

# Workplace Health, Safety and Compensation Review Division

## Activity Plan 2017-2020



Advanced Education, Skills and Labour

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## Message from the Chief Review Commissioner

Pursuant to the Transparency and Accountability Act, I am pleased to present the 2017-2020 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 of Service NL. As a Category 3 entity, the Activity Plan was developed in consideration of WHSCRD's mandate and the relevant strategic direction of Government.

Improvement in processing times and client services remains the focus of the WHSCRD for this planning cycle. The focus area is hearing preparedness as we explore how the WHSCRD can assist its clients by being more responsive to their needs for access to file information prior to the hearing.

Advance hearing preparedness is recognized as improving client service and creating efficiency in the review process. This not only improves the timeline for client preparation, but also protects the integrity of the hearing schedule by minimizing or eliminating untimely hearing postponements or withdrawals. Hearing preparedness is a priority for WHSCRD as part of its ongoing efforts to enhance the overall review process.

WHSCRD contributes to the identified strategic direction by providing an environment where workers and employers participate in an independent, timely and fair review process anchored in a culture of exceptional client service. In this regard, WHSCRD's focus for this planning cycle will be on improving timelines and engaging its clients to support their need for further information on the Review Division's processes.

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 2017-2020 Activity Plan.



**Marlene A. Hickey**  
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 featuring 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 offices are located in Mount Pearl, NL where twelve staff (11 female, 1 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 of WHSCRD are final and conclusive, and may only be reviewed by the courts under limited and specific grounds.

## Financial Information

Funding for the operations of WHSCRD is provided by the Injury Fund pursuant to Section 25 of the Act. WHSCRD's budgetary allocations are contained within the overall budget for Service NL. As per the Estimates of the Program Expenditure and Revenue of the Consolidated Revenue Fund 2017-2018, the annual budget for WHSCRD in 2017-2018 is \$1,232,400. 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 and are contained in 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

Values are the fundamental attributes that guide behaviour and decision making in shaping the culture of an organization. The culture of WHSCRD is one which promotes stability in the workforce by ensuring its services respond to the needs of its clients through the provision of a fair and timely review process.

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

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

## 5.0 Primary Clients

WHSCRD provides services to many 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, 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 Objectives

Supporting stability in the workforce through a fair and timely review process for injured workers, dependents and employers has been identified as a key priority in consideration of the strategic direction of Government as outlined in Appendix B. The following objectives reflect intended results in the three-year timeframe, within the mandate and existing financial resources of WHSCRD.

### **Issue 1: Ensuring a Fair Review Process**

A fair review process is one which upholds the principles of natural justice by ensuring clients are heard by a decision maker who is free from bias and whose judgement is based upon the weight of evidence. The right to a hearing involves more than procedural compliance. It requires that an individual is heard in a meaningful fashion.

WHSCRD is an independent quasi-judicial body and its mandate does not extend to providing or arranging representation for clients. However, in our efforts to enhance the review process, WHSCRD will assist clients by providing them with continued support and access to information so they are better informed and capable of presenting their positions in a relevant and constructive manner before Review Commissioners.

Over the 2014-2017 planning period, WHSCRD significantly upgraded its online information and application services to ensure clients have the option to use web-based technology to access the most accurate information on WHSCRD's processes.

As WHSCRD enters the 2017-2020 planning cycle, it remains committed to promoting the principles of procedural fairness by ensuring its information services respond to the needs of clients and are aligned with the strategic direction of Government. WHSCRD recognizes that a fair review process includes informing clients to help them understand the overall review process.

WHSCRD is aware that not all clients are interested in, or able to access, information services through web-based technology. Many WHSCRD clients seek general information from, or the assistance of, an advocate from a group or association external to WHSCRD. These include worker and employer advisory groups, private consultants, unions, lawyers, and MHAs. Fairness is also promoted by advocates and representatives who are informed about WHSCRD processes as well as the provisions of the Act.

As part of efforts to inform clients about the review process, in this planning cycle WHSCRD will be reaching out to stakeholders throughout the Province to provide information service support on WHSCRD's review process. WHSCRD will conduct in-person information sessions with stakeholder groups to assist in their understanding of its review process. Active engagement with stakeholders will give all parties the opportunity to share service experiences and address gaps in procedural knowledge.

## 7.0 Objectives continued

WHSCRD provides comprehensive reasons for its decisions. Through the decision-making process WHSCRD conducts extensive examination of claim files, legislation, and policy. This not only produces the outcome on review applications, but also a transparent and interpretive rationale on many provisions of the Act. This information is considered critical in informing clients. WHSCRD will continue to upload decisions to the Decision Search System (DSS) and explore ways to promote and improve the system as an information resource to enhance client knowledge of the Act, legislation, and policies.

