

Human Rights Tribunal Panel

1998-1999 Estimates

A REPORT ON
PLANS AND PRIORITIES

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Minister of Justice

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Section I: Messages



A. President's Message

We anticipate that 1998-99 will be an exciting and challenging year of transition for the Human Rights Tribunal (HRT). In the fall of 1997, the Government of Canada introduced Bill S-5, amendments to the *Canadian Human Rights Act (CHRA)*, in the Senate. Following committee hearings, the Bill was passed by the Senate in December and is expected to be introduced in the House of Commons when the House reconvenes in February.

In the interim, the Tribunal will continue to provide service to Canadians as in the past. We have approximately 35 dedicated part-time Members, who will continue to interpret and apply the *CHRA*.

In addition, we anticipate that this year Members of the Human Rights Tribunal will commence hearings under the *Employment Equity Act (EEA)*, as the Employment Equity Review Tribunal. The *Employment Equity Act* came into effect in October 1996, and in November 1997, the Canadian Human Rights Commission (CHRC) began auditing federally regulated employers governed by the *Act*. Depending on the results of these audits, hearings may commence as early as the fall of 1998.

The Tribunal is developing new rules of procedure for hearings under the *Employment Equity Act*. These rules should be available before hearings commence under the *Employment Equity Act*. We will be consulting with the user groups directly affected by the Tribunal rules prior to their implementation.

I also want to take this opportunity to express my gratitude and appreciation to all the Members who have served on the Panel since 1979. The hard work, dedication and commitment to fairness of the Members of the Human Rights Tribunal Panel have improved the lives of many Canadians. The Federal and Supreme Courts have repeatedly recognized these efforts and the importance of the work of Tribunal Members. Members can take pride in their achievements. Their legacy is the important body of jurisprudence that has been developed over the years, which will undoubtedly provide guidance to the Members of the new Canadian Human Rights Tribunal.

The upcoming year should be an exciting and eventful year, and one full of challenges.

Anne L. Mactavish



B. Management Representation Statement

MANAGEMENT REPRESENTATION / DÉCLARATION DE LA DIRECTION	
<i>Report on Plans and Priorities 1998-99 / Un rapport sur les plans et les priorités 1998-1999</i>	
<p>I submit, for tabling in Parliament, the 1998-99 Report on Plans and Priorities (RPP) for the</p>	<p>Je sou mets, en vue de son dépôt au Parlement, le Rapport sur les plans et les priorités de 1998-1999 du</p>
Human Rights Tribunal	Tribunal des droits de la personne
<p>To the best of my knowledge the information:</p> <ul style="list-style-type: none"> • Accurately portrays the department's mandate, plans, priorities, strategies and expected key results of the organization. • Is consistent with the disclosure principles contained in the <i>Guidelines for Preparing a Report on Plans and Priorities</i>. • Is comprehensive and accurate. • Is based on sound underlying departmental information and management systems. • I am satisfied as to the quality assurance processes and procedures used for the RPP's production. <p>The Planning and Reporting Accountability Structure (PRAS) on which this document is based has been approved by Treasury Board Ministers and is the basis for accountability for the results achieved with the resources and authorities provided.</p>	<p>À ma connaissance les renseignements :</p> <ul style="list-style-type: none"> • Décrivent fidèlement les mandats, plans, priorités, stratégies et résultats clés escomptés de l'organisation. • Sont conformes aux principes de divulgation de l'information énoncés dans les <i>Lignes directrices pour la préparation du Rapport sur les plans et les priorités</i>. • Sont complets et exacts. • Sont fondés sur de bons systèmes d'information et de gestion sous-jacents. • Je suis satisfait des méthodes et procédures d'assurance de la qualité qui ont été utilisées pour produire le RPP. <p>Les ministres du Conseil du Trésor ont approuvé la structure de planification, de rapport et de responsabilisation (SPRR) sur laquelle s'appuie le document et qui sert de fondement à la reddition de comptes sur les résultats obtenus au moyen des ressources et des pouvoirs fournis.</p>
<p>Name/Nom : <u>Michael P. Glynn</u></p> <p>Date : <u>February 10, 1998</u></p>	

Section II: Departmental Overview



A. Mandate, Roles and Responsibilities

The Human Rights Tribunal Panel is a quasi-judicial body. It was created by Parliament to inquire into complaints of discrimination and to decide if particular cases have contravened the *Canadian Human Rights Act*. The Tribunal is the only entity that may legally decide whether there has been a discriminatory practice under the *Act*.

