



Workplace Health, Safety and Compensation Review Division

Activity Plan 2023-2026

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Message from the Chief Review Commissioner

Pursuant to the **Transparency and Accountability Act**, I am pleased to present the 2023-26 Activity Plan for the Workplace Health, Safety and Compensation Review Division (WHSCRD). As its Chief Review Commissioner, I am accountable for the preparation of this Plan and achievement of its objectives.

WHSCRD is an independent, quasi-judicial body, responsible for reviewing the final decisions of WorkplaceNL. It reports to Government through the Minister responsible for WorkplaceNL. As a Category 3 entity, the Activity Plan was developed in consideration of the mandate of WHSCRD, which includes improvements to the overall workers' compensation system.

The review process for clients of WorkplaceNL is vital to the overall service provided to employers and to workers who sustain workplace injuries in Newfoundland and Labrador. It is the final level of appeal within the workers' compensation system. It is our responsibility to deliver fairness through decision correctness, consistency and judicial transparency. Fairness is the cornerstone of all our actions.

Transparency in reporting, efficiency and client service remains the focus of the WHSCRD for this planning cycle. 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 implementation of the 2023-2026 Activity Plan.



Suzanne Hollett

Chief Review Commissioner

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1.0 Overview

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. WHSCRD is an independent, quasi-judicial body, consisting of a panel of Review Commissioners and a Chief Review Commissioner. WHSCRD is responsible for reviewing the decisions of WorkplaceNL to ensure they are made in accordance with the **Act**, Regulations and policies as approved by WorkplaceNL's Board of Directors. The following are examples of issues that may be reviewed by WHSCRD:

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

WHSCRD is independent of WorkplaceNL. Its office is located in Mount Pearl, NL where twelve staff (9 female, 3 male) coordinate the caseload work for the Chief Review Commissioner and panel of Review Commissioners.

WHSCRD's annual caseload is approximately 500 cases. Appeal reviews 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 WorkplaceNL's decision. WHSCRD's decisions are final and conclusive, and may only be reviewed by the courts under limited and specific grounds.

Financial Information

Funding for the operations of WHSCRD is provided by the Injury Fund pursuant to Section 25 of the **Act**. WHSCRD's budgetary allocations are contained within the overall budget of the Department of Environment and Climate Change. As per the Estimates of the Program Expenditure and Revenue of the Consolidated Revenue Fund 2023-24, the annual budget for WHSCRD in 2023-24 is \$1,465,500. This funding covers such areas as salaries, transportation and communication, professional services, accommodations, etc.

2.0 Mandate

The mandate of WHSCRD is to review decisions of WorkplaceNL to ensure compliance with the **Act** and Regulations, as well as with WorkplaceNL policies. 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 WHSCRD (Appendix A).

3.0 Lines of Business

WHSCRD offers the following services to its clients:

1. **Review of WorkplaceNL decisions.** 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.** 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

The following core values will guide our behavior and decision making in our interactions with clients and stakeholders 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

WHSCRD provides services to people and organizations involved in the workers' compensation review process. The primary clients of WHSCRD are injured workers, their dependents and employers. Our clients also include their representatives, such as union officials, consultants, worker and employer advisors, lawyers and Members of the House of Assembly (MHA).

6.0 Vision

WHSCRD's vision statement articulates its sense of purpose while defining its priorities. The following vision statement provides direction to WHSCRD towards achieving its mandate:

The Vision of 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 Issues

A decision from a WHSCRD Review Commissioner is an applicants' final level of appeal within the workers' compensation system.

The path through which an application to WHSCRD is processed and finalized in a written decision involves both administrative and adjudicative functions. The administrative function is performed by staff and overseen by the Manager of Operations. The adjudicative function, is fulfilled by the Review Commissioners, one of whom is the Chief Review Commissioner.

For each year of this plan, WHSCRD has identified objectives and associated indicators that provide WHSCRD and the public with information that can be used to monitor activity through its administrative and adjudicative processes.

The following objectives represent the focus of WHSCRD and report the intended results for each year of the three-year timeframe, within the mandate and existing financial resources of WHSCRD. These objectives are aligned with the values, vision and mandate of WHSCRD, and are aligned with the Minister's mandate to improve the workplace compensation system for workers and employers.

Issue 1: Review Application Processing

Before an application is presented to the adjudicative branch, review application processing begins with WHSCRD's administrative team. Applications are processed through intake, client service record collection and preparation, scheduling of a hearing, preparing statistical reports, and decision publishing. The following objective applies to all three years of this plan.

Objective 1:

By March 31 of 2024, 2025 and 2026, WHSCRD will have collected all information on the standing of its review applications for reporting to the public and all other relevant parties.

