

# Workplace Health, Safety and Compensation Review Division



## 2009-2010 Annual Performance Report



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## MESSAGE FROM THE CHIEF REVIEW COMMISSIONER

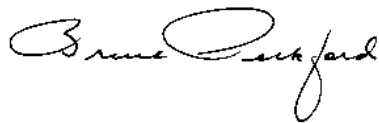
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I am pleased to present the Annual Performance Report representing the activities of the Workplace Health, Safety and Compensation Review Division (the WHSCRD) for the fiscal year 2009-2010, in accordance with the *Transparency and Accountability Act* and pursuant to the provisions of the *Workplace Health, Safety and Compensation Act* (the Act).

The Annual Performance Report covers the activities of the WHSCRD for the fiscal year 2009-2010. The WHSCRD and its Chief Review Commissioner are responsible for the preparation of this report and are accountable for the results contained within it.

In 2009-2010, the WHSCRD focused its efforts on providing enhanced client services by identifying areas for continuous improvement in its practices and procedures. During that timeframe the WHSCRD undertook a comprehensive analysis of the review process both within the organization and jurisdictionally to determine areas for enhancement.

I would like to recognize the professional contribution of outgoing Chief Review Commissioner, Robert W. Lundrigan, who completed his term in January 2010. I would also like to thank Review Commissioner Harrold and staff of the WHSCRD for their commitment and professionalism in providing clients outstanding service throughout the review process and I look forward to our continued efforts in 2010-2011.



**E. Bruce Peckford**

Chief Review Commissioner (Acting)

# OVERVIEW

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## 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 benefits;
- ◆ Rehabilitation and return to work services and benefits;
- ◆ Employers' assessments;
- ◆ The assignment of an employer to a particular class or group;
- ◆ An employer's merit or demerit rating; and
- ◆ The obligations of an employer and a worker with respect to return to work and rehabilitation issues.

## REVIEW COMMISSIONERS

The WHSCRD has a Chief Review Commissioner and a panel of Review Commissioners. Up to seven Review Commissioners 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, 2010, Mr. E. Bruce Peckford is the Chief Review Commissioner (Acting) and Alex Harrold is a Review Commissioner.

## WHSCRD STAFF

The WHSCRD employs ten (female) staff in its office located in the Dorset Building, at 6 Mount Carson Avenue in Mount Pearl, NL.

## OVERVIEW (CONTINUED)

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### MISSION STATEMENT

The mission statement identifies the priority area of focus of the WHSCRD. The planning under this mission statement began in 2007-2008 and will continue to 2010-2011. The statement also identifies the measures and indicators that will assist the WHSCRD and others to monitor progress and evaluate success.

**Mission Statement:** By 2011, the WHSCRD will have implemented a client service framework that provides workers and employers with effective tools and processes to assist in their participation within the review process.

**Measure:** Client Service Framework is Implemented

**Indicators:**

- Increased information regarding the WHSCRD's role and services is provided.
- Recommendations for changes to current practices and procedures are identified.
- Increased efficiency in application turnaround time.
- Client Service Manual is available to clients.

### 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.

## OVERVIEW (CONTINUED)

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### 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

Initiatives that provide for continuous improvements in the area of client service remain a priority for the WHSCRD. The WHSCRD provides timely frontline services to its clients in an environment which is respectful, professional and free of bias. The core values of independence, respect and professionalism guide the Review Commissioners and staff of the WHSCRD on a daily basis.

