



# Human Rights Tribunal Panel



For the  
period ending  
March 31, 1997



Improved Reporting to Parliament —  
Pilot Document

Canada

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## Foreword

On April 24, 1997, the House of Commons passed a motion dividing what was known as the *Part III of the Estimates* document for each department or agency into two documents, a *Report on Plans and Priorities* and a *Departmental Performance Report*. It also required 78 departments and agencies to table these reports on a pilot basis.

This decision grew out of work by Treasury Board Secretariat and 16 pilot departments to fulfil the government's commitments to improve the expenditure management information provided to Parliament and to modernize the preparation of this information. These undertakings, aimed at sharpening the focus on results and increasing the transparency of information provided to Parliament, are part of a broader initiative known as "Getting Government Right".

This *Departmental Performance Report* responds to the government's commitments and reflects the goals set by Parliament to improve accountability for results. It covers the period ending March 31, 1997 and reports performance against the plans presented in the department's *Part III of the Main Estimates* for 1996-97.

Accounting and managing for results will involve sustained work across government. Fulfilling the various requirements of results-based management – specifying expected program outcomes, developing meaningful indicators to demonstrate performance, perfecting the capacity to generate information and report on achievements – is a building block process. Government programs operate in continually changing environments. With the increase in partnering, third party delivery of services and other alliances, challenges of attribution in reporting results will have to be addressed. The performance reports and their preparation must be monitored to make sure that they remain credible and useful.

This report represents one more step in this continuing process. The government intends to refine and develop both managing for results and the reporting of the results. The refinement will come from the experience acquired over the next few years and as users make their information needs more precisely known. For example, the capacity to report results against costs is limited at this time; but doing this remains a goal.

This report is accessible electronically from the Treasury Board Secretariat Internet site:  
<http://www.tbs-sct.gc.ca/tb/key.html>

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# Human Rights Tribunal Panel

## Performance Report

For the  
period ending  
March 31, 1997

A handwritten signature in dark ink, appearing to read "Anne McLellan", with a long, sweeping horizontal stroke extending to the right.

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*Anne McLellan*

Minister of Justice

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## Executive Summary

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.

On January 1, 1997 the Tribunal came into existence as a separate department. It had previously received its funding through the Canadian Human Rights Commission (CHRC). 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 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, and facilities—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.

### ▼ The Role of the Human Rights Tribunal

To understand the roles of the Canadian Human Rights Commission and the Human Rights Tribunal, it helps to consider the criminal justice system. The police receive complaints of criminal conduct and investigate those 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 Commission 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 Commission then acts like the Crown Attorney, representing the public interest. The Tribunal acts as the judge, deciding the case impartially.

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's 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 CHRC, usually after a full investigation by the Commission. 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 amended *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* will probably start after November 1997. 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.



## Section I: The President's Message

I am proud to present to Parliament and the Canadian public the first performance report of the Human Rights Tribunal. This is our first year as a free-standing separate agency, although in practice we have been operating independently of the Canadian Human Rights Commission for some years now. It has, of course, been a year of transition, marked by challenges and change, but we can look back with pride. We have much good to report, especially given our small size and modest budget.

Our accomplishments in 1996–97 include the issuance of a number of formal decisions that affirm Canada's commitment to achieving true equality for all its citizens. We have established an Alternative Dispute Resolution mechanism to assist in the resolution of cases. This initiative has already resulted in the settlement of a number of complaints. Finally, the Tribunal has had conferred upon it a very important second role, that of the Employment Equity Review Tribunal, with the responsibility to determine issues under the *Employment Equity Act*.

I would like to express my strong sense of satisfaction in the performance of members of the Human Rights Tribunal Panel and our Registry staff. They have worked hard and have shown extraordinary dedication to their duties. The Tribunal plays a vital role in Canadian society, deciding difficult issues, establishing important precedents, and making decisions with far-reaching implications. Our Panel members have shown themselves fully capable of handling this significant responsibility.

I look forward to an equally exciting year ahead, as we prepare to deal with the many issues that confront the Human Rights Tribunal.

