



ESTIMATES

Competition Tribunal

Performance Report

For the period ending
March 31, 2004

Canada

The Estimates Documents

Each year, the government prepares Estimates in support of its request to Parliament for authority to spend public monies. This request is formalized through the tabling of appropriation bills in Parliament.

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*.

The Estimates, along with the Minister of Finance's Budget, reflect the government's annual budget planning and resource allocation priorities. In combination with the subsequent reporting of financial results in the Public Accounts and of accomplishments achieved in Departmental Performance Reports, this material helps Parliament hold the government to account for the allocation and management of funds.

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Foreword

In the spring of 2000, the President of the Treasury Board tabled in Parliament the document “Results for Canadians: A Management Framework for the Government of Canada”. This document sets a clear agenda for improving and modernising management practices in federal departments and agencies.

Four key management commitments form the basis for this vision of how the Government will deliver their services and benefits to Canadians. In this vision, departments and agencies recognise that they exist to serve Canadians and that a “citizen focus” shapes all activities, programs and services. This vision commits the Government of Canada to manage its business by the highest public service values. Responsible spending means spending wisely on the things that matter to Canadians. And finally, this vision sets a clear focus on results – the impact and effects of programs.

Departmental performance reports play a key role in the cycle of planning, monitoring, evaluating, and reporting results to Parliament and citizens on behalf of ministers. Departments and agencies are encouraged to prepare their reports following principles for effective performance reporting (provided in the *Guide to Preparing the 2004 Departmental Performance Report*: http://www.tbs-sct.gc.ca/rma/dpr/03-04/guidance/table-of-contents_e.asp). Based on these principles, an effective report provides a coherent and balanced picture of performance that is brief and to the point. It focuses on outcomes - benefits to Canadians and Canadian society - and describes the contribution the organisation has made toward those outcomes. It sets the department’s performance in context, associates performance with earlier commitments, explains any changes, and discusses risks and challenges faced by the organisation in delivering on these commitments. Achievements realised in partnership with other governmental and non-governmental organisations are also discussed. Supporting the need for responsible spending, it links resources to results. Finally, the report is credible because it substantiates the performance information with appropriate methodologies and relevant data.

In performance reports, departments and agencies strive to respond to the ongoing and evolving information needs of parliamentarians and Canadians. The input of parliamentarians and other readers can do much to improve these reports over time. The reader is encouraged to assess the performance reports of organisations according to the established principles, and provide comments to departments and agencies to help them improve in their next planning and reporting cycle.

This report is accessible from the Treasury Board of Canada Secretariat Internet site:
<http://www.tbs-sct.gc.ca/rma/dpr/dpre.asp>

Comments or questions can be directed to:
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Ottawa, Ontario K1A 0R5
OR at: rma-mrr@tbs-sct.gc.ca

Competition Tribunal

Performance Report

For the period ending
March 31, 2004

A handwritten signature in black ink, appearing to read 'D. L. Emerson', with a long horizontal flourish extending to the right.

David L. Emerson
Minister of Industry

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Minister's Message

The Government of Canada has a crucial role to play in supporting a dynamic and innovative 21st century economy. Through prudent fiscal management, by creating an opportune environment for research, development and commercialization, and by promoting a climate that supports the entrepreneurial spirit, we are helping to create a solid foundation for Canada's future. It is a foundation that we can build on to meet the challenges of the global marketplace — one that is essential to generate the wealth that Canadians need to raise our standard of living and improve our quality of life.

The Industry Portfolio:

- Atlantic Canada Opportunities Agency [1]
- Business Development Bank of Canada [2]
- Economic Development Agency of Canada for Quebec Regions [1]
- Canadian Space Agency
- Canadian Tourism Commission [2]
- Competition Tribunal
- Copyright Board Canada
- Enterprise Cape Breton Corporation [1] [2]
- Industry Canada
- National Research Council Canada
- Natural Sciences and Engineering Research Council of Canada
- Social Sciences and Humanities Research Council of Canada
- Standards Council of Canada [2]
- Statistics Canada
- Western Economic Diversification Canada [1]

[1] Not a Portfolio member for the purposes of the Main Estimates.