### 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**

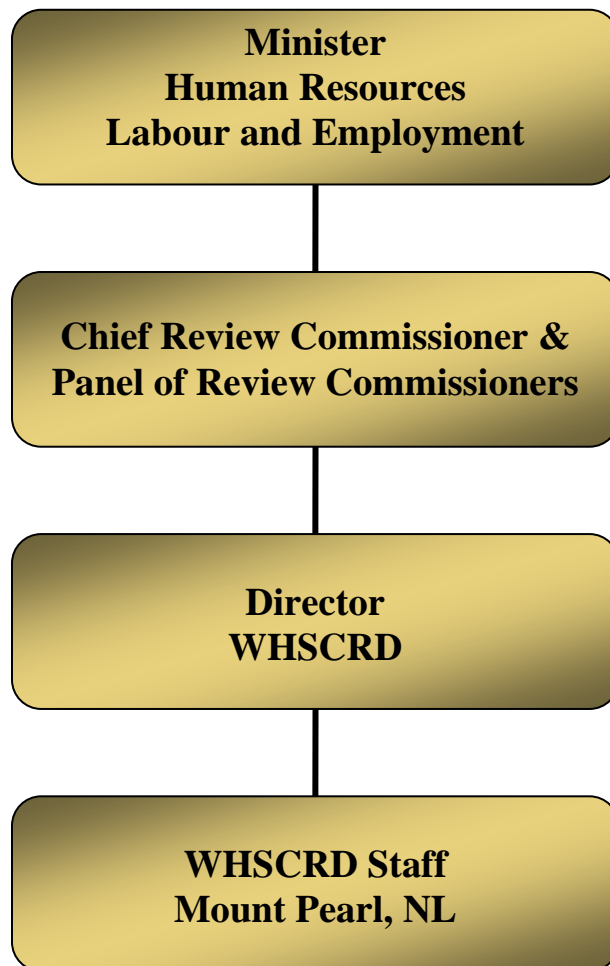
- The WHSCRD processes review applications submitted by injured workers, their dependants and employers in the province, as well as coordinates a review process that includes a hearing before a Review Commissioner concluding with a final written decision usually within thirty days.

#### **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.

## ORGANIZATION CHART

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## HIGHLIGHTS AND ACCOMPLISHMENTS

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In continuing to provide exceptional client service and to identify areas for continuous improvement to its practices and procedures, the WHSCRD has completed the following initiatives for 2009-2010:

### **WHSCRD Operational Review**

- Building upon previous achievements in providing clients with additional assistance throughout the review process, the WHSCRD focused some of its current initiatives internally by conducting an operational review of the many aspects of its services such as case management, adjudication and the post-decision process. The outcome of this review was to identify areas where the WHSCRD's processes can be streamlined by further enhancing its communication and information services, the preparation of the file documents package and the proper identification of issues under review.

### **Access to Personal Information and Protection of Privacy**

- Through the internal monitoring of its processes under the ATIPP legislation, the WHSCRD initiated a file formatting project. The objective of this project was to develop a process for the release of the file document package, while maintaining the injured worker's right to protection of their personal information and balancing the rights of other parties such as the employer in the review process. The project will run until the summer of 2010. Any changes or recommendations arising from the project will likely be implemented later in 2010 or early 2011.

### **WHSCRD Client Satisfaction Survey**

- A Client Satisfaction Survey was completed providing clients an opportunity to express their opinions regarding the review process and to also measure their level of satisfaction and awareness of WHSCRD's services. Two hundred questionnaires were distributed in 2009-2010, with a participant response rate of 41%. Clients' feedback and observations have been compiled into a summary report which will be incorporated into the WHSCRD's operational changes to further enhance its services.

### **WHSCRD Information Services**

- The WHSCRD contacted labour and employer groups offering to provide information on the review process. In the fall of 2009, the WHSCRD attended the Newfoundland and Labrador Employers' Council annual conference and through a display booth provided information to conference attendees on the WHSCRD's various services.



## HIGHLIGHTS AND ACCOMPLISHMENTS (CONTINUED)

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### Professional Development

- The WHSCRD continues to organize professional development initiatives to provide supports for Review Commissioners and staff. Specifically, a contract for the development of a professional development program in the area of decision-writing for Review Commissioners was awarded in 2009-2010 to a local communications firm with training scheduled throughout 2010.
- To foster and maintain effective working relationships, the WHSCRD staff participated in the Public Service Respectful Workplace Program. The Program offered valuable learning and insight to all staff in the areas of communication, problem solving, team building etc. As a result of the Program's success, ongoing professional development has been initiated to assist staff build upon their existing competencies and to meet WHSCRD's business requirements.

### WHSCRD Website

- The WHSCRD's newly developed website at [www.gov.nl.ca/whscrd](http://www.gov.nl.ca/whscrd) has been operational for a full year. This is the first year that the WHSCRD had an ability to measure the number of visitors to its website. There have been 3,558 visits to the site with most visitors accessing information on the review process and WHSCRD forms in the past year.

## 2009 – 2010 OBJECTIVE

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In the 2008-2011 Activity Plan, the WHSCRD outlined as its objective for 2009-2010, the identification of areas for continuous improvement in its practices and procedures.

