



# Canadian Human Rights Tribunal

## Performance Report

For the period ending  
March 31, 1998

Canada

## **Improved Reporting to Parliament Pilot Document**

The Estimates of the Government of Canada are structured in several parts. Beginning with an overview of total government spending in Part I, the documents become increasingly more specific. Part II outlines spending according to departments, agencies and programs and contains the proposed wording of the conditions governing spending which Parliament will be asked to approve.

The *Report on Plans and Priorities* provides additional detail on each department and its programs primarily in terms of more strategically oriented planning and results information with a focus on outcomes.

The *Departmental Performance Report* provides a focus on results-based accountability by reporting on accomplishments achieved against the performance expectations and results commitments as set out in the spring *Report on Plans and Priorities*.

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## Foreword

On April 24, 1997, the House of Commons passed a motion dividing on a pilot basis what was known as the annual *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*.

This initiative is intended to fulfil the government's commitments to improve the expenditure management information provided to Parliament. This involves sharpening the focus on results, increasing the transparency of information and modernizing its preparation.

This year, the Fall Performance Package is comprised of 80 Departmental Performance Reports and the government's "*Managing For Results*" report.

This ***Departmental Performance Report***, covering the period ending March 31, 1998, provides a focus on results-based accountability by reporting on accomplishments achieved against the performance expectations and results commitments as set out in the department's *Part III of the Main Estimates* or pilot *Report on Plans and Priorities* for 1997-98. The key result commitments for all departments and agencies are also included in *Managing for Results*.

Results-based management emphasizes specifying expected program results, developing meaningful indicators to demonstrate performance, perfecting the capacity to generate information and reporting on achievements in a balanced manner. Accounting and managing for results involve sustained work across government

The government continues to refine and develop both managing for and reporting of results. The refinement comes from acquired experience as users make their information needs more precisely known. The performance reports and their use will continue to be monitored to make sure that they respond to Parliament's ongoing and evolving needs.

This report is accessible electronically from the Treasury Board Secretariat Internet site:  
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Planning, Performance and Reporting Sector  
Treasury Board Secretariat  
L'Esplanade Laurier  
Ottawa, Ontario, Canada  
K1A 0R5  
Tel: (613) 957-7042  
Fax (613) 957-7044



# Canadian Human Rights Tribunal

## Performance Report

For the period  
ending March 31, 1998

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*Anne McLellan*  
Minister of Justice



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## Results Commitments

to provide Canadians with:	to be demonstrated by:	achievement reported in:
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>use of the Tribunal's decisions in legal proceedings.</li> <li>a body of case law and precedents to guide future decisions.</li> <li>economic and social impacts of the Tribunal's decisions.</li> <li>changes to policies, regulation and laws made as a result of the Tribunal's decisions.</li> <li>application of innovative processes to resolve disputes.</li> <li>service that is satisfactory to the Members, the parties involved and the public.</li> <li>equity of access.</li> <li>public awareness and use of Tribunal's public documents.</li> </ul>	<p>S.3-p.11; S.3-p.21-22; S.4-p.23</p> <p>S.2-p.5; S.3-p.14-17; S.3-p.21</p> <p>S.3-p.13</p> <p>S.3-p.13</p> <p>S.3-p.17</p> <p>S.2-p.8</p> <p>S.1-p.3; S.3-p.12</p> <p>E.S.-p.2; S.1-p.3; S.2-p.5 &amp; 8; S.3-p.11-13</p> <p>S.3-p.13</p> <p>S.3-p.13</p>



## Executive Summary



The Canadian Human Rights Tribunal is a quasi-judicial body created by Parliament to inquire into complaints of discrimination and to decide if particular cases have contravened the *Canadian Human Rights Act (CHRA)*. Only the Tribunal may legally decide if there has been a discriminatory practice.

On January 1, 1997, through Orders-in-Council and the approval of Treasury Board, the Tribunal became a separate agency under the provisions of the *Financial Administration Act*. It had previously received its funding through the Canadian Human Rights Commission (CHRC/Commission). In fact, except for shared administrative services, the Tribunal had been operating independently since 1988. In May 1998, Parliament passed amendments to the *CHRA* that confirmed the independence of the Tribunal.

Separating the Tribunal from the CHRC was necessary to confirm – in the eyes of the Canadian public and its clientele – the Tribunal’s independence and impartiality. Under the *CHRA*, 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 holds public hearings to inquire into complaints of discrimination. Based on (often conflicting) evidence and the law, it determines whether discrimination has occurred. If it has, the Tribunal decides on the appropriate remedy to prevent future discrimination and to compensate the victim of the discriminatory practice.

The vast majority of discriminatory acts are not malicious. Most problems 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. As a result, the Tribunal Members frequently put in long hours analyzing evidence and the law before reaching their conclusions.

### ▼ The Role of the Canadian Human Rights Tribunal

To better understand the roles of the Tribunal and the Canadian Human Rights Commission, it helps to think of the criminal justice system. The police receive complaints of criminal conduct and investigate. Some allegations turn out to be unfounded and no charges are laid. In other cases, police lay charges and the case is prosecuted. 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 further inquiry is warranted, the case is referred to the Tribunal. The Commission then acts like the Crown Attorney, representing the public interest. The Tribunal acts as the judge, deciding the case impartially.



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

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**The Canadian Human Rights Tribunal is not an advocate;  
that is the role of the Canadian Human Rights Commission.**

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The Canadian 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 may be reviewed by the Federal Court of Canada.

The Tribunal's responsibilities were expanded in 1996 with the proclamation of the *Employment Equity Act (EEA)*. As well as being the Canadian Human Rights Tribunal, it is also the Employment Equity Review Tribunal. Hearings under this *Act* are expected to begin in 1999. The Tribunal is drafting guidelines and rules of procedure to deal with this new area of responsibility. A group of potential stakeholders will review and comment on the draft rules prior to publication in the *Canada Gazette*.

## Section I: The Chairperson's Message



This report comes in the midst of fundamental changes to the Canadian Human Rights Tribunal. Even as I look back on the significant accomplishments of 1997–98, our first full year of operation as a separate agency, it is difficult not to look ahead at the same time to what will be the first year of the new Canadian Human Rights Tribunal.

Though the Tribunal has been operating independently of the Canadian Human Rights Commission on an administrative level for many years, the final links between the two bodies were severed on June 30, 1998, with the proclamation of amendments to the *Canadian Human Rights Act*.

This has been a difficult transitional period, as we moved from operating under the old *Act* to the amended *Act*, a period complicated by decisions of the Federal Court that profoundly affected the operations of the Tribunal. I am proud to say, however, that our first year as a separate agency has been successfully completed, and that we look forward to the future with optimism and enthusiasm.

Particularly satisfying was the success of the Tribunal's Alternative Dispute Resolution (ADR) project. The Tribunal mediation process allows a Member of the Tribunal to assist parties in finding an agreeable solution to their complaints. In only two years of operation, the Tribunal has saved \$730,000 through mediation. We are pleased that the consumers of the Tribunal's services appear to have 'bought in' to the use of mediation as a method of resolving human rights complaints, and that in the majority of cases now coming before the Tribunal, the parties opt for mediation before proceeding to a full hearing.

Credit must go to all those Members who have contributed so much to the process.

Under amendments to the *Canadian Human Rights Act*, a smaller, permanent Tribunal is being put into place. The establishment of statutory qualifications for appointment to the Tribunal, as well as increased opportunity for Tribunal Members to hear and decide cases will undoubtedly result in a more expert and efficient hearing being provided to those appearing before the Tribunal. This means that more will be asked of Tribunal Members in terms of time and energy. I know they are looking forward to the challenge.

After a flurry of changes over the past few years, the Tribunal is looking forward to a period of stability in which to consolidate operations and improve efficiency. We will be developing new rules of procedure to improve and speed up the process, and plans are in place to provide in-depth training for all Tribunal Members.

I look forward to a year in which we build on the accomplishments of the past to improve service to all Canadians in the years to come.

Anne L. Mactavish

## Section II: Departmental Overview

### Mandate, Vision and Mission

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.

### Departmental Overview

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It should be noted that amendments to the *Canadian Human Rights Act*, adopted on June 30 1998, created a smaller, permanent Tribunal with fewer Members.

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The Human Rights Tribunal consists of two parts: the Panel and the Registry (see Figure 1). The Tribunal Panel included about 40 part-time Members as of March 31, 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 and is responsible for planning and organizing the hearing process. It should be noted that amendments to the *Canadian Human Rights Act*, adopted on June 30 1998, created a smaller, permanent Tribunal with fewer Members.

The Panel deals with matters concerning employment or the provision of goods, services, facilities and 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; and
- sexual orientation.

In addition, 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, facilities and accommodation. In employment equity matters, the *EEA* applies only to employers with more than 100 employees.

