as Coordinator for Job Corp. Program. Mr. Piercey has served on various Committees with Eastern College and has served in various executive positions for groups and committees within the community.

CONTACT INFORMATION

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