On January 1, 1997, the Tribunal came into existence as a separate agency. It had previously received its funding through the Canadian Human Rights Commission. In fact, the Tribunal had been operating independently since 1988, except for shared administrative services. In 1996, approval through Orders-in-Council and Treasury Board made the Tribunal a separate agency under the provisions of the *Financial Administration Act*. The transfer of personnel and financial services was completed through an agreement with the Office of the Commissioner for Federal Judicial Affairs on January 1, 1997.

Separating the Tribunal from the CHRC was a way of enhancing the Tribunal's independence and impartiality in the eyes of the Canadian public and its clientele. Under the *Canadian Human Rights Act*, the Tribunal carries out a critical responsibility: to balance the rights of the individual against the requirements of a fair and democratic society. It is a formidable task. Whatever their personal circumstances, all Canadians have the right to equality, equal opportunity, fair treatment, and an environment free of discrimination. The Tribunal ensures that this right is not violated by federally regulated employers and providers of goods, services, facilities and accommodation – including the government itself.

The Tribunal inquires into complaints of discrimination through public hearings. Based on (often conflicting) evidence and the law, it determines whether discrimination has occurred. If the answer is “yes”, it decides on the appropriate remedy to stop future discrimination and to compensate the victim of the discriminatory practice.

Experience shows that the vast majority of discriminatory acts are not malicious. The problems usually arise from long-standing systemic practices, legitimate concerns of the employer, or conflicting interpretations of the statute and precedents. Very few cases are clear-cut, and the evidentiary and legal issues are extremely complex. The Tribunal Members (who are part-time) must put in long hours analyzing evidence and the law before reaching their conclusions.

The Tribunal may inquire only into complaints referred to it by the CHRC, usually after a full investigation by the CHRC. The CHRC resolves most cases without the Tribunal's intervention. The cases referred to the Tribunal generally involve complicated legal issues, new human rights issues, unexplored areas of discrimination, or multifaceted evidentiary complaints that must be heard under oath.

The Human Rights Tribunal is not an advocate. That is the role of the Canadian Human Rights Commission. The Tribunal has a statutory mandate to apply the *Canadian Human Rights Act*, based on the evidence presented and on current case law. Decisions of the Tribunal are reviewable by the Federal Court of Canada.

The Tribunal's responsibilities were expanded in the fall of 1996 with the proclamation of the *Employment Equity Act*. With the *Act*, the Tribunal takes on a "second hat": as well as being the Human Rights Tribunal, it is now the Employment Equity Review Tribunal. Hearings under this *Act* may commence as early as the fall of 1998. The Tribunal is establishing guidelines and rules of procedure to deal with this new area of responsibility and will consult with Treasury Board on the financial implications of the change.

Role of the Human Rights Tribunal

To understand the roles of the Human Rights Tribunal and the Canadian Human Rights Commission, it helps to consider the criminal justice system. The police receive complaints of criminal conduct and investigate these complaints. Some of these allegations turn out to be unfounded, and no charges are laid. In other cases, the police lay charges and the case will be prosecuted by the Crown Attorney's office. These cases are decided by an independent judiciary. In the human rights process, the CHRC acts like the police, receiving and investigating complaints. If it decides that further inquiry is warranted, it refers the case to the Tribunal for a decision. The CHRC then acts like the Crown Attorney, representing the public interest. The Tribunal acts as the judge, deciding the case impartially.

The Human Rights Tribunal consists of two parts: the Panel itself, and the Registry (see Table 2, page 13). The Tribunal Panel includes about 35-45 part-time Members, appointed by the Governor in Council. Members' backgrounds vary, but most have legal training and experience in human rights issues. The Tribunal Registry provides full administrative support services to the Members; it is responsible for the planning and organization needed for the hearing process.