WHSCRD's attention to this objective is aligned with its values, vision, and the focus area of Government's strategic direction to ensure responsive programs and a fair review process for all.

### **Objective 1:**

By March 31, 2018, WHSCRD will have developed an information presentation to increase stakeholder knowledge of the review process.

#### **Indicators:**

- Consulted with Communications and Public Engagement Branch for guidance in stakeholder engagement.
- Developed review process information session presentation.

### **Objective 2:**

By March 31, 2019, WHSCRD will have conducted review process information sessions with stakeholder groups to increase stakeholder knowledge of review process.

### **Objective 3:**

By March 31, 2020, WHSCRD will have explored ways to promote DSS as an information resource.

## 7.0 Objectives continued

### Issue 2: Enhancing Hearing Preparedness

WHSCRD's main line of business is processing **Request for Review** applications made by injured workers, their dependents and employers and coordinating the review process, which includes a hearing before a Review Commissioner. For the hearing process, WHSCRD staff prepare the file in a format known as the case description.

WHSCRD case descriptions are prepared using claim files provided to the WHSCRD by WorkplaceNL. The case description is the body of documentary evidence which represents the official record of WorkplaceNL concerning the application under review. This is the document that clients rely upon to present their case before a Review Commissioner. Case descriptions can range in size from 50 to thousands of pages in length and often require extensive amounts of time to review in preparation for a hearing. Much of WHSCRD's preparation time is spent compiling the case description (which most often consists of complex medical evidence) and placing the documents in chronological order, reviewing each document for the purposes of redacting irrelevant personal information.

When a client receives their case description well in advance of a hearing date, their hearing preparedness is enhanced by affording them time to review their file, contact WHSCRD with concerns, access representation and advisory services, or alter how they would like to proceed with their case (e.g., withdraw application, seek clarification of issue, obtain new evidence, etc.).

WHSCRD will enhance its clients' hearing preparedness by developing new performance measures to quantify the work it conducts to prepare and deliver clients' case descriptions. The application of performance measures to the case description preparation process will allow WHSCRD to explore and increase efficiencies in the time it takes to get a case description to clients by identifying areas of the process that can be made more efficient.

Enhanced hearing preparedness of both WHSCRD and its clientele should reduce postponement requests and hearing adjournments, as it is anticipated fewer concerns with case descriptions will arise on short notice during the hearing process. If all parties have time to prepare for their hearing, this will also result in efficiencies in the Review Commissioners' management of the hearing procedure.

## 7.0 Objectives continued

Hearing preparedness will improve the quality of client engagement in the review process prior to the hearing. The timeline in which a case moves through the review process to a hearing is significantly affected by the preparedness of the parties.

### **Objective 1:**

By March 31, 2018, WHSCRD will have finalized a review of its hearing preparedness process to identify opportunities for more efficient file preparation and release of case descriptions in advance of a hearing.

#### **Indicator:**

- Established more efficient internal processing mechanisms and performance measures to ensure expeditious release of case descriptions.

### **Objective 2:**

By March 31, 2019, WHSCRD will have begun implementing new performance measures in relation to the preparation of case descriptions for hearing preparedness.

### **Objective 3:**

By March 31, 2020, WHSCRD will be providing 90 per cent of case descriptions within six weeks advance of hearing dates.

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

1998 c19 s9; 2001 c10 s11

### **Conflict of interest**

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

1994 c12 s4

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

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

2009 c7 s3

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

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

1994 c12 s4

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

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

1994 c12 s4

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

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

1994 c12 s4

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

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

1994 c12 s4

### **Stated case**

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

1983 c48 s23

### **Rules for appeal**

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

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

1987 c41 s24; 1994 c12 s4

### **Notification of appeals, etc.**

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

1983 c48 s25; 1994 c12 s6

## 9.0 Appendix B: Strategic Direction

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

The strategic direction relevant to the entities reporting to the Minister responsible for the Workplace Health, Safety and Compensation Act was considered and is identified below. The strategic direction is comprised of a number of components, or focus areas. Focus areas relevant to WHSCRD are indicated in the table below.

### **Strategic Direction: Workforce Stability**

**Outcome:** Increased stability in the workforce.

<b>Focus Areas of the Strategic Direction:</b>	<b>This Direction is addressed:</b>	
	<b>By other entities reporting to the Minister</b>	<b>In this Entity's Activity Plan</b>
Prevention programming;	✓	
Facilitating recovery at work;	✓	
Claims management programming and supports;	✓	
Responsive programs and services; and,		✓
Sound financial management.	✓	

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