[2] Not required to submit a Departmental Performance Report.

The Industry Portfolio, comprising 15 departments and agencies, plays a significant role in improving Canada's innovation performance. By continuing to fund basic research through the granting councils, and by working with small and medium-sized businesses through initiatives such as the Industrial Research Assistance Program and Aboriginal Business Canada, we can continue to accelerate the innovation agenda and improve our commercialization capacity.

The progress we are making in the research and commercialization agenda will have a noticeable impact on Canada's ability to compete in the marketplace of tomorrow. We have seen positive results from our investments in universities and colleges. In order to transform this increased research capacity and these results into jobs for Canadians, we need to work in partnership with our stakeholders to encourage innovation and build our commercialization capacity.

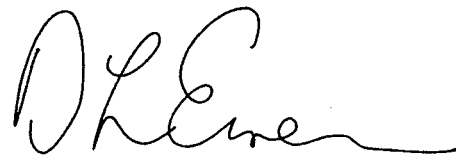
To build on this, we must create a world-class business environment — one with sound marketplace frameworks that encourage entrepreneurial activity while removing obstacles to effective business growth. In today's global

economy, we must ensure that our regulatory regime is one of the most efficient and effective in the world. This is why the Government of Canada has made regulatory reform a priority.

The many programs offered by the Industry Portfolio give our regions and communities the opportunity to expand their businesses so they can more effectively compete in the global economy. The expanded on-line delivery of key government services and information extends our reach into the remote areas of Canada even further.

With these and other initiatives, the Competition Tribunal has made significant strides to continue providing Canadians with a modern, efficient Tribunal while keeping the organization current with important Government-wide initiatives.

I invite you to review the Competition Tribunal Departmental Performance Report for more details on how the Tribunal fosters a productive, innovative environment while respecting the important institutional values of independence, fairness and due process.

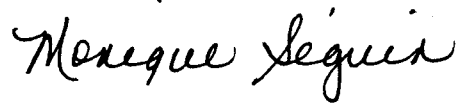
A handwritten signature in black ink, appearing to read 'D. L. Emerson', with a horizontal line underneath.

David L. Emerson
Minister of Industry

Management Representation Statement

I submit, for tabling in Parliament, the 2003–04 departmental performance report (DPR) for the Competition Tribunal.

This report has been prepared based on the reporting principles and other requirements in the 2003–04 Departmental Performance Reports Preparation Guide and represents, to the best of my knowledge, a comprehensive, balanced, and transparent picture of the organization's performance for fiscal year 2003–04.

A handwritten signature in cursive script, reading "Monique Séguin".

Name: Monique Séguin
Title: Deputy Head / Registrar
Date: September 1, 2004

Performance Accomplishments

Strategic Context

The Competition Tribunal is a quasi-judicial adjudicative tribunal created in 1986 by the *Competition Tribunal Act*. Its mandate is to hear applications and issue orders related to the civil reviewable matters set out in Parts VII.1 and VIII of the *Competition Act* that deal with deceptive marketing practices and restrictive trade practices, and whose purpose is to maintain and encourage competition in Canada and to ensure that firms compete fairly and markets operate efficiently.

Significant strides have been made in 2003-04 to continue to provide Canadians with a modern, efficient Tribunal, and to keep the organization current with important government-wide initiatives.

Over the last few years, the Tribunal, with the assistance of the Tribunal-Bar Liaison Committee, has intensified efforts to expedite procedures before the Tribunal while respecting the important institutional values of independence, fairness and due process.

The amendments resulting from Bill C-23 an *Act to amend the Competition Act and the Competition Tribunal Act* have substantially increased the Tribunal's mandate by providing the Tribunal with the power to award costs, to hear and determine references, and to make summary dispositions. They allow the Tribunal to be more efficient, to better control case management, and to narrow the issues, which in turn helps to limit the length of hearings.