*Anne Mactavish*

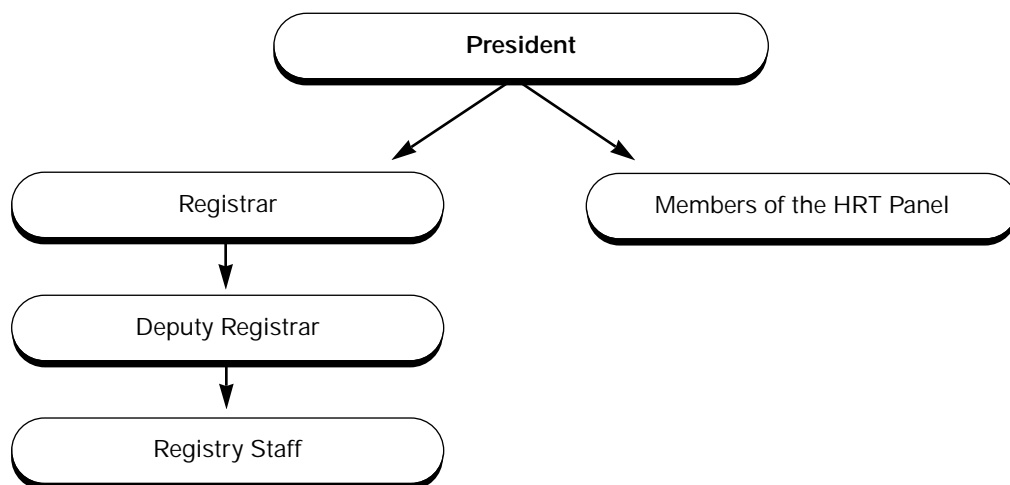


## Section II: Departmental Overview



The Human Rights Tribunal consists of two parts: the Panel itself, and the Registry (see Figure 1). The Tribunal's Panel includes about 50 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.

*Figure 1: Structure of the Human Rights Tribunal*



What issues does the Panel deal with? In matters concerning employment or the provision of goods, services, or facilities, 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.

In addition to dealing with cases involving these areas, members of the Tribunal may hear cases involving equal pay for work of equal value, or cases concerning the use of telephonic devices to disseminate hate messages against identifiable groups.

The Tribunal's jurisdiction covers matters that come within the legislative authority of the Parliament of Canada. This includes federal government departments, agencies, banks, airlines, and other federally regulated employers and providers of goods, services, and facilities. In employment equity matters, the *Act* applies only to employers with more than 100 employees.

The Tribunal's decision-making process must remain (and must be seen as) independent and impartial, offering fair process to all parties. Tribunal members must make their decisions solely on the merits of the individual complaints and on the evidence presented at the hearing.

The Registry's activities are entirely separate from the decision-making process. The Registry is accountable for the resources allocated by Parliament. It plans and arranges hearings and gives Panel members the administrative support they need to carry out their duties, acting as liaison between the parties and Panel members. It must provide high-quality, effective services to the Canadian public.

In the interest of controlling costs while maintaining services, the Registry regularly monitors and adjusts its procedures and practices. At the same time, however, it has to deal with varying numbers of cases—some of which are highly complex and require hearings in different locations. The Registry has no control over the number, location, or duration of these hearings. Under these circumstances, providing support to the Tribunal and services to the public while staying within budget can be a challenge.

## Mandate, Roles, and Responsibilities

The Tribunal's mandate is to interpret, apply, and uphold the human rights of Canadians—according to the *Canadian Human Rights Act* and the *Employment Equity Act*—through the conduct of fair and impartial hearings and the rendering of decisions.

## Service Line and Organization Composition

For reporting purposes, the Tribunal's mandate can be divided into two distinct roles: first, the Panel's decision-making processes; and second, the Registry's administrative support, which supports the Panel in its work.

The Panel's objective is to interpret, apply and uphold the human rights of Canadians, in accordance with the *Canadian Human Rights Act* and the *Employment Equity Act*, through properly conducted hearings and fair decisions.

The Registry's objective is to support the Panel in its operations, to help ensure its independence and impartiality, and to create a positive and workable environment in which members can fulfil their responsibilities.