Indicators

- Number of review applications carried over from previous year;
- Number of new review applications received;
- Number of review applications closed; and
- Number of reconsideration applications received.

Issue 2: Hearing Review Applications

With the record of information compiled by the administrative team, Review Commissioners conduct hearings of review applications in-person, by video and teleconference, or a documents only (paper) review. At times applicants may request postponements for reasons outside the control of WHSCRD. In such cases, WHSCRD tries its best to reschedule hearings in as timely a manner as possible. The following objective applies to all three years of this plan.

Objective 2:

By March 31 of 2024, 2025 and 2026, WHSCRD will have collected all information on the standing of its hearings for reporting to the public and all other relevant parties.

Indicators

- Number of review applications scheduled to be heard;
- Number of review applications waiting to be heard;
- Number of review application hearings rescheduled; and
- Number of review application hearings held by region.

Issue 3: Decisions Rendered

Review Commissioners use the record of information, which includes the hearing, to conduct a thorough review and analysis of the issue(s) before them. A final written decision with a clear and well-reasoned outcome is then provided to the applicant and redacted by administrative staff for publication on WHSCRD's website. WHSCRD also selects several Noteworthy Decisions each year to highlight outcomes that articulate new or emerging issues, or the issue may be of interest to the general public and stakeholders

Objective 3:

By March 31 of 2024, 2025 and 2026, WHSCRD will have collected all information on the standing of its decisions for reporting to the public and all other relevant parties.

Indicators

- Number of decisions rendered;
- Decision outcomes; and
- Noteworthy Decisions.

8.0 Appendix A: 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.

1994 c12 s4

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 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.

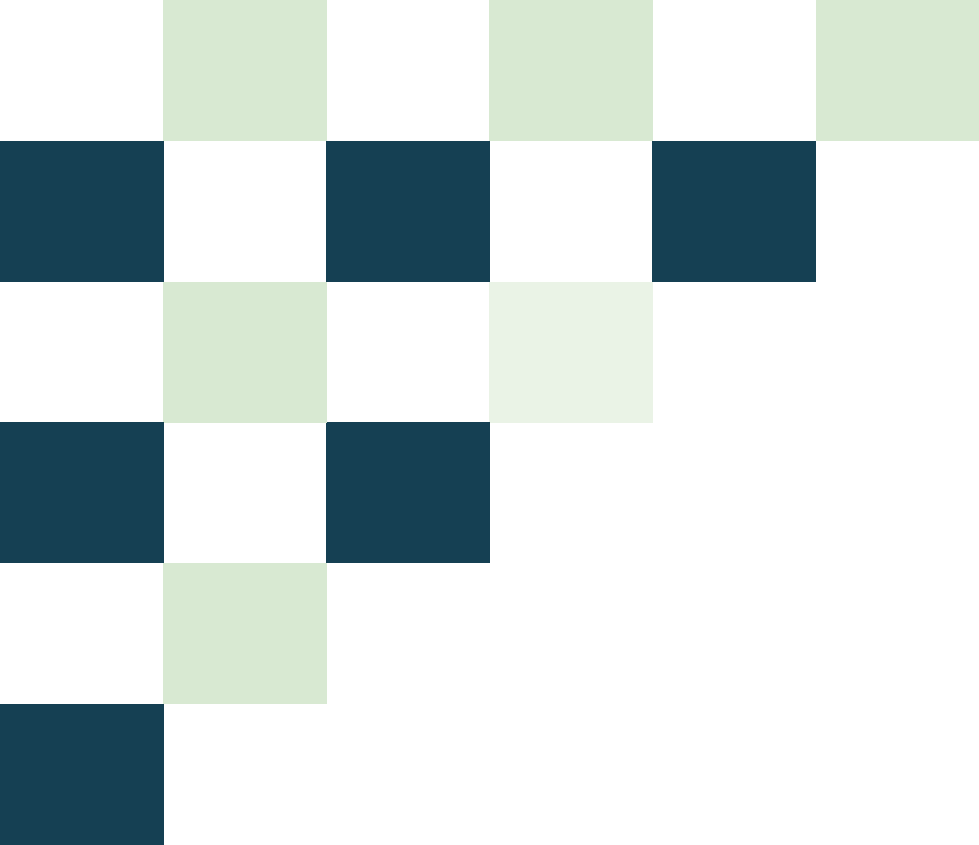
(2) A notice or other document required to be served on the commission may be served on the chairperson or, in his or her absence, the chief executive officer of the commission.

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.

1983 c48 s25; 1994 c12 s6



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