

WORKPLACE HEALTH, SAFETY AND COMPENSATION REVIEW DIVISION



THREE YEAR ACTIVITY PLAN 2008-2011



MESSAGE FROM THE CHIEF REVIEW COMMISSIONER

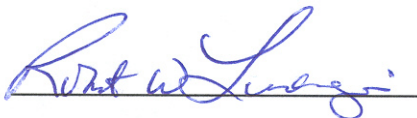
Pursuant to the *Transparency and Accountability Act*, I am pleased to present the three-year activity plan for the Workplace Health, Safety and Compensation Review Division (Review Division).

As a Category 3 entity, this performance-based activity plan outlines the objectives for the fiscal years 2008-2009, 2009-2010 and 2010-2011 and is in keeping with the strategic directions set out by the Minister of Human Resources, Labour and Employment. Though the Review Division does not play a direct role in the specific strategic directions identified by the Minister, it contributes through its focus on improved client service, to a stable employment relations climate conducive to economic growth. The Review Division and its Review Commissioners are responsible for the preparation of this plan and are accountable for the achievement of the specific objectives that are identified.

The Review Division is an independent, quasi-judicial body, which is responsible for reviewing final decisions of the Workplace Health, Safety and Compensation Commission (WHSCC). The Review Division consists of a Chief Review Commissioner and up to six additional Review Commissioners. It reports to government through the Minister of Human Resources, Labour and Employment. Its primary clients are injured workers, their dependants and employers in the province.

The Review Division's mission, developed through the 2007-2008 planning initiatives, highlighted the need for a client service framework to assist clients in their participation within the review process. Over the next three years, the Review Division will continue to focus on its commitment to provide exceptional client services through the ongoing creation and enhancement of a client service framework. The Review Division will also complete a review of its practices and procedures, and follow up on the implementation of an Awareness Plan.

Client involvement is essential to the Review Division's success of attaining its objectives. I would invite all interested parties to fully participate in this process and encourage their feedback as we move forward with this three-year activity plan.



Robert W. Lundrigan
Chief Review Commissioner

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1.0 OVERVIEW

The Review Division was established in 1994 by a legislative amendment to the Workplace Health, Safety and Compensation Act (Act). The Review Division is the final level of review within the workers' compensation system in the province.

The Review Division is responsible for the review of decisions of the WHSCC to ensure that decisions of the WHSCC are made in accordance with the *Act*, *Regulations* and the policies as approved by the WHSCC Board of Directors. The following are examples of the types of issues that may be reviewed by the Review Division:

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

The Review Division is independent of the WHSCC and is accountable to the Minister of Human Resources, Labour and Employment. Its offices are located in Mount Pearl where nine staff coordinate the caseload work for the Chief Review Commissioner and Review Commissioners.

The Review Division receives approximately 400 applications on an annual basis and hearings are conducted by the 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 a hearing process, a Commissioner will provide a written decision in relation to the application and the decision of the WHSCC under review. Decisions of the Review Division are final and conclusive and may only be reviewed by the court under limited and specific grounds.

Financial Information

Funding to support the Review Division's activities is allocated within the Department of Human Resources, Labour and Employment under the heading of the Labour Relations Agency. As per the *Estimates* of the Program Expenditure and Revenue of the Consolidated Revenue Fund 2008-09, the annual budget for the Review Division in 2008/09 is \$950,100. This funding covers such areas as salaries, transportation and communication, professional services, accommodations, etc. Funding for the operations of the Review Division is supported by the *Injury Fund* pursuant to s.25 of the *Workplace, Health, Safety and Compensation Act*.

2.0 MANDATE

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

Specifically, PART II – APPEALS, Sections 21 to 37 of the *Act* provides the legislative provisions for the Review Division and are contained in Appendix B.

3.0 LINES OF BUSINESS

The Review Division offers the following services to its clients:

- 1. Review of decisions of the WHSCC.** The Review Division processes review applications made 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.
- 2. Information Services.** The Review Division provides information services to its clients by providing web-based distribution of its decisions; researching workers' compensation issues and collecting and maintaining statistical information relative to the review process.