As a result of the amendments, the Tribunal started to modify the Competition Tribunal Rules in consultation with the Tribunal-Bar Liaison Committee. For the first time in its history, the Tribunal issued Practice Directions in view of the need for guidance on procedures to be followed before the Tribunal with respect to the new provisions of the Act. The Practice Directions provide increased predictability and certainty as to the procedures to follow under the new provisions of the Act, while allowing flexibility and opportunities for further improvements based on experience.

Bill C-23 also created a new right for any person to apply to the Competition Tribunal for leave to make an application under section 75 or 77 of the Act (refusal to deal, exclusive dealing, tied selling and market restrictions). To expedite the process under the private access provisions, the Practice Directions established that a decision on an application for leave to make an application may be rendered on the basis of the written record without a formal hearing.

The Competition Tribunal continues to enhance its “e-filing/hearing” initiative. The option to use electronic filing/hearing streamlines the Tribunal process and provides accessibility to clients regardless of their physical location. While e-filing is rapidly becoming an alternative in various government institutions, rules governing the process are not always in place. To ensure consistency with legal requirements, standards and government regulatory requirements, the Tribunal has created an Advisory Committee on electronic filing. The Committee released its first draft of E-Filing Practice Directions in the fall of 2003. The Tribunal-Bar Liaison Committee endorsed the Advisory Committee’s draft and will issue the new e-filing Practice Directions in 2004.

During 2003, the Competition Tribunal has made the federal government’s modern management agenda an organizational priority, and has actively participated in the implementation of the Modern Comptrollership (MC) Initiative.

The Tribunal has developed partnership relationships as an active member of a small agency cluster group under the MC initiative, comprised of the Competition Tribunal, the Copyright Board of Canada, the Transportation Appeal Tribunal of Canada and the Canadian Artists and Producers Professional Relations Tribunal. The cluster group undertook a number of activities related to their MC Action Plan in 2003-2004, focused on Internal Audit, Integrated Risk Management, Evaluation, Performance Measurement and Values and Ethics. The following outlines the achievements made by the cluster group in 2003-2004:

- A Feasibility Study on how best to implement the Treasury Board Secretariat (TBS) Evaluation Policy was conducted and completed; Logic Models for each of the four agencies were developed;

- Individual Corporate Risk Profiles and Risk Assessments were completed for all four agencies, as well as a Consolidated Risk Profile for the Cluster Group,
- Internal Audit Plans and a Governance Structure were developed;
- A second facilitated session on Values was held for staff of the four agencies in June 2003 which resulted in an approved Cluster Group Values Statement and Implementation Plan;
- An information session for all staff on the new Public Service Values and Ethics Code was held in November 2003; and
- A MC Information Bulletin was issued to all staff in May and October 2003 as well as in March 2004.

The above achievements coupled with those in the two previous fiscal years have resulted in the cluster group completing all of the initiatives outlined in their MC Action Plan.

For the Competition Tribunal specifically, commitment on the part of senior management to implement a modern management practices environment remained a high priority during 2003. To this end, the following has been accomplished:

- Management and staff have all received training on risk management;
- improved mechanisms to better monitor resource allocations and update forecast information have been developed and implemented;
- The measurement and reporting of performance and productivity has been improved as a result of the development of budget forecast and year-to-date reports and the updating of the management reporting module of the case management system;
- All staff participated in the second government-wide employee survey. The results of that survey have been evaluated and an action plan will be developed;
- The Cluster Group Value Statement was implemented.

Strategic Outcomes

The Competition Tribunal's strategic outcomes, as stated in its Report on Plans and Priorities are:

- a Court of Record to hear and determine, as informally and expeditiously as circumstances and considerations of fairness permit, applications under Parts VII.1 and VIII of the *Competition Act*; and
- a Registry service that provides administrative support to Tribunal members and litigants and also provides timely access to case records and decisions.