To achieve this objective, the WHSCRD completed an analysis of its operations and conducted an examination of best practices in other Canadian appeal jurisdictions. Feedback was also obtained from WHSCRD's clients and stakeholders on the review process through a Client Satisfaction Survey. The resulting outcome of the analysis, research and survey was to identify key areas for improved service delivery to meet the evolving needs of clients.

The following measure and related indicators outline the WHSCRD's endeavours for 2009-2010:

**Objective 2: By 2009-2010, the WHSCRD will have identified areas for continuous improvement in its practices and procedures.**

**Measure:** Areas are identified for continuous improvement

**Indicators:**

- ✓ Research and analysis of existing practices and procedures completed.
- ✓ Strengths and weaknesses of existing practices and procedures are identified.
- ✓ Stakeholders' needs are identified and prioritized.
- ✓ Summary compiled of key findings from stakeholders' input and review of practices and procedures.
- ✓ A jurisdictional research and analysis to determine best practices will be completed.
- ✓ Desired outcomes are determined.

## OUTCOMES

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In consideration of the strategic direction of the Minister and the mandate and financial resources of the WHSCRD, the following table outlines the WHSCRD's objective for 2009-2010 and the associated indicators to assist both the WHSCRD and the public in monitoring and evaluating its progress and accomplishments:

INDICATORS	PROGRESS AND ACCOMPLISHMENTS
<b>Research and analysis of existing practices and procedures completed.</b>	<ul style="list-style-type: none"><li>• Operational review and analysis of WHSCRD's internal operations and program delivery has been completed in 2009-2010.</li><li>• The operational and program review focused on case management, adjudication, post-decision process, as well as WHSCRD's communication and information services it provides to clients and stakeholders.</li></ul>
<b>Strengths and weaknesses of existing practices and procedures are identified.</b>	<ul style="list-style-type: none"><li>• Using the results of the operational review, a summary of strengths and weaknesses of WHSCRD's practices and procedures has been developed.</li><li>• While analysis has determined the WHSCRD is one of the most efficient review bodies in Canada, it was found that opportunities exist to further enhance its services by assisting review participants, particularly those who are unrepresented; improving response times with regard to scheduling; and providing additional supports for Review Commissioners in the decision-making process.</li></ul>
<b>Stakeholders' needs are identified and prioritized.</b>	<ul style="list-style-type: none"><li>• A Client Satisfaction Survey providing clients and stakeholders an opportunity to express their opinions regarding the WHSCRD's operations and to gauge their awareness of the various WHSCRD services has been completed. In addition to measuring their level of satisfaction, survey participants were also invited to provide comments and feedback on areas for improvement in the review process.</li><li>• The final results of the survey have been compiled in a summary report prioritizing the areas of importance to stakeholders.</li></ul>

## OUTCOMES (CONTINUED)

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INDICATORS	PROGRESS AND ACCOMPLISHMENTS
<b>A jurisdictional research and analysis to determine best practices will be completed.</b>	<ul style="list-style-type: none"><li>• Research and analysis of other Canadian workers' compensation appeal jurisdictions to determine best practices has been completed.</li><li>• The analysis focused on methods of appeal, processing timeframes, case management practices, advocacy groups, the disclosure of personal information, as well as the post-decision process.</li></ul>
<b>Summary compiled of key findings from stakeholders' input and review of practices and procedures.</b>	<ul style="list-style-type: none"><li>• Using a number of tools such as the client satisfaction survey, analysis of WHSCRD's operations and a research of jurisdictional best practices, resulted in the identification of key findings for improvements to the WHSCRD's operations. Specifically, the WHSCRD was able to establish that client service must remain a focal point for continuous planning, particularly with respect to assisting clients understand the review process and to provide advice and direction on follow-up once a decision has been rendered.</li></ul>
<b>Desired outcomes are determined.</b>	<ul style="list-style-type: none"><li>• As a result of the progress achieved on the 2009-2010 indicators, the WHSCRD has developed a profile of enhancements to its operations in the areas of case management, adjudication, post-decision processing and communication and information services. The WHSCRD will seek approval in 2010-2011 to implement these operational changes and an organizational redesign to further assist clients and stakeholders participate fully in the review process.</li></ul>

## 2010 – 2011 OBJECTIVE

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Continuing with its commitment to provide an effective client service framework to support clients' participation within the review process, the WHSCRD in its 2008-2011 Activity Plan identified the following as its objective for 2010-2011:

**Objective 3: By 2010-2011, the WHSCRD will have drafted a Client Services Manual outlining its practices and procedures.**

**Measure:** Client Services Manual Drafted

**Indicators:**

- A list of key practices and procedures to be identified is compiled for inclusion in the manual.
- Focus groups are arranged to assist in determining layout and structure of the manual.
- Manual is drafted.