## Planned Versus Actual Spending Tables



### Resource Requirements by Organization and Business Line

#### Comparison of Total Planned Spending to Actual Expenditures, 1996-97 by Organization and Business Line ▼

Business Lines								(\$ millions)
Organization	Business Line 1	Business Line 2	Business Line 3	Business Line 4	Business Line 5	Business Line 6	Business Line 7	TOTALS
Organization	2.3							2.3
	<b>2.2</b>							<b>2.2</b>
TOTALS	2.3							2.3
	<b>2.2</b>							<b>2.2</b>
% of TOTAL:	<b>0.96%</b>							<b>0.96%</b>

Note: Bolded numbers denote actual expenditures/revenues in 1996-97.

#### Comparison of Total Planned Spending to Actual Expenditures, 1996-97 by Business Line ▼

(\$ millions)							
Organization	Operating* Capital	Voted Grants and Contributions	Subtotal: Gross voted Expenditures	Statutory Grants and Contributions	Total Gross Expenditures	Less: Revenue Credited to the Vote	TOTALS Net Expenditures
Organization	2.3		2.3		2.3		2.3
	<b>2.3</b>		<b>2.3</b>		<b>2.3</b>		<b>2.3</b>
TOTALS	2.3		2.3		2.3		2.3
	<b>2.3</b>		<b>2.3</b>		<b>2.3</b>		<b>2.3</b>
Other Revenues and Expenditures							—
Revenue credited to the Consolidated Revenue Fund							
Cost of services provided by other departments							—
Net Cost of the Program							<b>2.3</b>

Note: Bolded numbers denote actual expenditures/revenues in 1996-97.

\* Operating includes contributions to employee benefit plans and ministers' allowances

#### Departmental Planned Versus Actual Spending by Business Line ▼

(\$ millions)					
Organization	Actual 1993-94	Actual 1994-95	Actual 1995-96	Total Planned 1996-97	Actual 1996-97
Human Rights Tribunal	2.3	2.0	1.9	2.3	2.2
TOTAL	2.3	2.0	1.9	2.3	2.2



## Results Commitments

Human Rights Tribunal Panel (HRT)  
has a budget of \$1,927,000

<i>to provide Canadians with:</i>	<i>to be demonstrated by:</i>
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"><li>• timeliness of the hearing and decision process</li><li>• well-reasoned decisions, consistent with the evidence and the law</li><li>• increased use of Alternate Dispute Resolution processes</li><li>• service that is satisfactory to the members, the parties involved, and the public</li><li>• access to the Tribunal's public documents</li></ul>

## Financial Summary Table

### *Summary of Voted Appropriations*

#### **Authorities for 1996-97 – Part II of the Estimates**

Financial Requirements by Authority (\$ millions)			
Vote	(thousands of dollars)	1996-97 Total Authorities <sup>1</sup>	1996-97 Actual
Program			

Note: The Tribunal operated as part of the Canadian Human Rights Commission in 1996-97 and did not receive direct financial authority.

Total Department

1. Main estimates plus supplementary estimates plus other authorities.

## Section III: Departmental Performance



### A. Performance Expectations

#### Key Initiatives

**Alternative Dispute Resolution (ADR) process:** The Tribunal initiated a new ADR process in this fiscal year. When the parties request it, the President may designate a Panel member as a mediator. (If the parties cannot resolve the dispute and the case is referred to the Tribunal, the mediator cannot serve on the Panel hearing the case.) Mediation allows the parties to a complaint to meet face to face and, with the mediator's help, to try to find a mutually agreeable settlement without the need for a full hearing. If mediation succeeds, it cuts costs to both the taxpayer and the disputing parties. More importantly, both parties reach an agreement that they have crafted themselves—a more satisfying and workable result than having a solution imposed upon them by the Tribunal. Even in those cases that do not reach a settlement, the ADR process helps to focus the issues and shorten the hearing process.

**Management Change:** When the Tribunal became a free-standing agency, the Registry took over management planning and reporting to Central Agencies. The Office of the Commissioner for Federal Judicial Affairs helps the Registry in these new responsibilities. Staff at the Registry are still establishing and learning procedures, but initial reports submitted to the Central Agencies have been favourably received. Both management and reporting should continue to improve over the next few years.

#### Specific Objectives

- to improve and expand the Alternative Dispute Resolution (ADR) process (see next page) so as to reduce the number of cases requiring a full hearing, while continuing to provide resolutions satisfactory to all parties;
- to modernize the Tribunal's information technology systems in order to improve members', clients', and the public's access to the Tribunal's public documents;
- to develop and implement operating rules of practice for the new Employment Equity Review Tribunal.