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**Tribunal Members make their decisions solely on the merits of the individual complaints and on the evidence presented at the hearing.**

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The Tribunal's decision-making process must remain (and must be seen as) independent and impartial, offering fair process to all parties. Tribunal Members make 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, acts as liaison between the parties and Tribunal Members and gives Tribunal Members the administrative support they need to carry out their duties. It must provide high-quality, effective services to the Canadian public. With the creation of the permanent Tribunal under the new amendments, we will have an increase in Registry staff to provide the greater support the new Members will require. Previously, Members, who were all part time, used their own support staff to assist them in legal research and rendering decisions, but the new Members will now have to rely on the Registry for that help.

To control costs while maintaining services, the Registry regularly monitors and adjusts its procedures and practices. At the same time, 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 is often a challenge.

## Service Line and Organization Composition

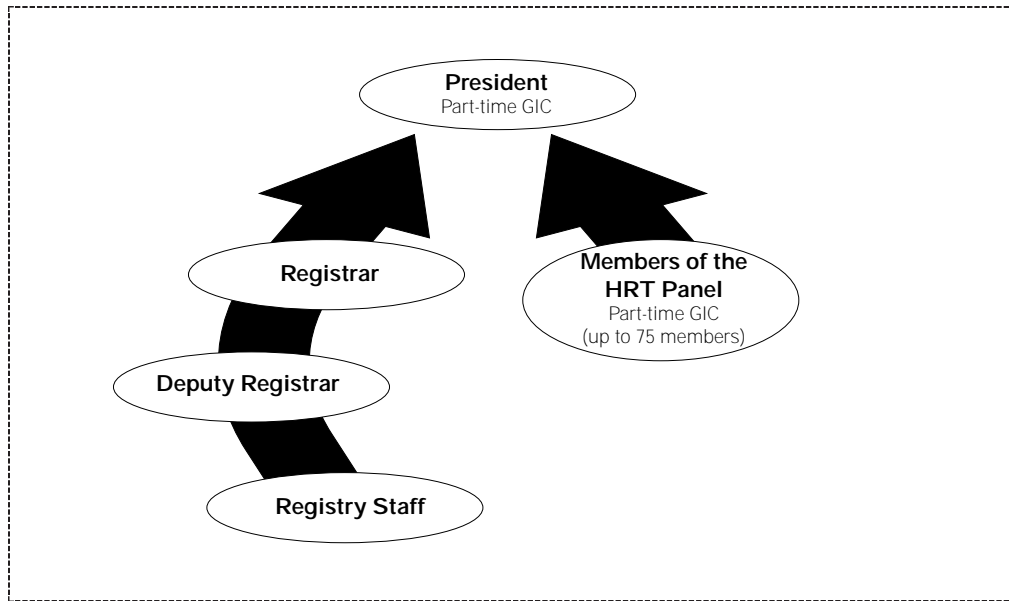
For reporting purposes, the Tribunal's mandate can be divided into two distinct roles: one, the Members' decision-making process; and two, the Registry's administrative support of the Members in their work.

The Members' 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 Tribunal 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.

**Figure 1**

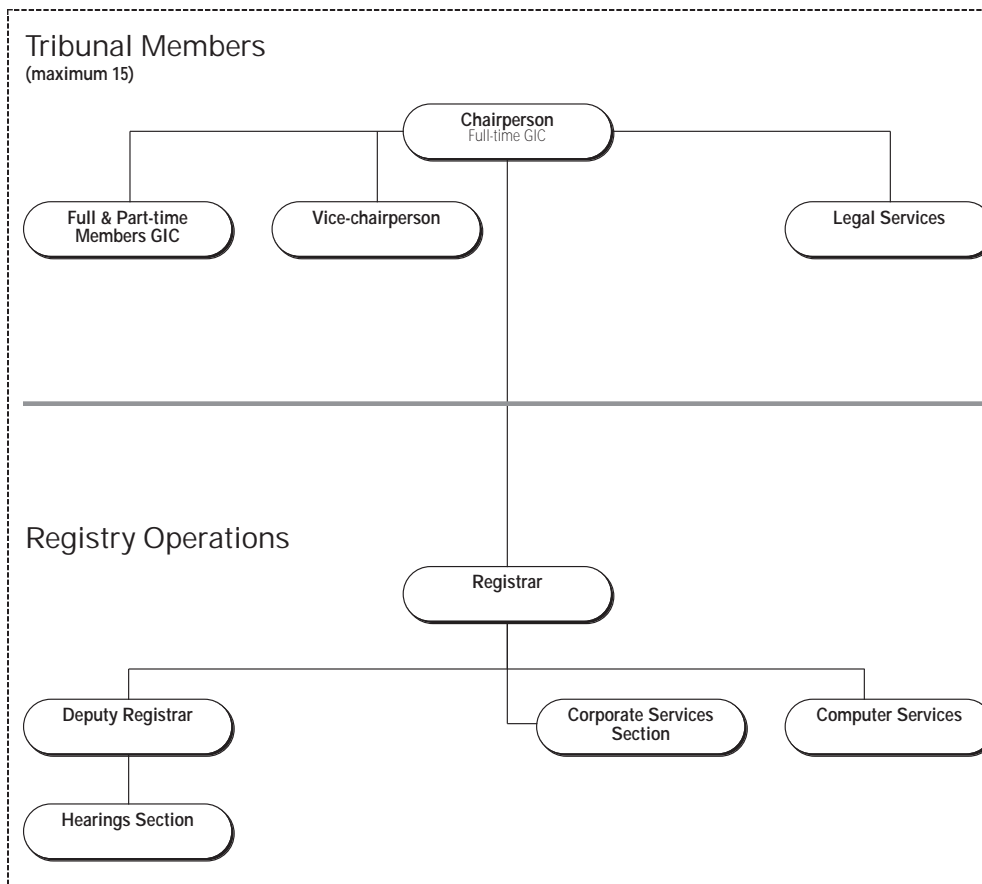
Structure of the Human Rights Tribunal – Prior to June 30, 1998



As stated earlier, amendments to the *CHRA*, adopted on June 30, 1998, changed the name as well as the structure of the Human Rights Tribunal Panel to the Canadian Human Rights Tribunal. Figure 1 outlines the structure of the Tribunal as it was before the amendments took effect. At that time, the Tribunal Panel was made up of approximately 40 part-time Members and was supported by the Tribunal Registry, which provided administrative services to the Members. As illustrated in Figure 2, the Canadian Rights Tribunal today is a smaller, permanent body with fewer Members (maximum 15). This enables new Members to develop superior expertise in the field of human rights while committing more time and energy to their task. The Tribunal Registry continues to provide administrative support to Members. The thick line between the two bodies emphasizes the fact that activities of the Tribunal Registry are entirely separate from those of Members, thereby reinforcing the complete independence of the Members' decisions.

**Figure 2**

Proposed Structure of the Canadian Human Rights Tribunal  
– Post June 30, 1998



## Operating Environment

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... our perceived link with the Commission has caused numerous judicial challenges to our independence

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The Canadian Human Rights Tribunal, like any other quasi-judicial administrative board, has an arm's length relationship with the government. This is necessary, in part, because the Tribunal must rule on many disputes in which the government is a party. To protect the integrity of the Tribunal's decision-making

process, its independence must be maintained. Therefore, the Tribunal does not work in direct cooperation with any other government agency in meeting its objectives, as such an agency or department could potentially appear before the Tribunal as a respondent. In fact, though the Tribunal and the CHRC are separate and distinct, our perceived link with the Commission has caused several judicial challenges to our independence. In short, the Tribunal, despite its limited size, is obliged to operate very much within its own sphere.

The stakeholders and clients affected by the Tribunal's decisions are many and varied. All government agencies and federally-regulated employers and service providers are within the Tribunal's jurisdiction. The Tribunal takes its role very seriously and understands the significance and consequences of its decisions for employers and individuals. The Tribunal's functions must be carried out with diligence and open-mindedness to ensure equity and fairness to all. Moreover, the Tribunal's decisions may, on occasion, alter policies, procedures and government practices which affect all Canadians. For example, the Tribunal may order the government to change the way in which it allocates employment benefits, hires personnel or implements social programs.

The Tribunal's business is affected by many outside pressures. For example, a change in the direction of government policy may result in amendments to the *Canadian Human Rights Act*. Such changes are often motivated by pressure from individual Canadians or special interest groups to alter the mandate of the federal human rights program, and with it, the mandate of the Tribunal. However, the main pressure affecting the Tribunal comes from the Federal and Supreme Courts, which review the Tribunal's decisions and issue opinions in other cases that have a direct bearing on human rights law.

