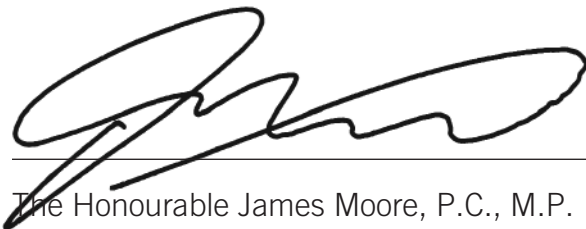


Public Service Staffing Tribunal

2011–12

Departmental Performance Report

A handwritten signature in black ink, appearing to read 'James Moore', is positioned above a horizontal line.

The Honourable James Moore, P.C., M.P.
Minister of Canadian Heritage and Official Languages



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Chairperson's Message

I am pleased to present the Departmental Performance Report 2011–12 for the Public Service Staffing Tribunal.

The Tribunal identified two operational priorities in its 2011–12 Report on Plans and Priorities: timely issuance of decisions; and efficient and simplified processes. To address these two priorities, the Tribunal undertook a number of important initiatives while at the same time managed the challenges of an increasing workload associated with a greater number and complexity of complaints.

In fact, the Tribunal managed over double the number of complaints in 2011–12 as compared to previous years, while integrating new tools, such as the settlement conferences and telephone mediations, into our normal business practice – tools which optimized our resources and proved helpful to our clients in resolving complaints.

We also continued to further refine our complaint process by developing a pilot project for expedited hearings. The pilot, which will be launched in April 2012, is designed to shorten the time required for hearings and written decisions by giving parties a more expeditious adjudication of less complex cases.

I believe that by providing timely and efficient processes for parties to resolve their complaints, the Tribunal upholds the values of the *Public Service Employment Act* of effective dialogue, respect for employees and recourse aimed at resolving appointment issues.



A handwritten signature in black ink, appearing to read 'Guy Giguère'. The signature is stylized with a large, sweeping 'G' and a long horizontal stroke extending to the right.

Guy Giguère
Chairperson and Chief Executive Officer



SECTION I:
Organizational Overview

Raison d'être

The Public Service Staffing Tribunal is an independent, quasi-judicial body established under the *Public Service Employment Act* (PSEA) to address complaints related to internal appointments and lay-offs in the federal public service.

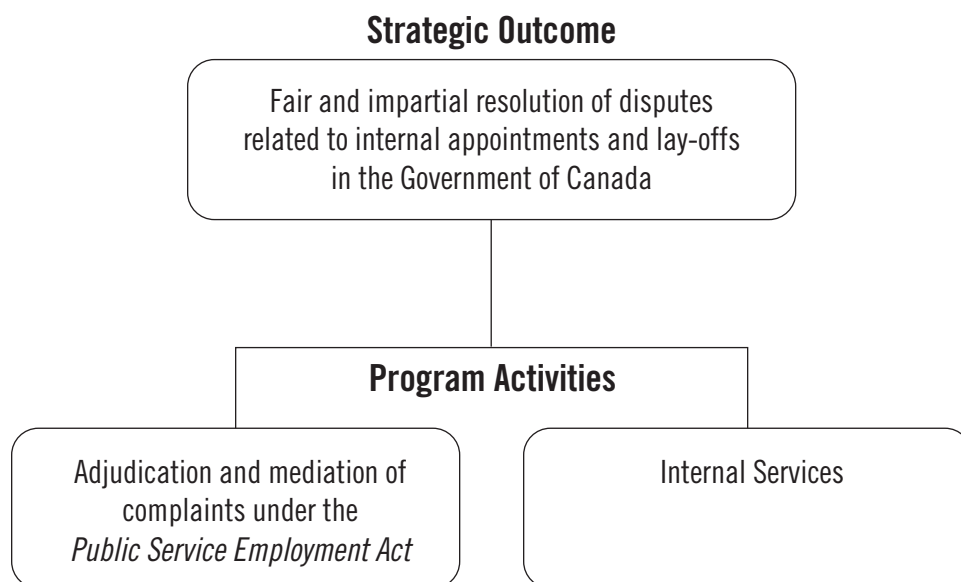
The Tribunal conducts hearings, settlement conferences and mediation sessions in order to resolve complaints. In fulfilling its mandate, the Tribunal fosters fair and transparent staffing practices, contributes to a public service that is based on merit, embodies linguistic duality and human rights, and strives for excellence.

