Canadian Human Rights Tribunal
Tribunal canadien des droits de la personne

ANNUAL REPORT 2023

Canada

Annual Report 2023.

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Table of contents

SECTION 1

Land acknowledgment

The Canadian Human Rights Tribunal conducts hearings and mediations across Canada on traditional territories of Indigenous Peoples. We prepared this report in Ottawa, the traditional unceded and unsurrendered land of the Algonquin Anishinabeg People.

We all have a role to play in the process of reconciliation. We invite you to learn more about the people whose traditional lands you are on.

SECTION 2

Who we are

The Canadian Human Rights Tribunal (the "Tribunal") is an administrative tribunal. We work hard to be less formal than a court. We are independent and work at arm's length from the federal government. This means that no Minister or other government official can tell us how to decide our cases. We are accountable to Canadians and report on our activity to Parliament through the Minister of Justice.

Under the *Canadian Human Rights Act* (CHRA), the Tribunal hears cases of discrimination involving federally regulated organizations like the military, airlines, interprovincial trucking, banks and the federal public service. Tribunal members are decision-makers. They hear complaints of discrimination that have been referred to the Tribunal by the Canadian Human Rights Commission (the "Commission"). Tribunal members review submissions and evidence, listen to witnesses at hearings and, in the end, decide whether discrimination has occurred. If the Tribunal member determines that discrimination occurred, they can rule on remedies. Parties can decide to settle their complaints through mediation or proceed to a hearing.

The Tribunal also has two other mandates. The first is under the *Pay Equity Act* (PEA), which requires employers to take a proactive approach to giving men and women equal pay for doing work of equal value. We have two roles under the PEA:

- the Pay Equity Commissioner can refer an important question of law or a question of jurisdiction to the Tribunal to determine; and
- an employer, bargaining agent (e.g., union) or other affected person may appeal some of the Pay Equity Commissioner's decisions or orders to the Tribunal.

We are also preparing to make decisions under the *Accessible Canada Act* (ACA), which aims to ensure that everyone in Canada can fully participate in society by requiring federal organizations to proactively identify, remove and prevent barriers to accessibility for persons with disabilities. Our role under the ACA is to decide appeals of certain decisions made by the Accessibility Commissioner.

As of December 31, 2023, the Tribunal consists of a Chairperson, a Vice-Chairperson and two full-time members. Seven part-time members work from various places across the country.

SECTION 3

Message from the Chairperson

On behalf of the Tribunal, I am pleased to present our 2023 Annual Report.

The Tribunal has a mandate that is large in scope, but it is a small organization. It has four full-time members and seven part-time members who work from various places across Canada. There are 24 full-time staff dedicated to the Tribunal and four others who support other tribunals as well. The Tribunal faces many of the same challenges that courts and other tribunals face—trying to balance limited resources with the demands of a complex and challenging case load while delivering timely, quality service to Canadians. But the reality is that all public institutions must be mindful of resource constraints and fiscal responsibility. Not all changes that can improve how we deliver service require additional resources.

Therefore, as Chairperson of the Tribunal, I am focusing on what we can do to mitigate those challenges while improving the quality of service using the resources we do have.

In my second year in this role, I am pleased to report a few highlights from 2023:

- We reduced our active case load from 425 to 274, a 42% decrease.
- We resolved over 100 cases.
- We had a 374% increase in hearing days or a fivefold increase in hearing days held.
- We engaged a roster of external mediators, whose efforts freed up 60 days for our members to focus on case management and hearings.
- We mediated 84 cases and settled 46% of them in full. In others we worked to pave the way for a more simplified case management process. 78% of complaints that settled between parties had a Tribunal-led mediation session during the life of the complaint.
- We initiated Chairperson-led early case management conference calls in files with self-represented parties to help them navigate the process and better understand their procedural rights and obligations.
- We created a Chairperson Roundtable composed of a cross-section of party representatives to get their feedback on how we deliver service.

"Canadians seeking resolution of their case at the Tribunal are entitled to receive timely, fair, accessible and knowledgeable service. This depends on a number of things. First, the Tribunal must be equipped with experienced and skilled adjudicators. Second, the Tribunal must be adequately supported so that it can execute its mandate. This includes having the means to accommodate the needs of the parties it serves and to ensure its hearing processes do not create barriers for litigants."