4.0 VALUES

Values are the guiding principles which describe the culture of an organization. The culture of the Review Division 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 our decision-making in our interactions on a daily basis.

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|-------------------------------|---|
| <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. |

5.0 PRIMARY CLIENTS

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

6.0 VISION

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

7.0 MISSION

The mission statement identifies the priority area of focus of the Review Division for 2008 - 2011. The mission statement follows the context of the strategic direction of the Minister of Human Resources, Labour and Employment, by focusing its activities on improving client services. This indirectly supports the strategic direction of stable employment relations conducive to economic growth. The mission statement identifies the measures and indicators that will assist the Review Division and others to monitor progress and evaluate success. The statement was used as a focus point for the previous 2007-2008 Activity Plan and is also included in this three-year plan.

The Review Division recognizes that there is a need to further enhance the level of workers' compensation knowledge among workers, their dependants and employers, as well as the representatives for those parties who require the services of the Review Division. Representatives may be union members, MHA's, lawyers, consultants or family members. Many attend their hearing unfamiliar with the role of the Review Division and their role within it and as such may require assistance to participate effectively in the review process. The Review Division recognizes this challenge facing these individuals and is committed to ensuring adequate supports exist within the Division to assist in this regard.

Mission Statement: By 2011, the Review Division 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 1: Client Service Framework is implemented

Indicators:

- **Increased information regarding the Review Division's role and services is provided**
- **Recommendations for changes to current practices and procedures are identified**
- **Increased efficiency in application turnaround time**
- **Client Services manual is available to clients**

8.0 ISSUES

The areas of client awareness, education and promotion have been identified as key priorities in consideration of the Minister's strategic directions. The following objectives identified reflect the results expected in the three-year time frame that are within the mandate and financial resources of the Review Division. Measures and indicators are provided for each year's objective to assist both the Review Division and the public in monitoring and evaluating progress.

In the 2007-2008 Activity Plan, client awareness was identified as a key priority for the Review Division. The workers' compensation system is complex and many injured workers, dependents and employers are either not aware that there is an external appeal process, or are not familiar with the role and services of the Review Division. Others require clarification on the distinct roles of the Workplace Health, Safety and Compensation Commission, the Workplace Health, Safety and Compensation Review Division, the Office of the Workers' Advisor and the Office of the Employers' Advisor, etc.

Objective 1:

The Review Division will provide enhanced client services to assist clients in the review process by identifying their needs and establishing an awareness plan that informs employers and workers about the roles, responsibilities, and services within the Review Division.

Objective 1:	By 2008-09, the Review Division will have implemented an Awareness Plan
Measure:	Awareness Plan Implemented
Indicators:	• Website revised and enhanced • Information brochures distributed • Information sessions conducted • Improved access to final decisions for public research

Objective 2:

Within enhanced client services, the refinement of its case management process also remains a priority for the Review Division. In that regard, the Review Division will undertake an analysis of its practices and procedures to identify key focus areas for improvement and development.

Objective 2:	By 2009-10, the Review Division 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 • Stakeholder's needs are identified and prioritized • Summary compiled of key findings from stakeholder's input and review of practices and procedures • A jurisdictional research and analysis to determine best practices will be completed • Desired outcomes are determined

Objective 3:

The Review Division continues its commitment to government's strategic initiative to ensure accountability and transparency, and increase public awareness. Upon the implementation of an Awareness Plan and review of its practices and procedures, the Review Division will also draft a Client Service Manual to ensure that its processes are fair, consistent and efficient.

Objective 3:	By 2010-11, the Review Division 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 manual • Manual is drafted

9.0 APPENDIX A: LEGISLATION

The following is reprinted from the 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.

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.

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.

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 a reconsideration relates of the request within 10 days of receiving it.

[1998 c19 s9; 2001 c10 s11](#)

Conflict of interest

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

[1994 c12 s4](#)

Annual report to House of Assembly

30. The review division shall, not later than March 31 in a year, submit to the minister a report of the proceedings of the review commissioners under this Act for the preceding calendar year, and the minister shall lay the report before the House of Assembly within 15 days after it is submitted, or where the House of Assembly is not then in session, within 15 days after the beginning of the next session.

[1994 c12 s4](#)

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](#)