Responsibilities

The Tribunal derives its mandate from the PSEA and is responsible for the impartial and timely consideration and disposition of complaints submitted under the Act with respect to internal appointment and lay-off processes in the Government of Canada.

By providing transparent, impartial and sound decision-making for complaints, as well as the support necessary to help parties resolve staffing disputes as informally as possible, the Tribunal is both accessible and responsive to its stakeholders – namely, deputy heads, human resources specialists, bargaining agents and public servants – and contributes to the effective management of human resources to the benefit of federal public service departments and agencies, managers, employees and Canadians at large.

Strategic Outcome and Program Activity Architecture



Organizational Priorities

Summary of Progress Against Priorities

Priority	Type	Strategic Outcome
Timely issuance of decisions	Ongoing	Fair and impartial resolution of disputes related to internal appointments and lay-offs in the Government of Canada
<ul style="list-style-type: none"> The Tribunal continues to fulfill its mandate and contribute effectively and directly to its strategic outcome by rendering decisions in a timely manner. While the number of complaints increased 142% in this fiscal year the Tribunal made significant progress in achieving its goal of rendering 80% of its decisions within four months of the hearing. 27% of decisions were rendered within this target in 2010–11, whereas 49% of its final decisions were rendered within this target in 2011–12. 		
Priority	Type	Strategic Outcome
Efficient and simplified processes	Ongoing	Fair and impartial resolution of disputes related to internal appointments and lay-offs in the Government of Canada
<ul style="list-style-type: none"> The Tribunal improved the tools, policies and processes that assist in effectively resolving complaints and better managing the organization. Settlement conferences and telephone mediations were added to the Tribunal's dispute resolution toolbox. Strategies were implemented to increase flexibility with respect to the choice of telephone, videoconference and in-person mediation. A streamlined version of the Tribunal's mediation training and an updated presentation on the Tribunal's jurisprudence were offered to stakeholders. 		
Priority	Type	Strategic Outcome
A workplace where people valued and know the importance of their contribution	Ongoing	Fair and impartial resolution of disputes related to internal appointments and lay-offs in the Government of Canada
<ul style="list-style-type: none"> The Tribunal undertook activities to foster an engaged and healthy workplace, to help increase job satisfaction and productivity in support of the Tribunal's objectives. Efforts continued to help staff improve skills or acquire new competencies geared to career development. Team building activities underscored the work and achievements of sectors and employees. Employees actively participated in drafting of the Tribunal's new code of values and ethics. Employees discussed the results of the 2011 Public Service Employee Survey and were encouraged to investigate ways to improve career opportunities and mobility at the Tribunal. 		

Risk Analysis

The challenges and risks faced by the Tribunal have remained similar from year to year over the last five years.

An on-going challenge for the Tribunal, as with most administrative tribunals, is the unpredictability of caseload, i.e. the number of cases can suddenly increase or decrease. For example, in 2011–12 there was a significant change in the caseload. The Tribunal received 1,873 complaints as opposed to its four-year average of 773.

As well, while we anticipated an increase in the number of complaints due to lay-offs in certain parts of the public service, only a small number of the complaints received dealt with lay-offs.

The Tribunal has put into place strategies to mitigate these risks.

Caseload Strategies

The number of complaints increased 142% in 2011–12 compared to the previous fiscal year (from 775 to 1,873). In part, this could be the result of an increase in the number of collective staffing actions, more appointment processes where appointees are chosen from existing pools of qualified candidates, and staffing actions relating to the setup of the Shared Services Canada Agency.

Several departments implemented lay-off decisions from their strategic reviews from previous fiscal years, and so it was anticipated that some individuals selected for lay-off would be filing complaints alleging abuse of authority in their selection for lay-off (section 65 *Public Service Employment Act*).

However, this did not materialize. At year end, lay-off complaints represented only a small portion of the Tribunal's caseload. The vast majority of complaints related, as they have in the past, to appointment processes. Since beginning its operations under the new legislation, lay-off complaints have represented less than 1% of the Tribunal's caseload.

To deal with the increased caseload, the Tribunal continued to encourage parties to consider alternate dispute resolution processes to resolve their complaints.