## OPPORTUNITIES AND CHALLENGES AHEAD

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The WHSCRD continues to build upon its current practices and procedures to provide an efficient client service framework. In particular, the WHSCRD will centre its future efforts on the following areas:

- The WHSCRD will begin the process in 2010-2011 for the next multi-year planning cycle focusing its efforts on continuing to provide the highest level of service possible to its clients while retaining a fair and impartial review process.
- Through ongoing communication and collaboration with stakeholders, the WHSCRD will solidify its client services principles by preparing a Client Service Manual to assist workers and employers participate in the review process.
- As a result of the internal examination of the WHSCRD's operations, there exists an opportunity to more efficiently enhance the protection of personal information. The WHSCRD will continue to work with workers and employers to determine the nature of the file information to be released and to address any concerns with the compilation and disclosure of file documents.
- In the WHSCRD's operational analysis, response time for clients was identified as a key factor in the case management process, particularly to schedule a hearing. The WHSCRD has responded by changing some aspects of its case management process and continues to work with clients to ensure the review process is delivered as efficiently as possible.
- As a result of increasingly complex cases with multiple issues coming before Review Commissioners, the WHSCRD will further examine options with respect to the acceptance of Request for Review applications and the identification of the issues under review to provide a more streamlined and responsive review process.
- In keeping with WHSCRD's strategic objective to provide the optimum framework for workers and employers who wish to seek appeal services, the WHSCRD will monitor and improve communications regarding WHSCRD's processes, as well as follow-up advice and direction to clients once a decision is rendered.
- WHSCRD's analysis of its operations determined that clients are not fully aware of the pre-requisites for requesting a reconsideration of a WHSCRD decision. There is an opportunity for the WHSCRD to respond to the needs of its clients regarding the reconsideration process by examining the legislation surrounding reconsideration requests for improved clarity and direction.

## CASELOAD ACTIVITY

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### 2009-2010 CASELOAD ACTIVITY AT A GLANCE

In 2009-2010, 334 Request for Review Applications were filed and 235 hearings were held. In addition, WHSCRD staff also coordinated work for an additional 139 hearings which were either postponed/rescheduled or subsequently withdrawn by the parties.

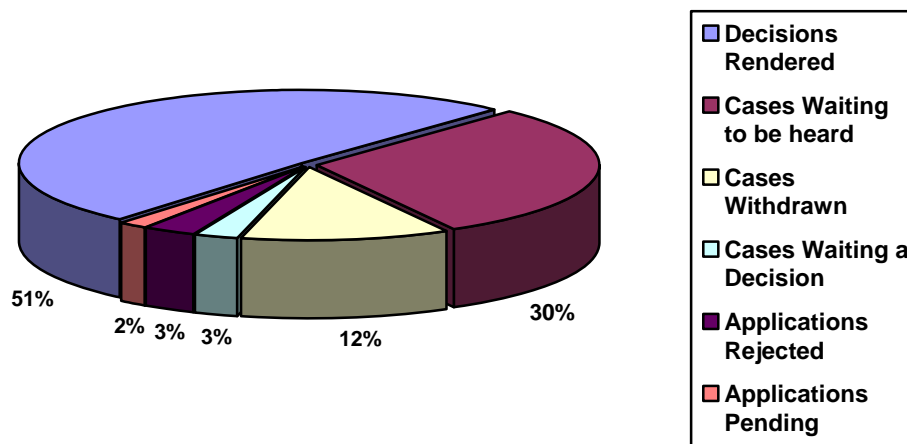
- ◆ Workers or their dependents filed 294 Request for Review Applications.
- ◆ Employers filed 40 Request for Review Applications which is an increase of 32% in the past three years.
- ◆ The WHSCRD provided decisions on 244 cases.
- ◆ Review Commissioners found that 45% of the Commission's decisions, 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.
- ◆ The average time to receive a decision following a hearing was 30 days. Overall processing time from application to decision was approximately 5 months. This figure represents an average of cases and includes those cases where excessive delays were caused by scheduling difficulties.
- ◆ Approximately 13% of workers, who received decisions were either self-represented throughout the Review Process, or were represented by friends or family.
- ◆ Employers who received decisions were self-represented in approximately 8% of these cases.
- ◆ There were 21 requests for reconsideration of decisions filed in 2009-2010. Seven requests were granted.
- ◆ The top three issues under review for workers were: Extended Earnings Loss 14%, Permanent Functional Impairment 14%, and Health Care Services 13%.
- ◆ Approximately 15 of employers' Request for Review applications concerned cost relief.