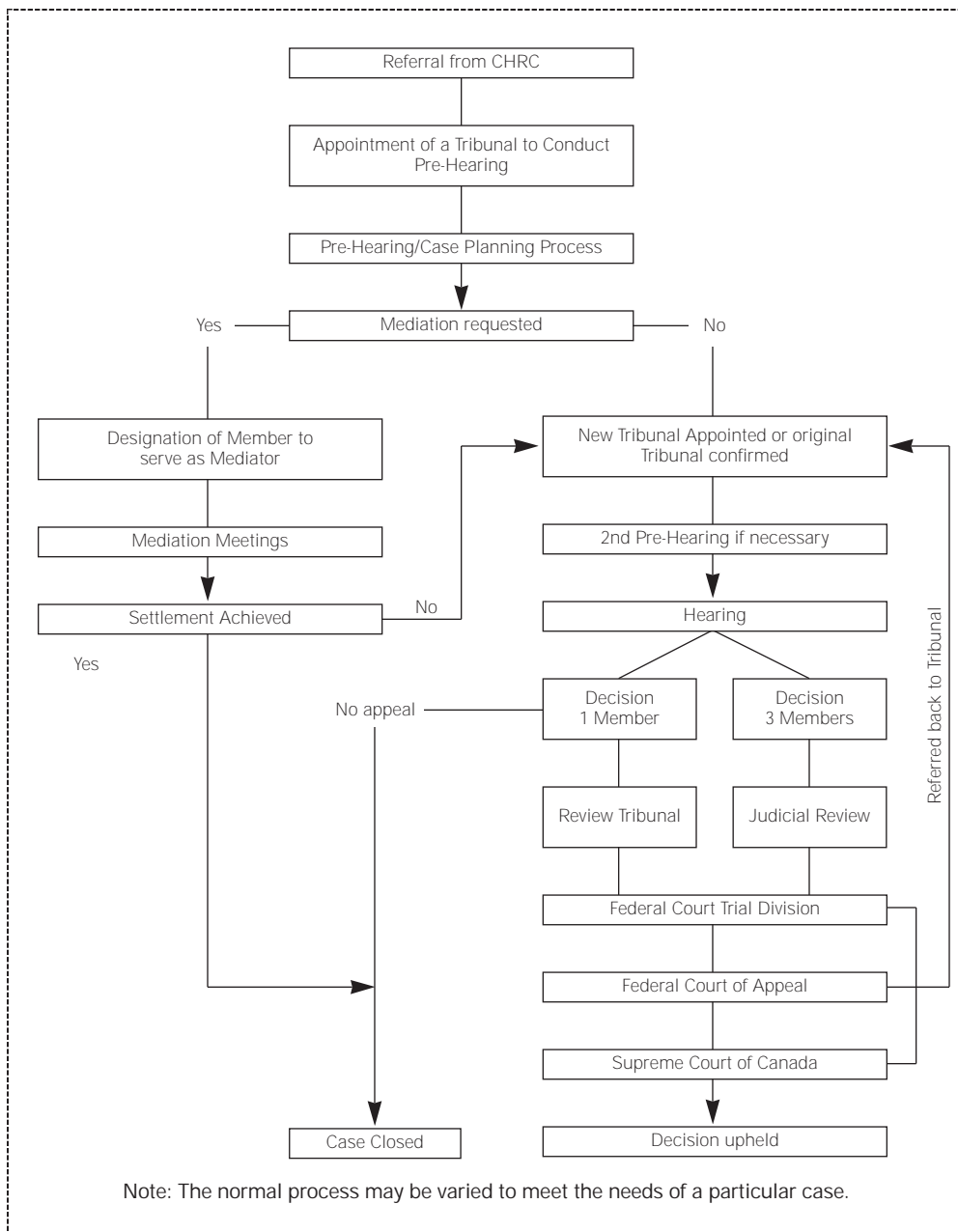
In March 1998, the Federal Court rendered a judgment which greatly limited the ability of the Tribunal to fulfil its mandate. In a decision by Justice McGillis, the process governing the appointment and remuneration of Members was judged to be not sufficiently independent. As a result, no further appointments to cases were made and hearings were adjourned or stopped entirely until amendments to the *Canadian Human Rights Act* were proclaimed on June 30, 1998.

Given the sophistication of the parties who regularly appear before the Tribunal, legal and procedural challenges will continue. In addition, the Courts generally deny the Tribunal participation in challenges to its own procedures and jurisdiction. The results of these challenges have a grave impact on the Tribunal's ability to function. The Department of Justice must be cautious when drafting legislation, to ensure that the scheme of the statute does not invite challenges on institutional grounds from parties wishing to obstruct the Tribunal's inquiry. The Tribunal is willing to work with the Department of Justice on future amendments affecting our operation. Despite recent amendments, we anticipate that additional challenges will be made to the Court which could fetter the Tribunal's ability to speak and function.



**Figure 3**

Human Rights Tribunal – Case/Hearing Process Prior to June 30, 1998



The chart above traces the path a case follows from the moment it is referred to the Tribunal from the Canadian Human Rights Commission until a decision is rendered by the Tribunal. Again, as a result of amendments adopted on June 30, 1998, some changes to the hearing process have been introduced and are now in place.

Figure 4

Results Commitments		
to provide Canadians with:	to be demonstrated by:	achievement reported in:
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>use of the Tribunal's decisions in legal proceedings.</li> <li>a body of case law and precedents to guide future decisions.</li> <li>economic and social impacts of the Tribunal's decisions.</li> <li>changes to policies, regulation and laws made as a result of the Tribunal's decisions.</li> <li>application of innovative processes to resolve disputes.</li> <li>service that is satisfactory to the Members, the parties involved and the public.</li> <li>equity of access.</li> <li>public awareness and use of Tribunal's public documents.</li> </ul>	<p>S.3-p.11; S.3-p.21-22; S.4-p.23</p> <p>S.2-p.5; S.3-p.14-17; S.3-p.21</p> <p>S.3-p.13</p> <p>S.3-p.13</p> <p>S.3-p.17</p> <p>S.2-p.8</p> <p>S.1-p.3; S.3-p.12</p> <p>E.S.-p.2; S.1-p.3; S.2-p.5 &amp; 8; S.3-p.11-13</p> <p>S.3-p.13</p> <p>S.3-p.13</p>

Human Rights Tribunal	
Planned Spending	\$1,927,000
<i>Total Authorities</i>	<i>\$2,565,000</i>
<b>1997-98 Actuals</b>	<b>\$2,160,000</b>

## Performance Expectations

Amendments to the *Canadian Human Rights Act*, proclaimed on June 30, 1998, in Bill S-5, present an exciting challenge for this organization. As explained earlier, these amendments will significantly affect the structure, process and procedures of the Tribunal. The next three years will be a transitional phase during which many changes will come into effect. However, we do not foresee any adverse consequences to the stakeholders and users of our services.

Initially, the Tribunal will develop detailed rules of procedure for the Canadian Human Rights Tribunal and the Employment Equity Review Tribunal. Before being published, the rules will be given to various users for their comments and views. The effect of these rules should be to provide improved guidance to Members and the parties alike, and to enhance the effectiveness and timeliness of the Canadian Human Rights Tribunal process.

In addition, Members appointed to the new Canadian Human Rights Tribunal will receive training in rules and procedure, mediation and human rights. They will attend an in-depth, intensive three-week program in 1998 and have ongoing training throughout their terms. This should make the Tribunal more responsive to the needs of its clientele.

The Registry will also monitor the costing and effectiveness of its procedures and make changes and improvements as required. Our time lines will be watched closely to identify weaknesses, again with the aim of improving the delivery of service as set out in the Tribunal's commitments.

We are confident the Courts will now more readily accept the work of the Tribunal, requiring less need for judicial intervention and the further re-hearing of matters. The Tribunal is anxious for this process to begin and feels confident that Canadians will be satisfied with the level of service provided to them.

## Performance Accomplishments

In January 1998, we pledged to decrease to 12 months the time it takes to complete a case, from the point at which it is referred to the Tribunal to the release of the Tribunal's decision. At first glance, we had significant success – 13 of the 23 cases referred to us during that time took between three and 7.5 months to complete, an average of 4.4 months. However, the majority of these

cases were resolved through mediation, and never went to hearings. Ten cases referred to us are still active, although as of this writing, only two have exceeded the 12-month mark.

After re-evaluating the 12-month standard, we now believe it does not accurately represent an appropriate measure of the Tribunal's effectiveness. In addition, we fear that imposing such a time constraint could be seen as putting undue pressure on one or all of the parties involved in the process. However, we remain committed to improving the time it takes to bring a case to pre-hearing, and the speed with which we render a decision after the hearing is over, as these elements of the hearing process are in our complete control.

As promised in our 1997 report, the Tribunal increased the number of cases sent to Alternative Dispute Resolution. Introduced in 1996, ADR has proven to be very successful. In the first year, 12 complaints were referred to mediation, six of which were settled. In 1997, 19 complaints went to ADR. Fourteen of those were settled while three are still pending. Only two complaints proceeded to the hearing stage. Generally, parties involved in the process have been pleased to avoid a solution imposed upon them by the Tribunal, in favour of a settlement. ADR has generated significant savings for the Tribunal – \$730,000 in just two years.