In February 2012, the Tribunal consulted with its Client Advisory Group on a pilot project planned for launch in April 2012 – the Expedited Hearing Pilot Project. The pilot is a process for less complex cases where the parties can present their case at a one-day hearing. Certain conditions must be met to proceed through an expedited process. The Client Advisory Group was supportive of the initiative and it has proceeded.



The Tribunal continued to seek efficiencies through increased use of technology such as telephone and video conferencing. All prehearing conferences were held over the telephone as well as the majority of the settlement conferences. Fifteen percent of all mediations were either done over the telephone or by videoconferencing. As well, the Tribunal offered its mediation services in different regions of Canada by way of part-time mediators residing in those regions thus reducing the cost of travel for the Tribunal and the parties.

The Tribunal also took a more proactive role in consolidating complaints so that the cases could be heard together and held a number of case management conferences to deal with some large consolidations and certain complex cases.

Case Management System

The present case management system (CMS) that was a basic temporary solution when the Tribunal was established, has reached the end of its life cycle (the intellectual property owner will no longer support the product).

The Tribunal continued the work began in the previous year to find a suitable replacement. The Tribunal participated in the working group set up by Public Works and Government Services Canada (PWGSC) charged with the development of a shared CMS for small departments and agencies. However, the Tribunal could not wait for that shared CMS to be available as the timeline for the implementation of the PWGSC's shared CMS is several years down the road. At year end, the Tribunal identified an off-the-shelf product that would meet the Tribunal's needs and budgetary constraints.

Human Resources

As the Tribunal completes its sixth full year of operation, it has not faced an increase in the turnover rate, in fact we have retained our employees. With the continuous increase in its caseload, the Tribunal has ensured that all its senior and front line positions are staffed.

Even with employee retirement and foreseen potential increase in caseload due to workforce adjustments, the Tribunal will be in a good position to face upcoming challenges. We have also put emphasis on the impact of change on employees and will still promote work/life balance for this organization. Emphasis continues to be on creating a workplace of choice by providing learning opportunities and knowledge transfer to ensure it can deliver on its mandate.

The Tribunal has been proactive in doing its operational, strategic and financial planning so that costing is examined and reviewed. We continue to ensure stability in the organization by managing priorities and operational demands by maximizing internal capabilities and knowledge.

Review of the *Public Service Modernization Act*

The Committee reporting on the Review of the *Public Service Modernization Act* delivered its report on December 16, 2011. The Tribunal carefully reviewed the recommendations, more particularly the ones relevant to its work.

The Tribunal has taken advantage of opportunities to rethink the workplace in terms of people management and its tools in terms of how it does business as it fulfills its mandate – an approach consistent with the conclusions of the review.

Planning and Reporting

As a micro-agency, the Tribunal faced challenges dealing with the increasing reporting demands of government-wide initiatives. The issue will be looked at more closely by Heads of Federal Agencies in the coming year.

Summary of Performance

2011–12 Financial Resources (\$thousands)

Planned Spending	Total Authorities*	Actual Spending*
5,482	5,988	4,936
* Excludes amount deemed appropriated to Shared Services Canada, if applicable.		

2011–12 Human Resources (full-time equivalents [FTEs])

Planned	Actual	Difference
37	35	2

Summary of Performance Tables

Progress Toward Strategic Outcome

Strategic Outcome: The fair and impartial resolution of disputes related to internal appointments and lay-offs in the Government of Canada		
Performance Indicators	Targets	2011-12 Performance
Percentage of complaints referred to judicial review on the grounds that the Tribunal failed to observe a principle of natural justice, procedural fairness or other procedure.	3%	<p>Less than 1% of all final decisions were referred to judicial review on the grounds that the Tribunal failed to observe a principle of natural justice, procedural fairness or other procedure. Any result below the 3% target is an indication that the Tribunal has met or exceeded its level of performance.</p> <p>Of the 187 final decisions (37 Reasons for Decision and 150 Letter Decisions) issued, only one judicial review application was made to the Federal Court on the grounds mentioned above.</p>

Performance Summary, Excluding Internal Services

Program Activity	2010-11 Actual Spending	2011-12 (\$)				Alignment to Government of Canada Outcome
		Main Estimates	Planned Spending	Total Authorities*	Actual Spending*	
Adjudication and mediation of complaints filed under the <i>Public Service Employment Act</i>	3,477	3,891	3,891	4,213	3,644	Supports a public service that reflects excellence and leadership.
Total	3,477	3,891	3,891	4,213	3,644	
* Excludes amount deemed appropriated to Shared Services Canada, if applicable.						