A Court of Record...

In fulfilling its mandate to provide a court of record to hear and determine applications under Parts VII.1 and VIII of the *Competition Act*, the Tribunal dealt with the following numbers of cases in 2002-04:

Competition Tribunal 2003-04 Statistics	
Number of proceedings filed	12
Number of proceedings completed	10
Number of proceedings filed from previous year and still ongoing	6
Number of decisions rendered	30

Some highlights of cases dealt with by the Tribunal in 2003-04 in its consideration of deceptive marketing practices and restrictive trade practices, as required of the Competition Tribunal under Parts VII.1 and VIII of the *Competition Act* include:

Mergers

Canadian Waste Services Inc. (CWS)

In May 2003, CWS brought an application under Section 106 of the *Competition Act* claiming that the divestiture order by the Tribunal of October 3, 2001 should be rescinded or stayed as a result of several alleged changes in circumstances since the 2001 decision in the merger application. CWS' alleged changed circumstances revolved around its applications to expand two landfills. In particular, CWS maintained that a judicial review application that quashed ministerial approval of the "Terms of Reference" for environmental assessments for the expansions and a lack of host community support, were changes in circumstances. Four motions regarding pre-hearing and interlocutory matters were heard prior to the start of the hearing in October 2003. The proceeding concluded at the end of December 2003. The decision in this matter is scheduled for release in 2004.

Société Maxbeau (Maxbeau) and Astral Média Inc. (Astral)

In 2003, Maxbeau filed an application under Section 106 of the *Competition Act*. The respondents in this matter were the Competition Bureau and Astral. The application by Maxbeau, as successor and assign of Télémédia Radio Inc., sought an Order amending the Consent Agreement registered September 3, 2002, pursuant to Section 105 of the Act between the Commissioner of Competition, Astral Media Inc and Télémédia, relative to the transaction by which Astral had acquired certain radio undertakings, including Télémédia. Details of the changes requested can be found in the application on the Tribunal website.

The Tribunal heard the application in October 2003 and issued its decision immediately thereafter.

Reviewable Matters

Air Canada/Westjet Airlines Ltd./Canjet

Air Canada's response to the entry of WestJet and CanJet into eastern Canadian airline markets in 2000 gave rise to litigation in 2001. The Commissioner of Competition applied to the Tribunal alleging that Air Canada abused its dominant position by operating below avoidable cost on eastern Canadian routes. A decision was issued in April 2003.

Canada Pipe Company Ltd. (Canada Pipe)

In November 2002, the Competition Bureau filed an application with the Competition Tribunal under the abuse of dominant provisions of the Competition Act and exclusive dealing provisions, for an order prohibiting Canada Pipe from engaging in anti-competitive acts through its Bibby Ste-Croix Division. The anti-competitive acts related to the supply of cast iron pipe, fittings and mechanical joint couplings for drain, waste and vent applications usually used in the construction of commercial, institutional, industrial and high-rise residential buildings.

Prior to the commencement of the hearing, three motions were heard relating to jurisdictional issues and interlocutory matters. The hearing adjourned in March 2004 and is to resume for submission of final arguments in 2004.

Deceptive Marketing Practices

Sears Canada Inc. (Sears)

In July 2002, the Commissioner of Competition filed a first application with the Tribunal under the new ordinary selling price provisions. Sears Canada Inc. was the respondent. The application alleged that Sears deceived consumers about the real value of their savings by referring to "inflated" regular prices when advertising certain tires at "sale" prices during the year 1999. Seven hearings concerning interlocutory matters were held before the commencement of the proceeding. The hearing in this matter started in October 2003 and adjourned in February 2004. At the close of evidence,

counsel were directed to file their final arguments and subsequently a schedule for completion of the hearing was to be set in 2004.