However, the Tribunal is aware that, largely because the terms of the settlement remain confidential, ADR may not always serve the public interest on a wider social level. Cases which are decided by the Tribunal tend to be precedent-setting, and even if only one person appears as a complainant, decisions can have broad social implications. Therefore, while the individual complainant may be well served by mediation, others confronting similar problems cannot benefit because the settlement remains confidential.

A good example is the case *Hewstan v. Auchinleck* in which an employee at a radio station accused a co-worker of sexual harassment. While the complaint was dismissed, media attention surrounding the case generated a great deal of discussion in British Columbia as to what behaviours are appropriate in the workplace. Had this case been settled through ADR, there would have been no public awareness of this issue and any ensuing discussion would have been lost.

**Figure 5**

Statistical Analysis of Mediations

	Number of Complaints	Complaints Settled	Complaints Not Settled	Complaints Pending
1996 cases	12	6	6	0
1997 cases	19	14	2	3
1998 cases	1	0	0	1

Mediation process commenced in 1996. Total Estimated Savings as a result of successful mediations: \$732,867. To date one (1) 1998 case has been referred to mediation.

With this in mind, the Tribunal will closely monitor the ADR process to determine whether the end result serves the public interest.

Given the nature of our work, the Tribunal can expect little in the way of direct feedback from the public. In 1997–98, we received no comment – positive or otherwise – about our work during the year. In 1995, in an effort to elicit some form of feedback, the Tribunal formed an ongoing User Group of Counsel, comprised of lawyers who appear regularly before the Tribunal. The Group tells the Tribunal how the planning and hearing process is working from its point of view. All members of the Group reported being very satisfied with the administrative planning and support provided by the Registry, although they would like to see the process move more quickly, which is something we are working on.

A number of Tribunal Members whose appointments expired over the past year wrote to thank the Registry, expressing satisfaction with their experience and dealings with us.

In November 1997, the Tribunal set up a web page to improve communication with the public and increase understanding of the Tribunal's role. In addition to explaining the Tribunal's function and how it works, the web page provides hearing dates and locations, a listing of all active cases, the full text of every Tribunal decision since 1990 and the e-mail address of every Registry staff member.

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... the number of hits to our web site reached over 2,000 a week

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While traffic to the site was low initially, it increased once we established links to several other sites, such as the CHRC and the Government of Canada. Since the web site has been listed by the search engine Yahoo!, the number of hits to our web site reached over 2,000 a week. This does not mean that 2,000 people are exploring our site in detail – that number is closer to 800 – but we know awareness is increasing.

## Decision-Making Process

### Tribunal Decisions

Due to the success of the mediation process, the Tribunal rendered only 11 final decisions. See insert for three samples of the Tribunal decisions.

### ▼ **Jacobs and Jacobs v. Mohawk Council of Kahnawake**

A Tribunal found that Peter and Trudy Jacobs were discriminated against by the Mohawk Council of Kahnawake when they lost band status. The Tribunal recognized that it is not possible to order that someone be accepted in a community that does not want them, and pointed out that the Mohawk Council of Kahnawake has stated it would ignore any order made against it. Nevertheless, the Tribunal ordered that the Council cease all acts of discrimination against the Jacobs and allow them access to the benefits and services available to other members of the Mohawk community of Kahnawake.

This case is indicative of several others that have come before the Tribunal alleging discrimination by Indian Band Councils. It represents the problems Band Councils face in trying to set regulations for their own members in conjunction with the *CHRA*.

### ▼ **Moore and Akerstrom v. Treasury Board, Department of Foreign Affairs and International Trade and Canada Employment and Immigration Commission**

In last year's Performance Report, we reported that a decision had just been released in this case. The federal government was found to have discriminated against same-sex couples by denying them spousal benefits. This decision continues to have significant reverberations as the government works to comply with the Tribunal's precedent-setting ruling by extending spousal benefits to all federal employees involved in same-sex relationships.

### ▼ **Bader v. Department of National Health and Welfare**

David Bader, a Caucasian man from Vancouver who owned a health food supply business, complained that Health Canada did not allow him to import certain products from the East that Oriental importers were not impeded from obtaining. A Review Tribunal found that Mr. Bader had been discriminated against on the basis of his race. Health Canada was ordered to develop a clear policy statement committing to a uniform national approach to regulation and enforcement which does not discriminate on the basis of race or ethnic origin.

## Results from the Courts

### Federal Court of Canada

In 1997–98, the Federal Court of Canada issued nine decisions which had a direct impact on the work of the Tribunal. Five of the decisions upheld the decisions of the Tribunal. Four did not. Of those four, one case was terminated before the Tribunal had concluded the hearing. An explanation of each Court decision follows.

#### 1. *Lee v. B. C. M. E. A.* – April 27, 1997 [Upheld]

Both a Tribunal and a Review Tribunal agreed with the employer that the complainant's physical disability was such that he could not reasonably perform

his work. The Federal Court of Appeal dismissed the complainant's appeal, holding that scientific evidence is not always necessary to support a *bona fide* occupational requirement (BFOR) finding. In some cases, the testimony of an experienced lay eyewitness is enough.

## 2. *Chander and Joshi v. Health Canada* – May 21, 1997 [Upheld]

A majority of Tribunal Members concluded that the complainants were denied a promotional opportunity and continued employment based on prohibited grounds. The Federal Court dismissed the employer's application for judicial review, ruling that the majority did not fail to consider any relevant evidence. Further, the Court did not interfere with the majority's credibility findings, and, in particular with the way in which the majority resolved an apparent inconsistency in the testimony of different witnesses.

## 3. *PSAC v. Canada Post* – May 23, 1997 [Quashed]

During a hearing into this pay equity complaint, the Tribunal refused to permit expert witnesses to refer to a job evaluation study which had earlier been admitted into evidence. The Federal Court quashed the Tribunal's ruling to exclude testimony concerning the study, saying that it was unusual to allow a document into evidence, and then subsequently refuse to allow witnesses to testify on it. The Court indicated that Tribunals should generally tend towards admitting evidence and subsequently assigning it the weight which it is due. Frailties of evidence are a matter of weight, not admissibility.

## 4. *Mills v. VIA Rail* – August 19, 1997 [Quashed]

The complainant alleged that VIA Rail refused to continue his employment because of his physical disability. The Tribunal, while agreeing that the complainant was the object of discriminatory treatment, failed to specify whether the discrimination was of a direct or indirect nature. Since the Tribunal's decision did not identify the type of discrimination, it was impossible to ascertain whether the Tribunal had truly considered the employer's BFOR defence (which can be used only in cases of direct discrimination). Therefore, the Federal Court set aside the Tribunal's decision.

## 5. *MacNutt et al v. Shubenacadie Indian Band* – October 30, 1997 [Upheld]

A Tribunal had ruled that a Native Band's refusal to provide social assistance to non-Indian spouses of Band members contravened the *CHRA*. The Band was discriminating on the basis of race in the provision of services customarily available to the general public. The Federal Court dismissed the Band's application for judicial review, upholding the Tribunal's conclusion that the non-Indian complainants qualified as members of the general public. The Court also upheld the Tribunal's finding that the application of the *CHRA* was not barred by section 67 of that *Act*, which provides that the *CHRA* could not affect the *Indian Act*. In the Court's view, section 67 did not protect the Band's decision to deny benefits, since there was no evidence that said decision was made pursuant to the *Indian Act*.

#### 6. *Dhanjal v. Air Canada* – November 24, 1997 [Upheld]

A Tribunal had ruled that the complainant had not been subject to discrimination or harassment on the grounds of race or religion while employed with Air Canada. The Federal Court dismissed the complainant's application for judicial review, refusing to interfere with the Tribunal's factual findings since they were reasonably supported by the evidence. The Court approved of the Tribunal's analysis of the evidence, including the individual assessment made of each category of alleged discriminatory conduct. The Court further approved of the Tribunal's requirement that credible allegations be made before a *prima facie* case could be established.

#### 7. *Dumont-Ferlatte et al v. CEIC et al* – December 11, 1997 [Upheld]

A Tribunal had dismissed the complaints of a group of women against their union and employer that they were discriminated against in the terms of their maternity leave. The Federal Court dismissed the CHRC's application for judicial review, endorsing the Tribunal's rationale that, in assessing whether there was discrimination, the terms governing maternity leave could not be compared to the terms governing sick leave with pay. The Tribunal correctly noted that under the latter comparison, maternity leave actually conferred superior benefits.