## STATISTICAL OVERVIEW

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CASELOAD BREAKDOWN April 1, 2009 to March 31, 2010		
Caseload	2009/2010	2008/2009
Appeals Carried Forward	145	154
New Applications	334	322
<b>Total Caseload</b>	<b>479</b>	<b>476</b>
Decisions Rendered	244	270
Cases Waiting to be Heard	143	83
Cases Withdrawn	57	39
Cases Awaiting a Decision	13	20
Applications Rejected	14	11
Applications Pending	8	53

**Caseload Breakdown (Percentage)**  
April 1, 2009 to March 31, 2010



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

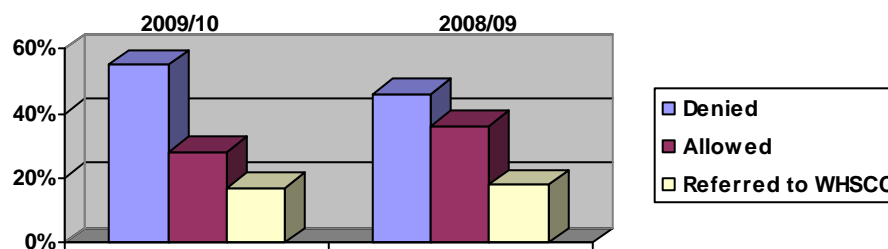


## STATISTICAL OVERVIEW (CONTINUED)

MONTHLY HEARINGS AND DECISIONS				
April 1, 2009 to March 31, 2010				
Hearings and Decisions	2009/2010		2008/2009	
	Hearings	Decisions	Hearings	Decisions
April	25	30	22	35
May	24	20	28	20
June	24	14	22	14
July	20	25	20	33
August	13	17	14	10
September	21	18	20	22
October	25	19	32	29
November	22	17	28	17
December	19	49	28	27
January	13	5	13	34
February	13	13	19	12
March	16	17	21	17
<b>Total</b>	<b>235</b>	<b>244</b>	<b>267</b>	<b>270</b>

DECISIONS BY TYPE				
April 1, 2009 to March 31, 2010				
Decisions	2009/2010		2008/2009	
Denied	134	55%	123	46%
Allowed	68	28%	98	36%
Referred to WHSCC	42	17%	49	18%
<b>Total</b>	<b>244</b>	<b>100%</b>	<b>270</b>	<b>100%</b>

**Decision Breakdown (Percentage)**  
April 1, 2009 to March 31, 2010



## STATISTICAL OVERVIEW (CONTINUED)

<b>HEARINGS BY REGION</b> <b>April 1, 2009 to March 31, 2010</b>		
<b>Region</b>	<b>2009/2010</b>	<b>2008/2009</b>
St. John's	143	181
Gander	19	10
Grand Falls-Windsor	35	32
Corner Brook	35	40
Labrador	3	4
<b>Total</b>	<b>235</b>	<b>267</b>

<b>REPRESENTATIVE PROFILE</b> <b>April 1, 2009 to March 31, 2010</b>		
<b>Representatives</b>	<b>2009/2010</b>	<b>2008/2009</b>
Employer Self	28	28
Employer Consultant	35	43
Worker Self	29	43
Worker Consultant	18	14
Legal Counsel	17	16
Union	59	63
Members of the House of Assembly	82	91
WHSCC	54	32
Other (Relative, Friend, etc.)	16	20
<b>Total</b>	<b>338</b>	<b>350</b>