Performance Summary for Internal Services

Program Activity	2010-11 Actual Spending	2011-12 (\$)			
		Main Estimates	Planned Spending	Total Authorities*	Actual Spending*
Internal Services	1,270	1,591	1,591	1,775	1,292
* Excludes amount deemed appropriated to Shared Services Canada, if applicable.					

Strategic Environmental Assessment

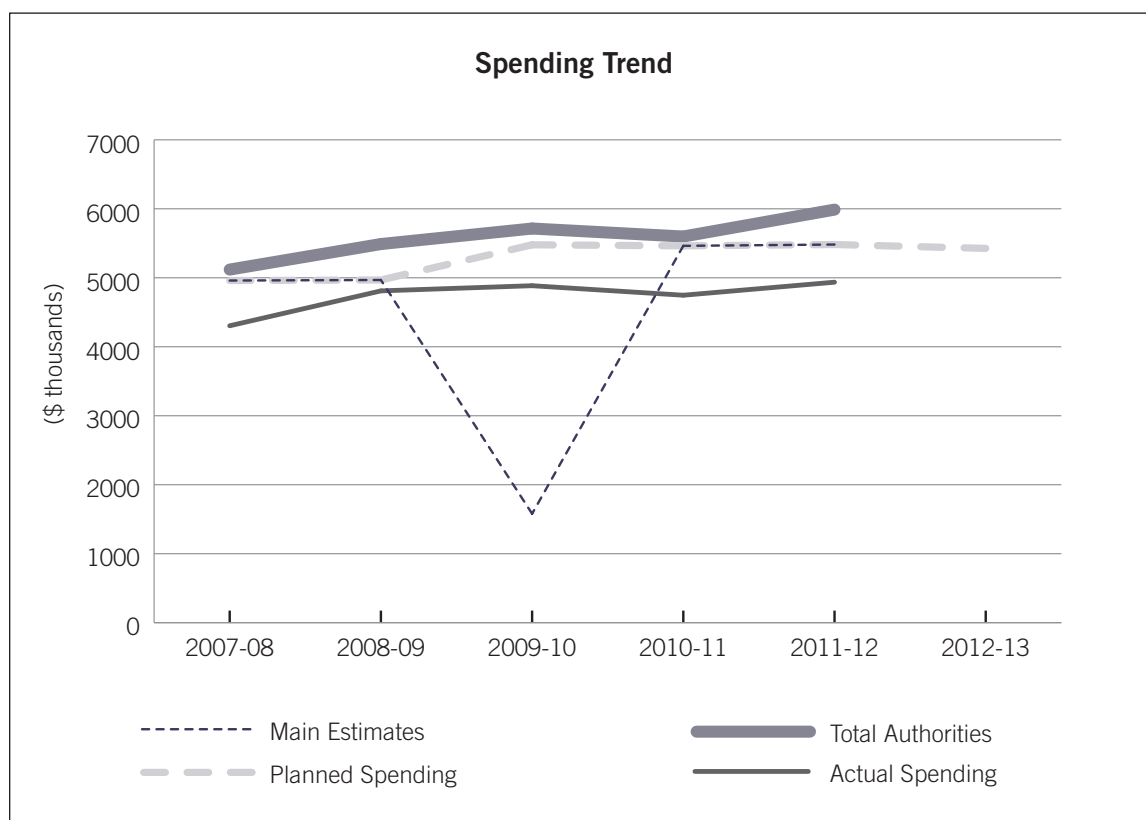
During 2011-12, the Tribunal considered the environmental effects of initiatives subject to the Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals and did not produce any public statements.

Expenditure Profile

The Tribunal's actual spending was \$4.9 million in 2011-2012. The Tribunal's expenditures have increased since the PSEA came into force in December 2005 because the number of complaints filed with the Tribunal rose sharply. Since its establishment in 2005, the Tribunal has steadily built up its capacity and invested in its infrastructure to deliver its activities.