#### 8. *Laslo v. Gordon Band Council* – December 30, 1997 [Quashed]

The complainant alleged that the Band discriminated against her when it failed to provide her with residential accommodation on the reserve. While finding that the complainant had indeed suffered discrimination, the Tribunal ruled that it was barred from remedying the matter based on section 67 of the *CHRA*, which excludes all decisions made by the Band pursuant to the *Indian Act*. The Federal Court quashed the Tribunal's decision, determining that the refusal to grant accommodation to the complainant could not be regarded as a provision made under the *Indian Act*.

#### 9. *CTEA et al v. Bell Canada* – March 23, 1998 [Quashed]

The complainants had alleged that Bell Canada was underpaying its female-dominated occupational groups relative to those occupations dominated by males. Before the Tribunal could rule on the validity of these complaints, Bell Canada brought a motion that the inquiry should cease since the Tribunal was not sufficiently independent to be able to provide a fair hearing. The Tribunal denied the motion and Bell Canada brought an application before the Federal Court on the same grounds. Bell Canada argued before the Federal Court that, given the way the *Canadian Human Rights Act* is structured, Members of the Human Rights Tribunal do not satisfy the criteria required for an independent tribunal. Justice McGillis found that Human Rights Tribunal Members fail the test for institutional independence in two of the criteria. In summary, Justice McGillis found:

1. **Security of Tenure:** The Members of the Human Rights Tribunal are appointed for fixed terms under the *Act*. However, if their terms expire while they are sitting on a case, they immediately lose jurisdiction and have to wait for the Minister to re-appoint them. Thus, the Minister can drastically affect their job security in the middle of a case.



2. **Financial Security:** The rates of remuneration of Members of the Human Rights Tribunal are set by a by-law of the Canadian Human Rights Commission. Since the Commission always appears as a party before the Tribunal, it has a large interest in how cases are decided. The Commission also has a large say in how Members are paid. If the Tribunal Members want a raise, they have to negotiate with the Commission.

For these two reasons, Justice McGillis ruled that it was not possible in this situation for Bell Canada to get a fair hearing before the Tribunal under the current *Act*. In her opinion, a reasonable observer would perceive the system as biased against the respondent. She therefore terminated the Tribunal inquiry.

### Supreme Court of Canada

In 1997–98, the Supreme Court of Canada issued one decision of direct relevance to the Tribunal: on November 13, 1997, it denied leave to appeal the decision rendered by the Federal Court of Appeal in *Lee* (noted above).

<b>Figure 6</b>					
Appeals/Judicial Review of Tribunal Decisions					
Total	Total of	Total	%	% of Total	% o
Decisions	of Cases	Appeals	of Total	Decisions	
Years	Appealed	Heard	Decisions	Reversed	Upheld
1993	13	8	38%	14%	24%
1994	12	10	55%	22%	33%
1995	7	6	35%	6%	29%
1996	11	9	70%	31%	39%
1993–96	43 Appeals	33	49.5%	(12) 18.25%	(21
31.25%					
Totals	63.5%				
1997	7	1	64%	0%	9%
1998	5	1	100%	20%	0%

The above chart indicates average rates of appeals of final Tribunal decisions to a Review Tribunal or to the Federal Court between 1993 and 1998.

In the years between 1993 and 1996 when statistics are more complete, 18.25% of final decisions are reversed under appeal. The majority of final decisions are upheld under appeal representing 31.25% of total decisions.

Due to the high number of unheard cases in the review process in 1997–98, an accurate depiction of how final decisions are fairing under appeal or review scrutiny is not possible.

Tribunal decisions rendered between 1996–98 are however marked by a high incidence of applications for review or appeal. The implementation of new human rights legislation early in 1998 will necessitate



### Pay Equity Tribunal Hearings

Our longest-running Tribunal, the pay equity complaint *PSAC v. Treasury Board*, finished hearing evidence and argument on January 24, 1997. At that point, Members began working on the final decision in the case. (The 202-page decision was released on July 29, 1998.)

The longest-running Tribunal still in hearings is *PSAC v. Canada Post*. Last fiscal year, it sat for 60 days of hearings. While more hearing days are scheduled, the case has been delayed, most recently when Canada Post's counsel was appointed to the Ontario bench. The hearings were adjourned until new counsel could become familiar with the case. This case may be delayed further as the parties react to the new amendments.

In another pay equity case, *CTEA et al v. Bell Canada*, Bell Canada applied for a judicial review before the Federal Court on issues of jurisdiction. A decision was rendered in March 1998. As outlined under **Operating Environment** in this Report, the decision upheld the appeal and quashed the Tribunal hearing.

*CUPE v. Air Canada and Canadian Airlines* sat 23 days in the last fiscal year. This case deals in depth with the issue of "establishment," which is set out, but undefined, under section 11 of the *Act*. The decision is pending. This will be an important decision, as it will define the boundaries of employees from an employer for the purpose of deciding appropriate comparator groups.

## Overview Statistics



**Figure 7**

### Number of Members on the Panel as of March 31st in Each Year

1990	1991	1992	1993	1994	1995	1996	1997	1998
91	99	97	74	62	52	63	53	33

These statistics reflect the recent trend towards fewer appointed members. The ramifications of this movement lead to difficulties in accommodating all cases in a timely manner. The recent trend of fewer members was precipitated by the planned amendments to the *CHRA*.

**Figure 8**

### Number of Cases Referred 1993–97

1993	1994	1995	1996	1997
31	35	26	15	23

The number of cases before the Canadian Human Rights Tribunal depends entirely on how many cases are referred by the Canadian Human Rights Commission. The reduction in cases in the past two years is due to changes in the CHRC's case referral process, as well as reverberations from the Federal Court decision by Justice McGillis in *CTEA et al v. Bell Canada*.

**Figure 9**

### Number of Decisions Rendered 1993–97

1993	1994	1995	1996	1997
21	18	17	13	11

The relatively small number of decisions rendered by the Tribunal is the result of two factors. First, as the number of cases referred to the Tribunal by the Canadian Human Rights Commission have decreased over the last two years, so have the number of decisions rendered by the Tribunal. However, with the amendments to the *Act* now in effect, the Tribunal expects the number of cases referred by the Commission to increase, resulting in more cases being heard and more decisions being rendered by the Tribunal. Second, the implementation by the Tribunal of the Alternate Dispute Resolution process impacts on the number of decisions rendered. Fourteen cases were resolved through this process in 1997. As the process evolves and becomes more efficient, more parties may choose the ADR route to lead to a mutual agreement.

## External Influences

### The Courts and Appeals

Changes to the *Canadian Human Rights Act* created a smaller and permanent Tribunal, which will result in a more expert and efficient Tribunal. Previously, the Courts gave little deference to Tribunal decisions and regularly interceded in the Tribunal's work. With few exceptions, decisions of the Tribunal are reviewed by the Court, delaying the process and affecting the Tribunal's credibility within the human rights community. Recently, the Courts have sent cases back to the Tribunal for rehearing, frequently adding two to three years of legal processing before the parties receive a final decision. If human rights complaints are to be handled efficiently, this time consuming litigation must become the exception rather than the rule. The Tribunal needs the support of the Courts to effectively deal with cases and reduce delays.

It will require a few years to evaluate the effect of the new Tribunal structure. First, the Superior Courts must review decisions that the Tribunal has rendered. If the Courts accept the Tribunal's expertise in human rights and defer to Members' findings, deference and respect will follow from our stakeholders. Only then will the Tribunal process become more expedient and effective in meeting the needs of Canadians. Hearings will be shortened and fewer decisions will be challenged. Without the Courts' clear acknowledgment and confidence, the Tribunal's overall effectiveness – and its value to Canadians – will continue to be in question. We are, however, confident that through their work, our Members will earn the needed respect of the Courts.

### Reliability of Indicators, Learning from Performance Reporting and Service Delivery and Service Standards

- In previous reporting to Parliament, the Tribunal established time frames as standards to measure its effectiveness. Specific time limits were established to conduct the process, from the point at which the complaint was referred by the Commission to the rendering of the Tribunal's decision. Upon review, we realize that an expedited or faster hearing process does not necessarily increase efficiency, or give Canadians a better product.
- In recent years, the time required to complete the hearing of evidence and legal argument has increased. The issues to be decided are much more complex and are presented by more sophisticated and experienced counsel. Legislation mandates that parties be given a full and ample opportunity to present their case. Finally, the Superior Courts, through their decisions, have directed that the Tribunal allow the parties to present their case in a way that does not infringe upon their procedural rights.
- We endorse the truism “that justice delayed is justice denied.” Nonetheless, a balance must be reached between providing a fair, full and impartial hearing process while guaranteeing that parties are well served by the time delays prescribed by an administrative tribunal. While not

avoiding responsibility, Members cannot be faulted if a case requires 30 to 40 days of hearings and more than a year to complete. Parliament designed the Tribunal system to give individual citizens increased access to an adjudication mechanism that would allow them to “tell their stories” without being subject to the confines of complicated legal evidentiary rules. Members must protect this right. Consequently, we will now alter our methodology for setting standards to measure the delivery of service to Canadians.