## B. Performance Accomplishments

### Key human rights decisions:

The Tribunal released 13 decisions, mostly dealing with complex evidence or issues. Two highly significant decisions involved Health Canada and benefits for same-sex couples (see sidebar).

### Alternative Dispute Resolution (ADR) process:

In 1996–97, the ADR process handled eight complaints, four of which were resolved without a formal hearing by the Tribunal. We expect the number of requests for ADR to grow dramatically in the next year.

### Tribunal appointments:

The Human Rights Tribunal appointed 15 tribunals to hear cases, down from the normal average of 25–30 tribunals per year. This decrease resulted from the reorganization of CHRC, which led to fewer referrals to the Tribunal.

### Annual workshop and training session:

The Tribunal conducted a workshop and training session for its members in November, to continue to improve the efficiency of the Tribunal and facilitate communication between the Registry and members.

### Gaining independence:

As noted above, the Tribunal was designated as a separate agency under the provisions of the *Financial Administration Act* and entered into an agreement with the Office of the Commissioner of Federal Judicial Affairs for the provision of corporate services.

### ▼ KEY DECISIONS

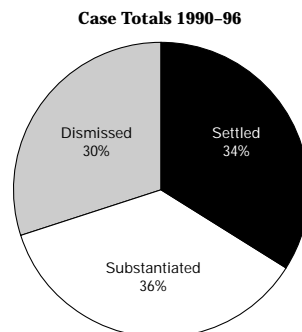
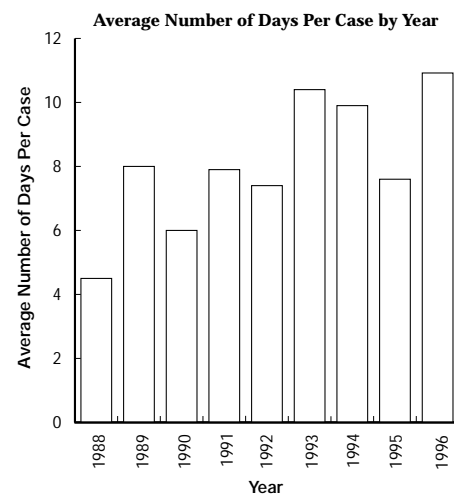
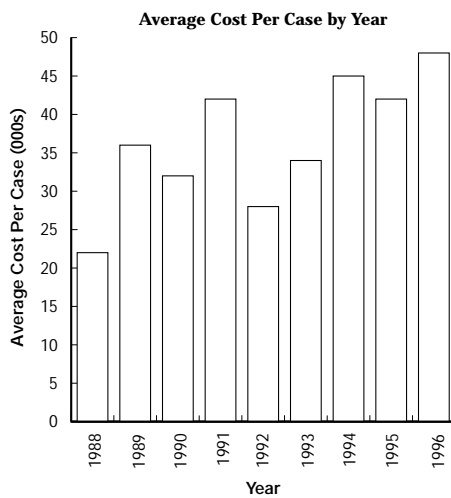
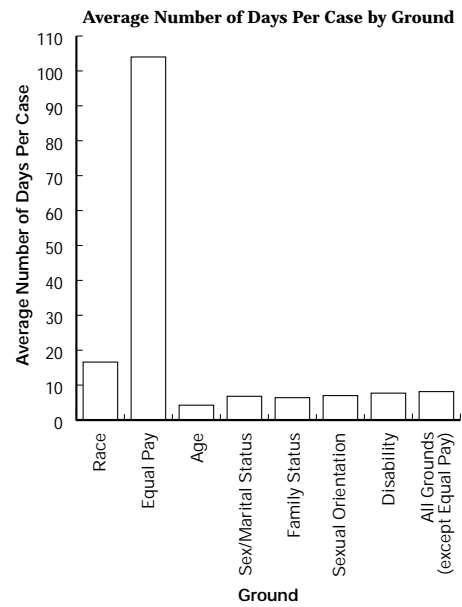
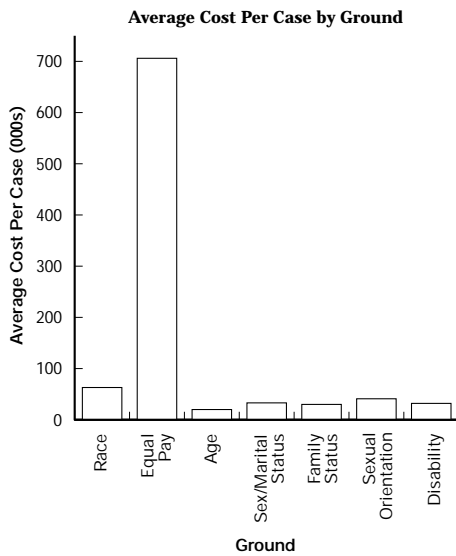
#### **NCAAR v. Her Majesty the Queen, *et al***