What issues does the Panel deal with? In matters concerning employment or the provision of goods, services, facilities or accommodation, the *Canadian Human Rights Act* makes it illegal for anyone to discriminate against any individual or group on the grounds of:

- race
- national or ethnic origin
- colour
- religion
- age
- sex (including pregnancy)
- family status
- marital status
- disability
- conviction for an offence for which a pardon has been granted
- sexual orientation.

Mission Statement

The mission of the Human Rights Tribunal Panel is to protect and uphold the human rights of all Canadians, through a decision making process that must be and must be seen to be independent and impartial, offering a fair process to all the parties involved.

Registry's Role

The Tribunal Registry's operating objective is to create the best possible environment to enable the Tribunal Members to fulfil their legal mandate, within reasonable cost limitations. The Registry provides the necessary administrative and ongoing support in the planning and organizing of hearings held throughout Canada, thus providing Members with a proper hearing environment.

Canadian Human Rights Act

As stated in the President's message, the Human Rights Tribunal may undergo many important and far-reaching changes to its structure and operations in 1998-99. Since 1978, the Tribunal has always functioned with a part-time membership ranging from 35 to 120 Members. These Members reside throughout Canada and are appointed to individual cases on an as-and-when required basis by the President of the Tribunal Panel. The President's position is also part-time.

In the past, a high priority for the Tribunal was training for its Members. A training program was developed to ensure that Members were fully capable of fulfilling their adjudicative duties as soon as possible. Outside specialists were coordinated to provide instruction on such subjects as the hearing process and procedure, rules of evidence as they apply to an administrative tribunal, human rights precedents, cultural sensitivity, decision writing, together with information sessions on the *CHRA*, government practices related to travel and entitlements and other related subjects, to assist Members in the performance of their duties. Training will be provided to any new Members who may be appointed by the government.

Employment Equity Act

The *Employment Equity Act* came into force in October 1996. In essence, this *Act* seeks to promote the equality of women, disabled persons, members of visible minorities and aboriginal peoples within the federally regulated workforce. The *Act* obliges Employers to collect information regarding the representation of the aforementioned groups in their own employee populations; the *Act* also requires Employers to prepare and implement an employment equity plan which seeks to remove barriers to workplace equality.

Under this legislation, the Canadian Human Rights Commission acts in a policing and auditing capacity. Members of the Human Rights Tribunal may be appointed to serve on special adjudicative bodies called Employment Equity Review Tribunals.

Employment Equity Review Tribunals have two major functions:

- 1) They review – and, if need be, enforce – compliance directions which have been issued by the CHRC against Employers (s. 27(1), (2)).
- 2) They review the assessment of monetary penalties levied against Employers by the Minister (s. 38(1) (b), (3)). Penalties are levied for an Employer’s failure to properly fulfill the *Act’s* reporting requirements.

The Canadian Human Rights Commission commenced auditing Employers in November 1997. With the commencement of audits, audited Employers will acquire the right to ask for a Tribunal hearing to review the CHRC’s directions and the CHRC will begin requesting Tribunal hearings to enforce compliance by Employers. Furthermore, as the administration of the *Act* progresses, the Minister may levy a monetary penalty against an Employer who, in turn, will seek a Tribunal hearing to review this penalty.

To prepare for its first proceeding under the *Act*, the Tribunal Registry staff, under the direction of the President, will issue rules in 1998/99 governing practice and procedure before Employment Equity Review Tribunals. Issues which will be addressed by these rules include expert evidence, disclosure, motions and the expeditious advancement of proceedings.

Although there is not yet any historical data upon which to rely, actual objectives and plans for these Tribunal operations will be developed. We will be determining the precise needs of our clientele from the Employer sector, within the CHRC, employees, and Counsel who will be practising before us. To the extent that our experience during the early years of the *Canadian Human Rights Act* is instructive, there will be a significant learning curve for all actors involved in adjudication under the *Employment Equity Act*. We are prepared to conduct hearings as required in 1998.

B. Objective

To ensure the equitable application of the *Canadian Human Rights Act* and the *Employment Equity Act* through the conduct of fair and efficient hearings.