- The time required to present a case, lead evidence and make oral argument is directly under the control of the parties. Members do not control the adducing of evidence. Each Member or Panel will endeavour, within the boundaries of procedural fairness, to expedite the evidentiary part of the hearing process.
- What is lacking or deficient in the system is not entirely the fault of the process or the parties. We, too, must accept our fair share of responsibility. We have historically taken too long to render decisions. We must, and will, improve our delivery of this aspect of our service.
- The *Official Languages Act* provides that federal decisions should be available to the public in both official languages. Translating a decision can be time-consuming, thereby delaying the process. This is, of course, beyond the Tribunal’s direct control.

#### Proposed Corrective Action

Accordingly, the Tribunal will take the following initiatives to measure our efficiency in providing service:

- the initial case planning meeting, at which mediation, hearing and disclosure dates are scheduled, will be held within 60 days from the time it is referred from the Commission.
- dates will be binding on the parties. The Chairperson will assign part-time Members to scheduled hearings only if those Members are available on the dates selected.
- the Tribunal will ensure that all Members submit their final decision to the Registry within four months from the close of the hearing process, for cases with fewer than 15 hearing days.
- for cases that require fewer than 15 days of hearings, the inquiry process should be completed within eight months from the date it is referred from the Commission.
- cases lasting more than 15 days will be completed within a reasonable time, considering all the relevant factors of the proceedings.
- we will monitor and report translation delays separately in our statistical reporting. On a positive note, a new translation contractor has reduced our translation delays by 50%.

### *Mea Culpa*

The Tribunal accepts its responsibility for delays in the adjudication process, particularly in those portions of the hearing process under its direct control. We are committed to setting up changes to our procedures to correct and improve our shortcomings. We will seek opinions and feedback from our stakeholders to ensure that we're on the right track. If a case requires several months to complete and the parties agree that such time was necessary for a full and fair hearing, we will deem that the Tribunal was efficient in meeting its statutory obligations. In previous reporting documents we said we would reduce to 12 months the time required to complete a case, from referral to decision. We now realize this standard is not a realistic basis on which to assess the efficiency of the Tribunal. We believe the changes suggested above more accurately reflect the value of the Tribunal's work.

### **Key Review, Audits and Evaluations**

No audits or formal reviews were conducted in 1997-98. However, the Auditor General of Canada commenced a review of the Tribunal with a final report expected in 1998-99.

### **Year 2000: Mission Critical Systems**

The Tribunal has no Mission Critical or government-wide Mission Critical Systems. Our in-house database system is Year 2000 (Y2K) compliant for reconciling financial commitments and expenditures with the Federal Judicial Affairs (FJA). We also have an older database system for case tracking which is not Y2K compliant but information is readily available elsewhere. This system is to be replaced before December 1999. Should either system fail, impact would be limited to Tribunal staff.

The FJA, which provides our official financial reporting and recording systems, assures us that their financial systems are Y2K compliant.

All computer hardware has been tested using Y2K testing software from the National Software Testing Library. Two systems will need manual date sets and this has been tested. This testing software was also provided to our court reporting firm for them to verify their computer systems.

The telephone system is critical to the continuation of departmental operations. While the voice mail system is not yet Y2K compliant, the vendor is fixing the problem. Voice mail is not a critical part of the telephone system and full service to the public will be maintained regardless of the operation of the voice mail technology. In any case, a new phone system will likely be in place by December 1999, to accommodate the increase in staff levels resulting from the June 30 amendments. Y2K compliance will be mandatory from the successful vendor.

The Tribunal's in-house Legal Advisor, in consultation with the Registrar and the Network and Systems Administrator, has examined the Year 2000 issues and determined that the Tribunal will face no legal liability issues should computer functions fail for the Y2K issue.

## Section IV: Financial Performance



### Performance Overview

The Human Rights Tribunal spent less than it was allotted in 1997–98. First, pay equity cases involving the Treasury Board, Canada Post and Bell Canada all lapsed funding, totalling approximately \$200,000. As a condition of Treasury Board's approval for funding for the pay equity cases, Treasury Board stipulated that funding may be used only in support of those individual cases. The reason for the funding shortfall was as follows:

**Treasury Board Case:** The Tribunal did not meet its anticipated decision date of March 31, 1998. All approved funding partially lapsed, as funds were set aside for translation, printing and final professional fee costs that were not needed.

**Canada Post Case:** A number of hearing days were cancelled due to illness and unavailability of counsel. Consequently, a small amount of funding for this specific case was lapsed.

**Bell Canada Equal Pay Case:** With the Federal Court's decision to not allow this matter to proceed, hearing days budgeted for did not proceed in 1997–98 and some funding was lapsed.

Finally, there was a funding lapse of approximately \$100,000 in the Tribunal's main reference levels. This can be directly attributed to the successful implementation of the ADR process. Without the ADR process, the Tribunal would have run a significant deficit in its operational budget, requiring a special funding proposal to Treasury Board to continue with the Tribunal's work.

## Presentation of Financial Information

### Financial Table 1

#### Summary of Voted Appropriations

<b>A. Authorities for 1997-98 — Part II of the Estimates</b>			
<b>Financial Requirements by Authority (millions of dollars)</b>			
<b>Vote</b>	<b>1997-98 Planned Spending</b>	<b>1997-98 Total Authorities</b>	<b>1997-98 Actual</b>
<b>Human Rights Tribunal</b>			
Operating Expenditures	1.852	2.5	2.085
Contributions to Employee Benefits	.075	.075	.075
Total Department	1.927	2.575	2.160

Reduction in actual expenditures caused by: cancellation of hearing days in *PSAC v. Canada Post* and *CTEA et al. v. Bell Canada* equal pay tribunals and number of cases settled through the Tribunal's new mediation service.



## Financial Table 2

### Comparison of Total Planned Spending to Actual Spending

Departmental Planned versus Actual Spending by Business Line (millions of dollars)									
Business line	FTEs	Operating	Capital	Less: Voted Grants & Contributions	Subtotal: Gross Voted Expenditures	Statutory Grants & Contributions	Total Gross Expenditures	Revenue Credited to the Vote	Total Net Expenditures
<b>Human Rights Tribunal</b>		<b>1.9</b>	—	—	<b>1.9</b>	—	<b>1.9</b>	—	<b>1.9</b>
<i>(Total Authorities)</i>	<i>11</i>	<i>2.5</i>	—	—	<i>2.5</i>	—	<i>2.5</i>	—	<i>2.5</i>
<b>(Actuals)</b>	<b>15</b>	<b>2.1</b>	—	—	<b>2.1</b>	—	<b>2.1</b>	—	<b>2.1</b>
<b>Total</b>		<b>1.9</b>	—	—	<b>1.9</b>	—	<b>1.9</b>	—	<b>1.9</b>
<i>(Total Authorities)</i>	<i>11*</i>	<i>2.5</i>	—	—	<i>2.5</i>	—	<i>2.5</i>	—	<i>2.5</i>
<b>(Actuals)</b>	<b>15*</b>	<b>2.1</b>	—	—	<b>2.1</b>	—	<b>2.1</b>	—	<b>2.1</b>
<b>Cost of services provided by other departments</b>									<b>.2</b>
<i>(Total Authorities)</i>									<i>.5</i>
<b>(Actuals)</b>									<b>.5</b>
<b>Net Cost of the Program</b>									<b>2.1</b>
<i>(Total Authorities)</i>	<i>11</i>	<i>2.5</i>			<i>2.5</i>		<i>2.5</i>		<i>3.0</i>
<b>(Actuals)</b>	<b>15</b>	<b>2.1</b>			<b>2.1</b>		<b>2.1</b>		<b>2.6</b>

\*Increase in FTE's are for special temporary positions for the active pay equity tribunals.

Decrease was caused by cancellation of hearing days on the *PSAC v. Canada Post* equal pay Tribunal and the number of cases settled through the Tribunal's new mediation service.

**Financial Table 3**

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## Historical Comparison of Total Planned to Actual Spending

The Canadian Human Rights Tribunal has no historical data upon which to base a comparison of total planned to actual spending since it only became a separate agency as of January 1, 1997.

**Financial Table 4**

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## Crosswalk Between Old Resource Allocation and New Allocation

This information is not applicable.

**Financial Table 5**

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## Resource Requirements by Organization and Business Line

This information is not applicable.

**Financial Table 6**

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## Revenues to the Vote

This information is not applicable.

**Financial Table 7**

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## Revenues to the CRF

This information is not applicable.

**Financial Table 8**

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## Statutory Payments

This information is not applicable.

**Financial Table 9**

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## Transfer Payments

This information is not applicable.

**Financial Table 10**

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## Capital Spending by Business Line

This information is not applicable.