The Tribunal was originally established with a planned expenditures budget of \$5 million on the assumption that approximately 400 complaints would be submitted per year. This number was reached in the Tribunal's second year of operations (2006-2007). An average of 991 complaints has been received in the last five fiscal years (April 1, 2007 to March 31, 2012). Despite the significant increase in the number of complaints, the Tribunal has continued to operate within the resources that were originally allocated. The number of complaints received in 2011-2012 was 1873 which represents a major increase from the 775 complaints last year.

The chart below shows the Tribunal's spending trend over a three-year period.





Estimates by Vote

For information on the Public Service Staffing Tribunal's organizational Votes and/or statutory expenditures, please see the Public Accounts of Canada 2012¹ (Volume II). An electronic version of the Public Accounts 2012 is available on the Public Works and Government Services Canada's website.

¹ <http://www.tpsgc-pwgsc.gc.ca/recgen/txt/72-eng.html>



SECTION II:
*Analysis of Program Activities
by Strategic Outcome*

Strategic Outcome

Fair and impartial resolution of disputes related to internal appointments and lay-offs in the Government of Canada.

Program Activity: Adjudication and Mediation

Adjudication and mediation of complaints filed under the *Public Service Employment Act*.

Program Activity Description

The Tribunal considers and disposes of complaints related to internal appointment and lay-off processes in the public service. It provides a number of opportunities for parties to resolve complaints. These include: the complaint process (which includes the pilot expedited hearing process), settlement conferences and mediation (including telephone mediation).

2011–12 Financial Resources (\$thousands)

Planned Spending	Total Authorities	Actual Spending
3,891	4,213	3,644

2011–12 Human Resources (full-time equivalents [FTEs])

Planned	Actual	Difference
27	26	1

Program Activity: Internal Services

The Tribunal contributes to the Greening Government Operations targets through the Internal Services program activity. For additional details on the Tribunal's Greening Government Operations activities, please see the List of Supplementary Information Tables in Section III.

2011–12 Financial Resources (\$)

Planned Spending	Total Authorities*	Actual Spending*
1,591	1,775	1,292
* Excludes amount deemed appropriated to Shared Services Canada, if applicable.		

2011–12 Human Resources (full-time equivalents [FTEs])

Planned	Actual	Difference
10	9	1

Performance Summary and Analysis of Program Activity

Tribunal decisions are timely, sound and well-reasoned.

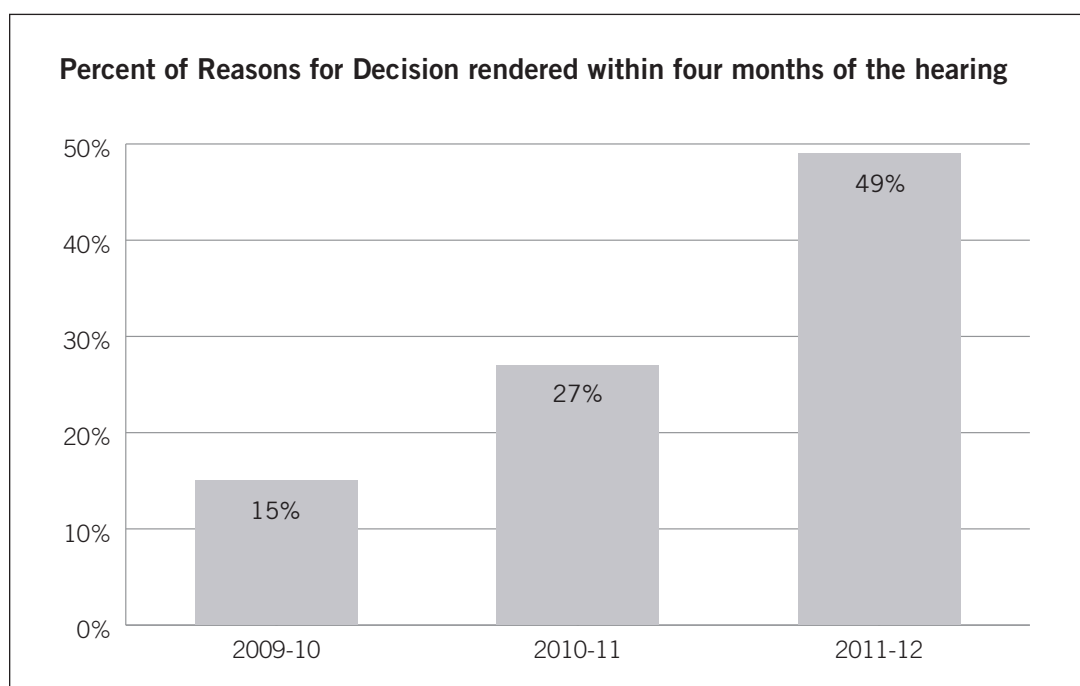
Indicator	Target
Percentage of decisions where reasons are issued within four months of hearing	80%

The Tribunal's ultimate goal with respect to the complaints it receives is to render high quality decisions within a reasonable time frame.