C. Financial Spending Plan

(\$ thousands)	Forecast Spending 1997-98*	Planned Spending 1998-99	Planned Spending 1999-00	Planned Spending 2000-01
Gross Program Spending:				
Human Rights Tribunal	2,364	2,191	1,518	1,518
	2,364	2,191	1,518	1,518
<i>Less:</i> Revenue Credited to the Vote	-	-	-	-
Net Program Spending	2,364	2,191	1,518	1,518
<i>Less:</i> Revenue Credited to the Consolidated Revenue Fund	-	-	-	-
<i>Plus:</i> Non-budgetary	-	-	-	-
<i>Plus:</i> Cost of Services Provided by other Departments	242	278	278	278
Net Cost of the Department	2,606	2,469	1,796	1,796

* Reflects best forecast of total planned spending to the end of the fiscal year.



Section III: Plans, Priorities and Strategies

A. Summary of Key Plans, Priorities and Strategies

Human Rights Tribunal	
(PLAN) to provide Canadians with:	(STRATEGIES) to be demonstrated by:
a fair, impartial and efficient public inquiry process for enforcement and application of the <i>Canadian Human Rights Act</i> and the <i>Employment Equity Act</i> .	<ul style="list-style-type: none"> reducing the total time required to process a case from referral by the CHRC through to a decision by one month each year, to reach an average of 12 months by the year 1998/99. This initiative commenced in 1996/97 reducing the time required to render a decision after the conclusion of a hearing to four months by 1998/99 for those cases which do not exceed 15 days of hearings improving and refining the ADR process to reduce the number of cases going to a full hearing and provide a satisfactory resolution to all parties, at less cost, that still meets the objectives of the <i>Act</i> continuing to modernize the Tribunal's information technology systems to allow improved access to the Tribunal's public documents to the Members and the general public

Legislative Acts and/or Regulations	Expected Results
Amendments to the <i>Canadian Human Rights Act</i> that will remodel the structure of the Human Rights Tribunal and the functionality of the public hearing process.	<ul style="list-style-type: none"> A more structured and efficient hearing system, requiring less time to complete each individual case.

B. Details by Program and Business Line



Business Line

Public Hearings

The Tribunal has one business line, which is to conduct public hearings and render decisions. With a smaller Tribunal Panel, Members will be devoting more time to cases and developing more expertise; we foresee that cases will be decided more quickly, hearings will be scheduled in a more timely fashion and delays previously encountered by the Tribunal should be minimized, resulting in improved service and meeting the needs of the parties appearing before the Tribunal. Human rights law is taking a new direction in both its complexity and importance to Canadian society. The Courts are continually emphasizing the importance of the application of human rights law, and to some extent, frustration with the process currently in place.

With changes in our procedures and improved time lines, we anticipate that the long term cost of individual human rights inquiries inducted under our *Act* will moderate and provide greater value for Canadian citizens. The effects of the new Employment Equity Review Tribunal will be monitored carefully over the next two fiscal years to determine its effect on Tribunal resources.



Figure 1: Public Hearings Expectations ▼

	97/98 Forecast	98/99 Estimated	99/2000 Estimated
Total number of appointments	31	39	45
Referrals from CHRC	28	35	40
Reviews Tribunals/Court Referrals	3	3	3
Employment Equity Review Tribunals	0	2	8
Cost per case	50K	50K	55K
Number of hearing days			
- Regular	141	195	225
- Pay equity	121	207	200
- Employment Equity Review Tribunals	0	10	30
Total Number of hearing days	262	402	455
Cases expected to be resolved through Mediation	10	12	12
Length of time to render a decision from conclusion of hearing	4.5 months	4.0 months	4.0 months
Length of time to process a case from referral by CHRC to rendering of decision	13 months	12 months	11 months

Planned Spending

The Business Line Spending Plan is the same as for the agency’s overall plan. (See details as stated in Section II, Financial Spending Plan, page 7)

Objective

The Tribunal Panel endeavours to ensure the equitable application of the *Canadian Human Rights Act* and the *Employment Equity Act* through the conduct of fair and efficient public hearings.