**Financial Table 11**

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## Capital Projects

This information is not applicable.

**Financial Table 12**

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## Status of major Crown Projects

This information is not applicable.

**Financial Table 13**

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## Loans, Investments and Advances

This information is not applicable.

**Financial Table 14**

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## Revolving Fund Financial Summaries

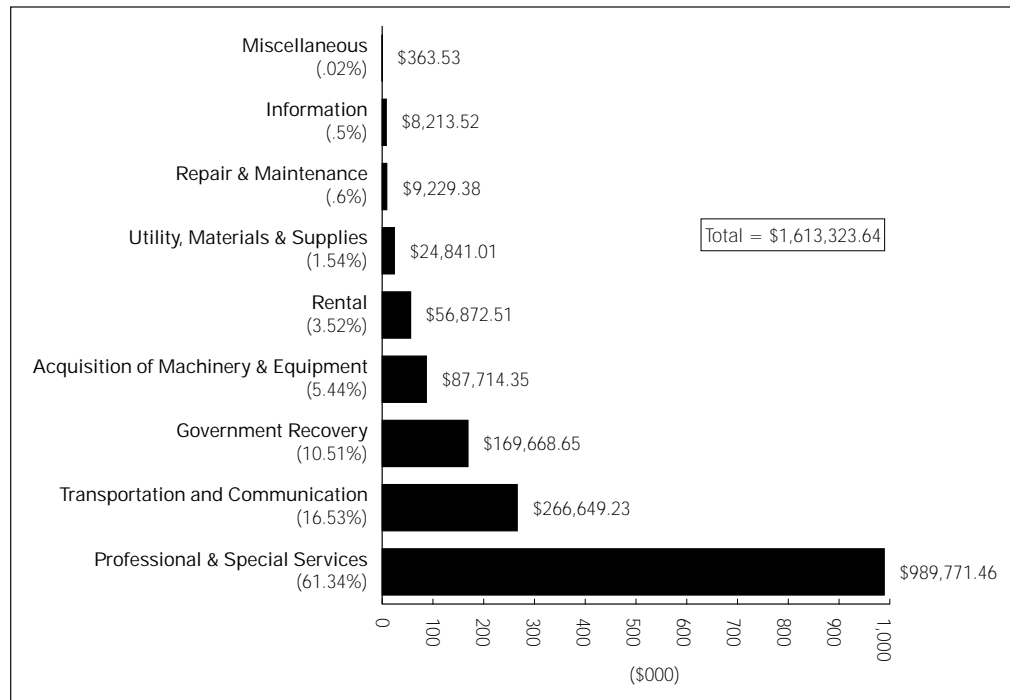
This information is not applicable.

**Financial Table 15**

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## Contingent Liabilities

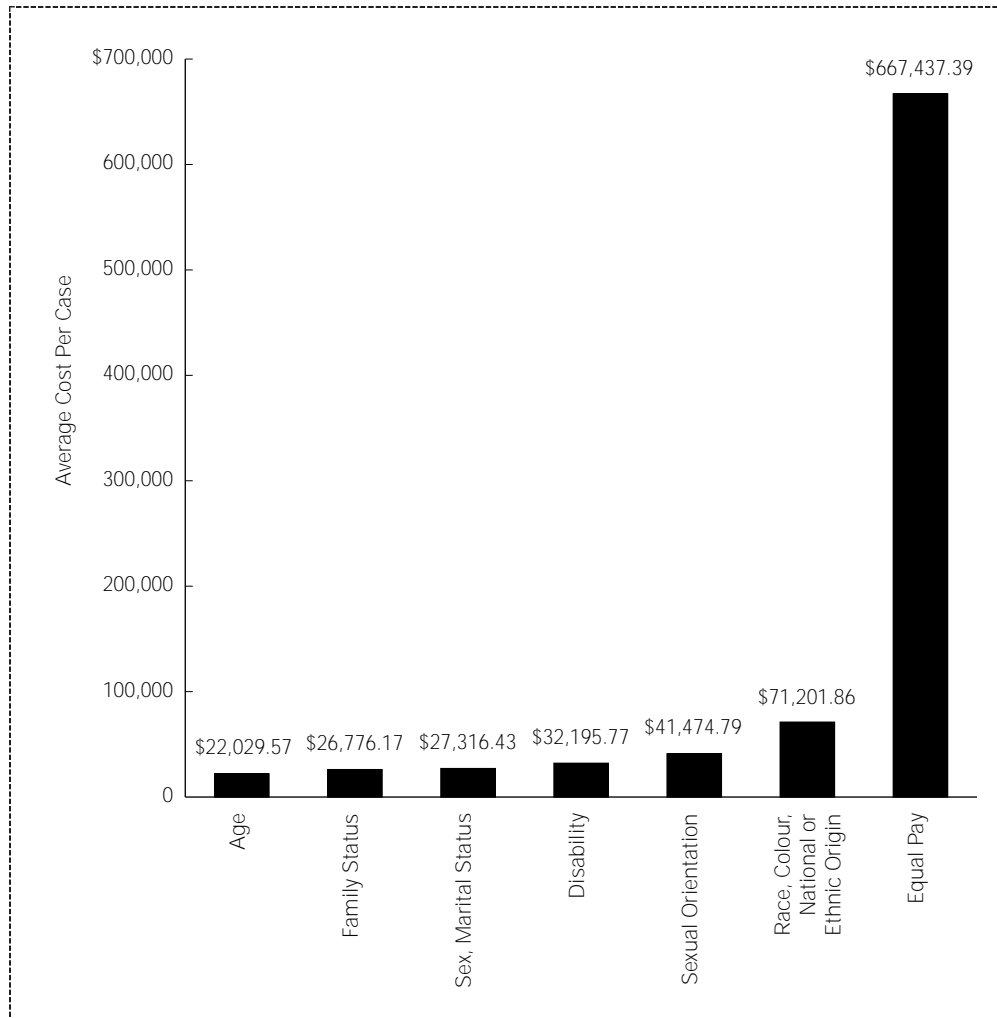
This information is not applicable.

**Figure 10****Budget Percentages**

The major part of the Tribunal's 1997 budget went to costs directly related to hearings. Our discretionary spending is relatively low, reflecting the Tribunal's focus on providing efficient service to Canadians.

The largest percentage of the budget (61.34%) is allocated to Professional and Special Services. These include court reporting, Members' fees, legal fees and professional services contracts. Transportation and Communication, which accounts for 16.53% of total spending, covers costs associated with the travel of Tribunal staff and Members to hearings. Government Recovery, 10.51% of the budget, represents payments of government services such as rental of space and payment of services.

Acquisition of Machinery and Equipment covers the purchase of computers and technology, required to improve service to Canadians. These acquisitions represent 5.44% of the total budget. These costs will be minimized in the future, once staffing actions are concluded as a result of amendments to the *CHRA*.

**Figure 11****Average Cost Per Case by Ground**

The most expensive cases for the Tribunal are, as indicated in the chart above, those dealing with race and equal pay. As illustrated in Figure 14, these two grounds usually take longer to hear. For example, the Treasury Board pay equity case required a large number of hearing days, resulting in a \$2.5 million cost to the Tribunal.

**Figure 12****Average Cost per Case by Year**

	1993	1994	1995	1996	1997
Closed Cases	43,014.60	63,392.78	64,441.51	104,732.67	9,584.69*
Settled Cases	2,086.66	5,537.37	5,768.30	3,652.76	3,152.77