A number of factors can have an impact on whether the Tribunal is successful. The increasing number of complex matters and cases dealing with human rights issues typically involve longer hearings and many procedural issues that must be decided prior to a hearing.

The Tribunal issues detailed Reasons for Decision following an oral hearing. It also issues Letter Decisions, which are more concise, to deal with the over 1,000 procedural and jurisdictional matters that must be decided by a Tribunal member during the year. These procedural and jurisdictional matters are usually decided on the basis of written submissions and the vast majority of the Letter Decisions are issued within a few days after the parties have provided their submissions.

Closer monitoring and case management practices, such as reassigning cases between members and conducting settlement conferences, are in place to provide conditions that will assist members in achieving the target. These strategies have contributed to the Tribunal's success in improving its results over the last three years and, in particular, the year under review.



While the Tribunal will continue, as best it can, to put in place the conditions that will allow it to reach its goals, nevertheless there are many variables over which the Tribunal has no control, e.g. timelines for appointment or reappointment of members, the independence conferred to the decision-makers by virtue of their role.

Indicator	Target
Percentage of Tribunal decisions upheld on judicial review	95%

One measure of the quality of decisions can be the number of applications for judicial review filed with the Federal Court (FC) and, of those, the number where the application is granted. Federal Court decisions are instructive for the parties and the Tribunal even in cases where a judicial review application has been granted and the case is returned to the Tribunal for a new hearing. There have been no significant changes in the number of cases going to judicial review. A total of five decisions were referred to judicial review out of the 187 final decisions issued by the Tribunal.

The FC issued its decision in four cases – granting two applications and dismissing two. Of note, the Court confirmed that the Tribunal may make non-binding recommendations in cases where a complaint has been substantiated (see *Beyak*, 2011 FC 629)².

In the first case to be appealed to the Federal Court of Appeal (FCA), the Court endorsed the Tribunal's analysis of abuse of authority. The Attorney General of Canada sought and obtained leave to appeal the FCA decision to the Supreme Court of Canada. A hearing into that matter has been scheduled for November 2012.

As of March 31, 2012, there were six applications for judicial review before the FC either awaiting a hearing or a decision. As well, two decisions of the FC are being appealed to the FCA.

See chart below for an overall view of judicial review applications.

	2007-2011	2011-2012	Total
Number of judicial review applications filed	21	5	26
Applications dismissed or moot	3	2	5
Applications granted	5	2	7
Applications discontinued	7	1	8
Applications pending	6	6	6
Number of final decisions rendered by Tribunal	589	187	776
Percentage of decisions upheld	99.2%	98.9%	99.1%

² <http://decisions.fct-cf.gc.ca/en/2011/2011fc629/2011fc629.html>

Lessons Learned

Predicting caseload and type of complaint

The year in review demonstrated how difficult it is to know what lies ahead when planning in the context of the Tribunal's work.

Our planning efforts were geared to examining how best to manage an influx of lay-off cases and to ensure that we had sufficient front-line staff to process the files. Lay-off complaints pose a particular challenge as they are time-sensitive and may have serious consequences for an employee. The Tribunal must therefore ensure it can hear and decide these cases expeditiously. There is a high likelihood that an influx will occur in the next fiscal year.

Given that the Tribunal did see its case load increase by over 140%, the additional staff and the planning of a pilot project for conducting expedited hearings were fortuitous.

Pilot project

After having completed two successful pilot projects previously (Settlement Conference Pilot Project and Telephone Mediation Pilot Project) and added them to the Tribunal's dispute resolution tool box, planning began for an Expedited Hearing Pilot Project and consultations were held with our stakeholders.

It was believed that this tool would assist in dealing with less complex cases that could be hearing in a day and where the Tribunal would render its decision within 30 days of the hearing.