Registered Consent Agreements

A total of eight consent agreements were registered with the Tribunal in 2003/04. These agreements related to the jewellery, clothing, telecommunications and retail industries, and in some cases involved substantial financial penalties. These orders are registered with the Tribunal by the Commissioner of Competition and have the authority of an order of the Tribunal. The details regarding the matters filed as consent agreements can be referenced on the Tribunal's website: <http://www.ct-tc.gc.ca>.

Leave Applications

Allan Morgan and Sons Ltd. (Morgan) vs. La-Z-Boy Canada Ltd (La-Z-Boy)

In November 2003, an application pursuant to sections 103 and 75 of the Competition Act was filed with the Competition Tribunal by Allan Morgan and Sons Ltd., relating to the refusal to deal by the respondent in this application, La-Z-Boy Canada Ltd. The applicant sought an order pursuant to subsection 75 (1) of the Competition Act directing the respondent to accept Morgan as a customer and dealer on usual trade terms for the supply of La-Z-Boy products. The applicant was granted leave to file in February 2004. La-Z-boy filed a notice of appeal to the Federal Court of Appeal in March 2004, and the scheduling of this matter is pending.

Barcode Systems Inc.(Barcode) vs. Symbol Technologies Canada ULC (Symbol)

In November 2003, an application pursuant to sections 103.1 of the Competition Act was filed with the Competition Tribunal by Barcode Systems Inc. requesting leave to file an application concerning the refusal to deal by the respondent in this application, Symbol Technologies Canada ULC. Reasons and Order allowing the application for leave to make an application under Section 75 was rendered in January 2004. The respondent filed a Notice of Appeal of the Tribunal Order to the Federal Court of Appeal in January 2004, and scheduling of this matter is pending.

A Registry Service ...

The Competition Tribunal Act also provides for an administrative infrastructure for the Tribunal. Through its Registry, the Tribunal can hold its hearings anywhere in Canada for the proper conduct of the Tribunal's business as necessary. The Registry is also the repository for filing applications and documents and issuing documents and orders for all cases brought before the Tribunal.

The Registry service provides administrative support to Tribunal members and litigants, and timely access to case records and decisions. With the full backing of the Tribunal and its members, and in keeping with the Tribunal mandate, the Registry has made efforts to move toward the implementation of less formal procedures to effect more efficient and expeditious proceedings. Some highlights of what has been accomplished in 2003/04 include:

- With the introduction of new legislation and new Practice Directions, the Registry made improvements to its case management system to accommodate new filings and to ensure a more comprehensive approach to the safe keeping of documents and their retrieval for enquiries and use at electronic hearings.
- A new website has been under development to provide the public and clients with timely information on cases, Tribunal activities and reference information. Based on consultation with members of the Canadian Bar Association and others, the Tribunal website was re-designed to provide more effective search capabilities, better navigation, surveys on client satisfaction and a subscription service for those who wish to follow the progress of cases. This project was initiated in late 2003/2004 and its implementation will continue in 2004/2005.
- The use of technologies that result in efficiencies and cost reduction, and facilitate the advancement of cases has increased during 2003/04. With the improvements to the Registry's electronic case management system and website, numerous positive comments from users have been received concerning accessibility of information and

ease of document filing and improved functionality. Results of consultation conducted with members of the Canadian Bar Association were very favourable.

- The Registry has refined many of its e-programs including its electronic document management system, hearing room case management equipment and software, and litigation toolkits used by members during hearings. Overall improvement to its computing infrastructure have contributed to ensuring that the services provided to members, lawyers appearing before the Tribunal, and Registry staff, are reliable, efficient and effective for all users. Electronic filing of documents via e-mail was used in a number of cases and proved to be a method that counsel found expedient and cost-effective. The introduction of electronic hearings allowed counsel to use equipment such as a “smart board” to adduce their evidence and annotate documents filed as exhibits. The ability to electronically produce exhibit lists and other case-related reports improved staff response time for requests for information or access to documents during hearings.
- Improved analytical tools have been introduced that allow Tribunal members to quickly retrieve information from notes or transcripts during the decision-writing stage. Tribunal members have reported that this has simplified their work during the decision writing process.