External Factors Influencing the Business Line



Canadian society has continually demanded that its government provide equality and fairness to all its citizens; the Tribunal must ensure that these high expectations, both from the government and individual Canadians are met. The Courts also have a direct input on the functioning of the Tribunal, by their direct or indirect intervention in applying and interpreting the *CHRA*. As a higher Court gives direction, the Tribunal must adhere to those directions given.

Also, the fluctuating number of referrals from the CHRC is beyond the HRT's control.

Key Plans and Strategies

1. Reduce the total time required to process a case

The Tribunal has implemented a case planning and management system to expedite the hearing process. Members are encouraged to establish hearing dates as early as possible after referral from the CHRC and to adhere to the hearing schedule, within the bounds of procedural fairness.

2. Reduce the time required to render a decision

Members are instructed to have their decision finalized and ready for release within four months of the conclusion of the hearing. Discussions have been held with the Office of the Commissioner of Official Languages to redefine our requirements for the release of bilingual decisions, based on the private interests of the parties, in conjunction with the public interest.

3. Improve and refine the ADR process

Since the introduction of the ADR process in 1996/97, many changes have occurred in our procedures to better meet the needs of the parties. The process is being regularly monitored and reviewed to adjust the process to not only meet the needs of the parties but to ensure the integrity of the *Act*.

4. Continue to modernize the Tribunal's information technology systems

In late 1997, the Tribunal went on line with its own web site. The information format and structure of the web site is new and some changes will be necessary. We are awaiting comments and suggestions from our users to ensure that our site is meeting the needs of Canadians.

Expected Results

The Tribunal, through new initiatives such as ADR, case plannings, pre-hearings and revised time lines, is confident that it can meet its objectives. All of these initiatives have been implemented to minimize delays, provide an improved service to Canadians, and most importantly, provide consistent and fair adjudication of human rights complaints.

Section IV: Supplementary Information

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Table 1: Spending Authorities – Ministry Summary Part II of the Estimates ▼

Vote	(\$ thousands)	1998-99 Main Estimates	1997-98 Main Estimates
Human Rights Tribunal			
30	Program expenditures	2,076	1,852
(S)	Contributions to employee benefit plans	115	75
Total Agency		2,191	1,927

Table 2: Structure of the Human Rights Tribunal ▼

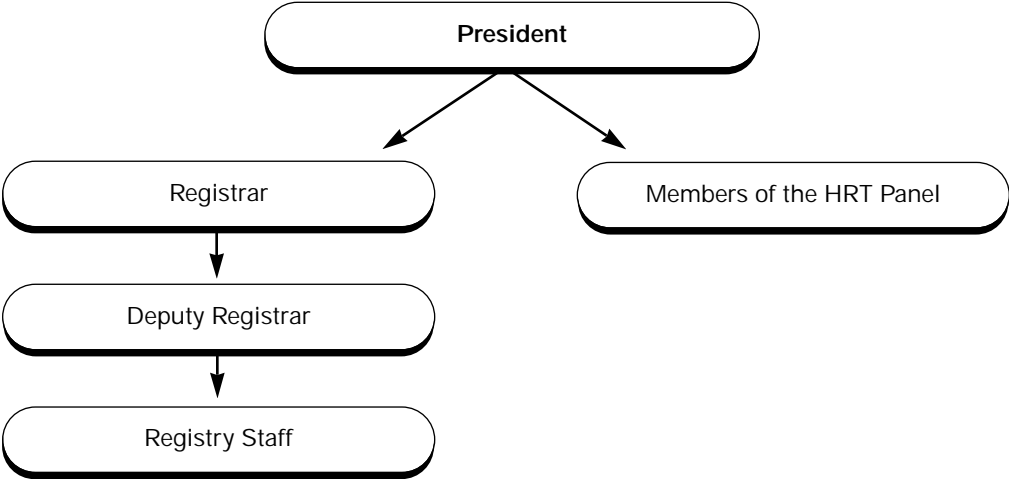


Table 2.1: Planned Full Time Equivalents (FTEs) by Program and Business Line ▼

	Forecast 1997-98	Planned 1998-99	Planned 1999-00	Planned 2000-01
Human Rights Tribunal	15	12	10	10
Departmental Total	15	12	10	10

Changes in FTEs: The fluctuation in FTEs is caused by the commencement and conclusion of pay equity cases. Staffing for these cases is on a term basis for the duration of the hearing.