Telephone and videoconference mediation pilot project

During the telephone mediation pilot project, some parties or representative had expressed a preference for in-person mediation. In order to increase flexibility on the part of everyone with respect to the choice of telephone, videoconference and in person mediation, the Tribunal added the possibility of doing the pre-mediation by telephone (one day) and the mediation in person (one day). This approach was quite popular since it was used in 25% of the mediations.

During the pilot project year, some mediations were done by videoconference by using the facilities of another federal administrative tribunal. Videoconference mediations are now also done by using the facilities provided by the parties to the complaint. As well, since it is more expedient to book a teleconference than a videoconference, mediators will sometimes schedule the pre-mediation by telephone and the mediation by videoconference.



For the telephone mediations, this year compared to the previous year saw substantial increases in the settlement rate (from an average of 67% to 82%) as well as in the participant's satisfaction rates (from an average of 83% to 90%). These increases could be due to the increased awareness and experience of the parties and their representatives, and to the increased experience of the mediators.

Based on this we learned to stay open to the client's feedback and to stay flexible to improve the dispute resolution processes implemented by the Tribunal.



SECTION III:
Supplementary Information

Financial Highlights

Condensed Statement of Financial Position (Unaudited)

As at March 31, 2012

(\$)

	Change \$	2011-12	2010-11
Total net liabilities	(207,410)	963,357	1,170,767
Total net financial assets	123,877	410,560	286,683
Departmental net debt	(331,287)	552,797	884,084
Total non-financial assets	9,652	41,247	31,595
Departmental net financial position	340,939	(511,550)	(852,489)

Condensed Statement of Operations and Departmental Net Financial Position (Unaudited)

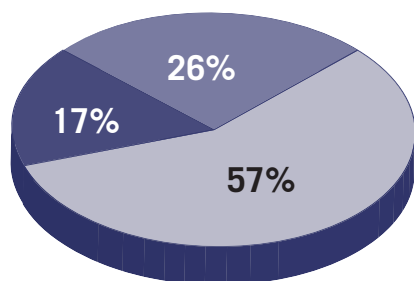
For the Year Ended March 31, 2012

(\$)

	Change %	2011-12	2010-11
Total expenses	1.5%	5,267,239	5,346,962
Total revenues	0%	0	0
Net cost of operations before government funding and transfers	1.5%	5,267,239	5,346,962
Departmental net financial position	40%	(511,500)	(852,489)

Financial Highlights – Charts and Graphs

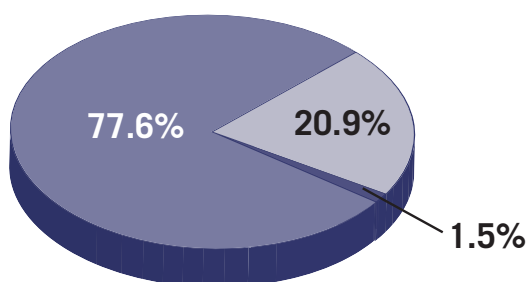
Spending Distribution by Operational Priorities



■ *Mediation Services*
 ■ *Internal Services*
 ■ *Adjudication Services*

Based on the Tribunal's financial statements, total expenses were \$5.3 million in 2011-12. The majority of the funds, \$3.1 million or 57%, were spent on the Adjudication Services; while Mediation Services represented \$880K or 17% of total expenses and Internal Services represented \$1.4 million or 26% of total expenses.

Spending Distribution by Type



■ *Translating Decisions*
 ■ *Salaries and Employee Benefits*
 ■ *Other Operating Costs*

Total expenses for the Tribunal were \$5.3 million in 2011-12 of which \$4.1 million or 77.6% were spent on salaries and employee benefits while \$1.1 million or 20.9% were spent on other operating costs such as transportation costs, professional services fees, accommodation costs and cost for hearing and mediation facilities. The balance of \$81 thousand or 1.5% of the Tribunal costs was for translating its decisions (special purpose allotment).

Financial Statements

Financial Statements can be found on the PSST website on the Reports page at:
www.psst-tdfp.gc.ca/article.asp?id=3486



List of Supplementary Information Tables

Electronic supplementary information tables listed in the 2011–12 Departmental Performance Report can be found on the Public Service Staffing Tribunal's website.³

- Greening Government Operations

³ <http://www.psst-tdfp.gc.ca/article.asp?id=5191>