The Registry continues to seek economies and efficiencies by sharing support services with other federal agencies and departments. For example, it shares hearing rooms with the North American Free Trade Agreement (NAFTA) Secretariat and Federal Court, and it is an active participant in inter-departmental groups such as the Small Agencies Administrators Network (SAAN), Heads of IT, Financial Group, and Modern Comptrollership initiative.

Appendix I: Financial Summary Tables

The Competition Tribunal is a small organization with a single business line; therefore the only pertinent financial tables are as follows:

Table 1 — Summary of Voted Appropriations

Table 2 — Comparison of Total Planned Spending to Actual Spending

Table 3 — Historical Comparison of Total Planned Spending to Actual Spending

- **Planned Spending** — what the plan was at the beginning of the fiscal year;
- **Total Authorities** — planned spending plus any additional spending Parliament has seen fit to approve to reflect changing priorities and unforeseen events; and
- **Actuals** — what was actually spent during the fiscal year.

Financial Table 1: Summary of Voted Appropriations

Financial Requirements by Authority (\$ thousands)				
		2003-2004		
Vote		Total Main Estimates	Total Planned Spending	Total Actual Spending
	Competition Tribunal			
50	Operating expenditures	1,457	1,457	1,743
(L)	Contributions to employee benefit plans	157	157	139
	Total for the Tribunal	1,614	1,614	1,882

**Financial Table 2:
Comparison of Total Planned Spending to Actual Spending**

(\$ thousands)		2003-2004		
Processing of cases	Total Main Estimates	Total Planned Spending	Total Authorities	Total Actual Spending
FTEs		14		13
Operating ¹	1,614	1,614	1,965	1,882
Capital	-	-	-	-
Grants and Contributions	-	-	-	-
Total Gross Expenditures	1,614	1,614	1,965	1,882
Less: Respendable Revenues	-	-	-	-
Total Net Expenditures	1,614	1,614	1,965 ²	1,882
Other Revenues and Expenditures	-	-	-	-
Non-respendable Revenues	-	-	-	-
Cost of services provided by other departments		468		469 ³
Net Cost of the Program	1,614	2,082	1,965	2,351

1. Operating includes contributions to employee benefit plans.
2. This amount includes the 5% carry forward of \$40,727 from the budget of 2002-2003, \$20,000 for collective bargaining compensation, a transfer of \$198,000 from Industry Canada, \$25,000 for *Internal Audit Initiative* and \$85,000 for the *Modernization of Comptrollership Initiative in the Government of Canada*. (As the host organization and member of the cluster group, the Competition Tribunal administered these funds on behalf of the Canadian Artists and Producers Professional Relations Tribunal, the Copyright Board of Canada and the Transportation Appeal Tribunal (formerly called the Civil Aviation Tribunal). The funds were used to manage the Project Management Office.)
3. Includes accommodation provided by Public Works and employee benefits covering the employer's share of insurance premiums and costs paid by Treasury Board Secretariat.

**Financial Table 3:
Historical Comparison of Total Planned Spending to Actual Spending**

Processing of cases						
(\$ thousands)			2003-2004			
	Actual 2001-2002	Actual 2002-2003	Total Main Estimates	Total Planned Spending	Total Authorities	Total Actual Spending
Competition Tribunal	1,689	1,724	1,614	1,614	1,965	1,882
Total	1,689	1,724	1,614	1,614	1,965	1,882

Appendix II: Enabling Legislation

Competition Tribunal Act, R.S.C. 1985 (2d Supp.), c. 19

Part VII.1, Competition Act, R.S.C. 1985, c. C-34

Part VIII, Competition Act, R.S.C. 1985, c. C-34

Appendix III: For Further Information

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