Table 2.2: Details of FTE Requirements ▼

(\$ thousands)	Forecast 1997-98	Planned 1998-99	Planned 1999-00	Planned 2000-01
Salary Ranges				
< 30,000				
30,000 – 40,000	8	6	3	3
40,000 – 50,000	6	5	6	6
50,000 – 60,000	–	–	–	–
60,000 – 70,000	1	1	1	1
70,000 – 80,000	–	–	–	–
> 80,000	–	–	–	–
Total	15	12	10	10

Changes in FTEs: The fluctuation in FTEs is caused by the commencement and conclusion of pay equity cases. Staffing for these cases is on a term basis for the duration of the hearing.

Additional Financial Information



Table 3: Departmental Summary of Standard Objects by Expenditure ▼

(\$ thousands)	Forecast Spending 1997-98	Planned Spending 1998-99*	Planned Spending 1999-00	Planned Spending 2000-01
Personnel				
Salaries and wages	515	546	353	353
Contributions to employee benefit plans	110	115	74	74
	625	661	427	427
Goods and Services				
Transportation and communications	412	389	250	250
Information	22	40	5	5
Professional and special services	1,098	1,000	760	760
Rentals	53	30	20	20
Purchased repair and maintenance	68	15	20	20
Utilities, materials and supplies	32	25	20	20
Other subsidies and payments	-	1	1	1
Postal subsidy	-	-	-	-
Minor capital	54	30	15	15
	1,739	1,530	1,091	1,091
Total operating	2,364	2,191	1,518	1,518
Capital				
Controlled capital	-	-	-	-
Revolving Fund	-	-	-	-
	-	-	-	-
Transfer payments				
Voted	-	-	-	-
Statutory	-	-	-	-
	-	-	-	-
Gross budgetary expenditures	2,364	2,191	1,518	1,518
<i>Less: Revenues Credited to the Vote</i>	-	-	-	-
<i>Revenues Credited to the Revolving Fund</i>	-	-	-	-
	-	-	-	-
Net budgetary expenditures	2,364	2,191	1,518	1,518
Non-budgetary (LIAs)	-	-	-	-
	-	-	-	-
Total	2,364	2,191	1,518	1,518

* An analysis is currently under way to plan and react to the effects of the Employment Equity Act.

Table 4: Program Resources by Program and Business Line for the Estimates Year ▼

	Budgetary									
	FTE	Operating	Capital	Grants and Contributions	Gross Voted	Statutory Items *	Non-budgetary Loans Investment and Advances	Gross Planned Spending	Less: Revenue Credited to the Vote	Net Planned Spending
Organization	14	2.2	-	-	-	-	-	2.2	-	2.2
Total	14	2.2	-	-	-	-	-	2.2	-	2.2

* Does not include non-budgetary items or contributions to employee benefit plans that are allocated to operating expenditures.

Table 5: Net Cost of Program for 1998-99 ▼

(\$ thousands)	Human Rights Tribunal	Total
Gross Planned Spending	2,191	2,191
Plus:		
<i>Services Received without Charge</i>		
Accommodation provided by Public Works and Government Services Canada (PWGSC)	242	242
Contributions covering employees' share of insurance premiums and costs paid by TBS	36	36
Workman's compensation coverage provided by Human Resources Canada	-	-
Salary and associated costs of legal services provided by Justice Canada	-	-
	278	278
Total Cost of Program	2,469	2,469
Less:		
Revenue Credited to the Vote	-	-
Revenue Credited to the CRF	-	-
Net Cost of Program	2,469	2,469
1997-98 Estimated Net Program Cost	2,606	2,606



Other Information

Listing of Statutes and Regulations:

Canadian Human Rights Act (R.S. 1985, CH-6, amended)

Employment Equity Act (Bill C-64, given assent on December 15, 1995)

Guide to the Operations of the Human Rights Tribunal

Pamphlet of the Human Rights Tribunal

Tribunal Activity Report (1996)

References:

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