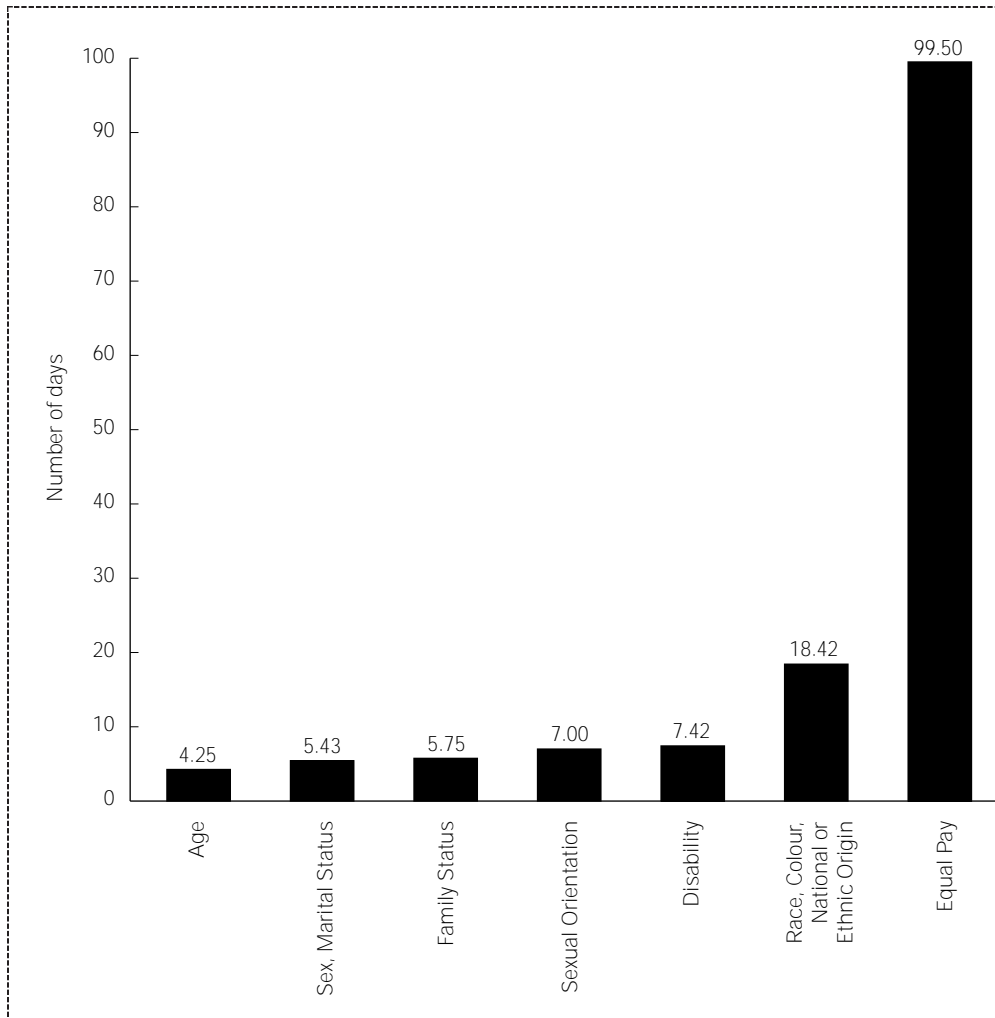
\* Non-representative statistic due to the large number of mediated cases in 1997

The increase in the cost of cases requiring a full hearing is explained by the level of complexity of the cases being referred to the Tribunal. As the complexity of cases increases, the number of days needed to hear a case to its completion also increases. The Tribunal Members hearing the cases require more time to analyze the evidence, study the case law, research for precedents and to write decisions, culminating in an increase of the cost related to cases channeled through the hearing process. The cost of cases settled for any year given does not vary substantially indicating a consistency in the amount of time devoted by Tribunal Members to initiate the Case Planning process and leading to a settlement. Note that the statistics for the year 1997 are incomplete due to the large number of cases mediated or still active.

**Detailed Examination of Cases****Figure 13****Cases by Grounds**

Ground	1993	1994	1995	1996	1997
Sex	3	5	7	6	8
Sexual Harassment	0	0	2	3	7
Sexual Orientation	5	6	1	0	0
Marital Status	5	4	2	0	1
Family Status	2	6	2	3	1
Equal Pay	0	0	1	2	1
Age	1	3	2	2	2
Disability	12	8	11	5	3
Race, Colour, National or Ethnic Origin	10	17	9	4	4
Religion	4	1	3	1	0
<b>Totals</b>	<b>42</b>	<b>50</b>	<b>40</b>	<b>26</b>	<b>27</b>

The number of disability cases shows a gradual but distinct decrease. This can be attributed to the fact that a large number of cases in this area have served as precedents, making laws clearer and easing the need for litigation. However, as a result of new accommodation legislation created in Bill S-5, the number of disability cases will likely rise in the future.

**Figure 14****Average Number of Days Per Case by Ground**

The average number of days per case by ground makes it simple to recognize the most time-consuming cases. Race cases, for example, take an average of 18.42 days. Because these cases are becoming increasingly complex, they can be expected to take longer in the future. As many race cases are systemic in nature, the problem may persist for years before a complaint is filed, increasing the need for lengthy evidence.

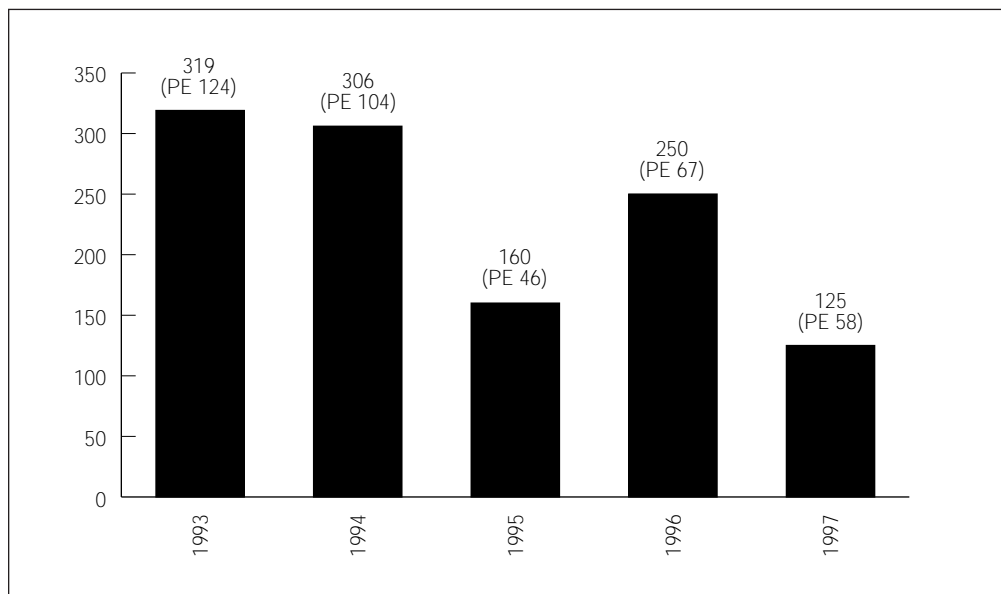
The Tribunal has also heard two pay equity cases, each requiring approximately 260 days of hearings from the early 1990s and continuing through to 1998. The number of days, as well as the length of time required for the hearings, reflects the complexity of the complaints.

**Figure 15****Average Number of Days Per Case by Year**

1993	1994	1995	1996	1997
7.08	6.30	6.32	14.08	3.19*

\* Non-representative statistic due to the large number of mediated cases in 1997

This table reveals a constant increase in the number of days required to complete the hearing of cases. This is due to the complexity of cases being referred to the Tribunal. The more complex cases become, the more time the Tribunal needs to deal with the issues to be adjudicated. With the implementation of Rules of Procedure and the creation of a permanent Tribunal, we are confident that the Tribunal will have the necessary tools to minimize the time necessary to complete hearings.

**Figure 16****Number of Hearing Days Per Year**

"PE" represents pay equity cases and includes *PSAC v. Treasury Board* and *PSAC v. Canada Post Corporation*.

The number of hearing days by year is influenced by the number of cases being referred to the Tribunal, the complexity of the issues to be adjudicated and cases that are settled prior to hearing. The Tribunal has no control over the cases being referred for inquiry by the Canadian Human Rights Commission. This makes it difficult to monitor and predict. However, with the new Rules of Procedure being implemented and Members devoting more time to the Tribunal, the Tribunal should be in a position to deal more quickly with the various issues facing a Tribunal, minimize the delays and reduce the time required to hear cases. The success of the Alternate Dispute Resolution process could have a very significant impact on the number of days per year devoted to hearings. As cases proceed to mediation and Mediators are successful in achieving settlements, the number of cases proceeding to hearings will diminish, reducing the total number of hearing days.



## Section V: Consolidating Reporting

### Regulatory Initiatives

New Rules of Procedure are being developed as a result of amendments to the *CHRA* and as a result of the Tribunal's additional responsibility under the *EEA*.

### Statutory Annual Reports

No annual reports were required under the previous *Act*. Under Bill S-5, the Tribunal is mandated to produce an annual report for presentation to the Speaker of the House and of the Senate.

### Special Travel Policies

Members of the Human Rights Tribunal and the staff of the Human Rights Tribunal Registry adhere to the travel policies set down by Treasury Board.

## Section VI: Other Information

### Contacts for Further Information and Departmental Web Sites

Michael Glynn  
Registrar  
Canadian Human Rights Tribunal  
473 Albert Street  
Suite 900  
Ottawa, Ontario  
K1A 1J4

Tel: (613) 995-1707

Fax: (613) 995-3484

Email: [Registrar@chrt-tcdp.gc.ca](mailto:Registrar@chrt-tcdp.gc.ca)

Web Site: [www.chrt-tcdp.gc.ca](http://www.chrt-tcdp.gc.ca)

### Legislation and Associated Regulations Administered

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)

### Statutory Annual Reports and Other Departmental Reports

*Guide to the Operations of the Canadian Human Rights Tribunal*

*Pamphlet of the Human Rights Tribunal*

*Tribunal Activity Report*