**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.

<b>RECONSIDERATION REQUESTS</b> <b>April 1, 2009 to March 31, 2010</b>								
<b>Reconsideration Cases</b>	<b>2009/2010</b>				<b>2008/2009</b>			
	<b>Requests</b>	<b>Allowed</b>	<b>Denied</b>	<b>Outstanding</b>	<b>Requests</b>	<b>Allowed</b>	<b>Denied</b>	<b>Withdrawn</b>
Employer	2	0	2	0	4	0	3	1
Worker	10	4	5	1	12	1	11	0
WHSCC	9	3	4	2	10	3	7	0
<b>Total</b>	<b>21</b>	<b>7</b>	<b>11</b>	<b>3</b>	<b>26</b>	<b>4</b>	<b>21</b>	<b>1</b>

## STATISTICAL OVERVIEW (CONTINUED)

ISSUES SUMMARY BY DECISION				
April 1, 2009 to March 31, 2010				
TYPE OF ISSUES REVIEWED		OUTCOME		
Worker/Dependent Applications	Objections	Allowed	Denied	Referred to WHSCC
Canada Pension Plan	3	0	2	1
Claim Denied	33	6	18	9
Compensation Denied	10	5	2	3
Compensation Rate	7	0	5	2
Dependency Benefits	3	2	1	0
Early & Safe Return to Work	3	0	1	2
Extended Earnings Loss Benefits	37	8	19	10
Health Care Services	35	16	13	6
Hearing Loss	15	2	9	4
Industrial Disease	2	0	2	0
Internal Review Denied	1	0	1	0
Labour Market Re-entry	21	4	12	5
Overpayment	2	1	0	1
Permanent Functional Impairment	36	8	22	6
Permanent Partial Disability	4	1	3	0
Proportionment	6	2	3	1
Re-employment Obligations	1	0	1	0
Recurrence	10	0	8	2
Reinstatement of Benefits	6	0	5	1
Reopening	11	4	7	0
Wage Loss Benefits	11	5	5	1
Other	5	3	2	0
<b>Total</b>	<b>262</b>	<b>67(26%)</b>	<b>141(54%)</b>	<b>54(21%)</b>
Employer Applications	Objections	Allowed	Denied	Referred to WHSCC
Assessment Rate	3	0	2	1
Cost Relief	6	2	3	1
Objection to a Worker's Claim	9	4	5	0
PRIME	2	1	1	0
Other	4	1	3	0
<b>Total</b>	<b>24</b>	<b>8(33%)</b>	<b>14(58%)</b>	<b>2(8%)</b>
<b>OVERALL TOTALS</b>	<b>286</b>	<b>75(26%)</b>	<b>155(54%)</b>	<b>56(20%)</b>

**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

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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, 2010 (UNAUDITED)

	2009/2010	2009/2010	
		Estimates	
	Actual	Amended	Original
	\$	\$	\$
8.1.01. Workplace Health, Safety and Compensation Review			
01. Salaries	413,800	516,500	516,500
02. Employee Benefits	1,390	2,500	2,500
03. Transportation and Communications	25,978	26,400	20,000
04. Supplies	14,861	21,100	22,500
05. Professional Services	181,140	311,500	320,500
06. Purchased Services	115,844	124,500	120,500
07. Property, Furnishings and Equipment	7,404	8,000	8,000
	760,417	1,010,500	1,010,500
02. Revenue - Provincial	(937,706)	(1,010,500)	(1,010,500)
Total: Workplace Health, Safety and Compensation Review	(177,289)	-	-

*Source: Report on the Program Expenditures and Revenues of the Consolidated Revenue Fund for the Year Ended 31 March 2010*

## **REVIEW COMMISSIONERS**

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### **E. Bruce Peckford, Chief Review Commissioner (Acting)**

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. He has most recently, in 2005, 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.

### **Alex Harrold, Review Commissioner**

Mr. Harrold is a resident of Westport. He has served as a Review Commissioner since 2005. He has a Bachelor of Science degree from Southwest Missouri University and a Bachelor of Laws degree from Dalhousie University. Mr. Harrold is a former teacher who taught at Baie Verte High School and he has also worked with the Department of Justice. Mr. Harrold also been a member of the Baie Verte Peninsula Health Care Board and is a former provincial Vice-President of the Multiple Sclerosis Society of Canada.

## **CONTACT INFORMATION**

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