The Tribunal substantiated a complaint of systemic discrimination against Health Canada, the Public Service Commission and Treasury Board. It ordered Health Canada to put in place a detailed special corrective measures program, with human rights workshops, management training and bias-free recruitment practices and to promote a specific percentage of visible minorities in the next few years.

#### **Moore and Akerstrom v.**

**Treasury Board, *et al*** The Tribunal also found that the federal government had discriminated against same-sex couples on the grounds of sexual orientation, family status and marital status. It ordered that spousal benefits should be paid to the same-sex partners of federal employees.

## Workload and Costing Indicators





## C. Business Line Performance

Given the size of the Human Rights Tribunal and its very modest budget (less than \$2 million), its effects on Canadian society have been far-reaching. Each tax dollar spent significantly improved the lives of all Canadians.

The Tribunal has immense social impact on the lives of all Canadians. For example, it ordered that:

- women may form part of the Changing of the Guard Ceremony on Parliament Hill;
- women may occupy combat positions in the Canadian Armed Forces;
- Air Canada must remove its age-27-upper-limit criterion for new-pilot hiring;
- visible minorities must be given better opportunities to be hired for management positions at Health Canada;
- up to the point of undue hardship to their business practices, employers must accommodate those with different religious beliefs;
- disabled Canadians must be given equal access to election polling stations;
- the Canadian Armed Forces must change its mandatory retirement policies;
- sexual orientation cannot be a reason for denial of employee benefits;
- employers must clearly prove that a disabled person cannot perform the duties of a particular job;
- expanded EI benefits must be made available to pregnant women.

A vast range of issues come before the Tribunal. Cases heard include:

- denial of entry into Canada because of a refugee's perceived disability;
- the forced retirement of a flight attendant at the age of 60;
- a trucking company's denial of employment to a driver because the driver was not a family member;
- a police officer's verbal abuse of a member of a visible minority;
- a Band Council's denial of benefits to a First Nations woman because she lived off reserve;
- release from employment because of pregnancy;
- apparent sexual or racial harassment by employers;
- whether slight curvature of the spine disqualifies an applicant from being a pilot for a national airline;
- differential treatment of a gay client at a Canadian Customs centre;
- the use of telephone answering machines to transmit hate messages;
- denial of benefits or employment for individuals with HIV or AIDS;
- the use of drug testing by employers in screening prospective employees.



Cases require considerable deliberation because decisions can be far-ranging in their implications. While a Tribunal decision usually involves only an individual complainant, the ripple effects can be considerable. Canadians who now have access to services and jobs that only five years ago would not have been available to them can thank those individuals who had the courage to challenge the system and were proved right.



The majority of Human Rights Tribunal decisions receive local and national media coverage. This attention helps inform the public of their rights and where to seek help. Publicity also reminds employers of their obligations to their employees and clients. For example, when a decision involves a bank, other financial institutions immediately ask for a copy of the decision to compare it with their own policies. Where necessary, they make amendments to their policies to follow the principles set out in the decision.

Starting in spring 1997, the Auditor General will carry out an in-depth audit of the Tribunal's operations. We look forward to this first opportunity to be evaluated by an independent agency, and we will welcome any suggestions for improvement.

## Key Reviews

No audits or reviews were conducted in 1996–97.



## Section IV: Supplementary Information

### A. Listing of Statutory and Departmental Reports

Guide to the Operations of the Human Rights Tribunal

Pamphlet of the Human Rights Tribunal

Tribunal Activity Report (1996)

### B. Contact for Further Information

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### C. Legislation Administered by the Human Rights Tribunal

**The Minister has sole responsibility to Parliament for the following Acts:**

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

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