- We launched a speaker series for adjudicators on diversity, equity, inclusion and accessible hearings.
- We delivered ongoing professional development to members to enhance the quality of our decisions and adjudication skills.

Despite these efforts, delay remains a problem. At the end of 2023, roughly a quarter of our active caseload of complaints was waiting to be assigned to an adjudicator. This means that cases cannot move forward in our process because no member is available to case manage and hear them. This delay will worsen as the Canadian Human Rights Commission increases its case referrals in 2024. In December 2023, parties were waiting an average of 200 days to have a file assigned to an adjudicator for a hearing. This impacts the parties at all stages of our process. Delay will also continue to have a significant impact on our productivity and ability to respond effectively to urgent issues that can arise in a case.

Canadians seeking resolution of their case at the Tribunal are entitled to receive timely, fair, accessible and knowledgeable service. This depends on a number of things. First, the Tribunal must be equipped with experienced and skilled adjudicators. Second, the Tribunal must be adequately supported so that it can execute its mandate. This includes having the means to accommodate the needs of the parties it serves and to ensure its hearing processes do not create barriers for litigants.

In April, I had the honour of appearing before the Standing Senate Committee on Indigenous Peoples. I addressed the fact that the Tribunal will need support and resources to better serve Indigenous parties. That includes developing an Indigenous-led strategy to help litigants navigate the process, including providing Indigenous-specific public education materials and resources. This need will only grow as the number of complex Tribunal cases involving Indigenous Peoples increases.

But significant shifts will not happen within the current structure given the pressures placed on staff and members alike. I look forward to working with the Administrative Tribunals Support Service of Canada so that the Tribunal can deliver on its mandate and provide fair and timely recourse to all Canadians.

Jennifer Khurana
Chairperson
Canadian Human Rights Tribunal

SECTION 4

2023 in numbers

Complaints referred to and closed by the Tribunal

66 complaints referred

211 complaints closed

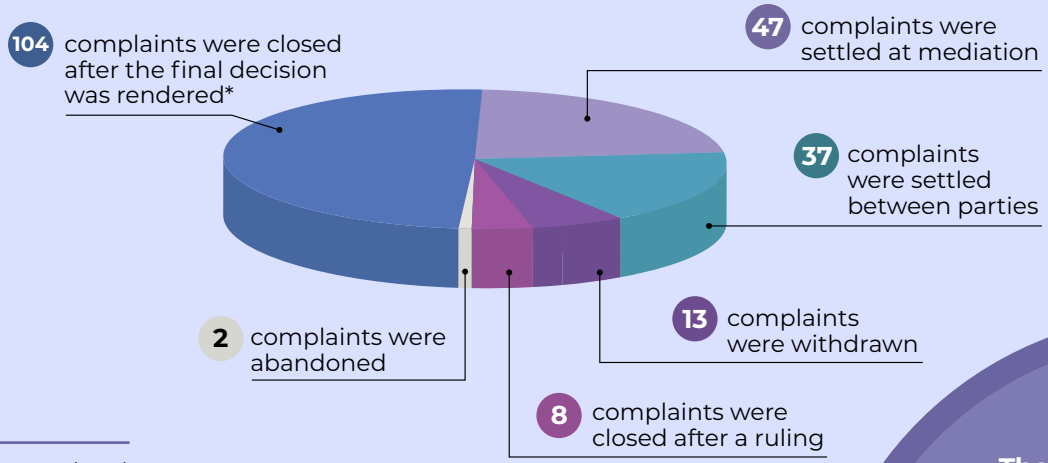
276 CHRA complaints active at year end

53% 35 or 53% of complainants in 2023 did not have legal representation

At a glance

2023		2022	
81	mediations involving 84 complaints	139	mediations involving 143 complaints
46%	mediations settled in full	57%	mediations settled in full
164	days from receipt of complaint to mediation session	124	days from receipt of complaint to mediation session
227	CMCCs held	237	CMCCs held
211	complaints closed by the Tribunal	125	complaints closed by the Tribunal
66	complaints referred by the Commission	140	complaints referred by the Commission (plus 1 *Pay Equity Act* complaint)

Complaints closed in 2023



* 1 of the decisions rendered closed a total of 86 complaints.

The Tribunal closed more cases in 2023 than it received from the Canadian Human Rights Commission (the "Commission").

Referrals from the Canadian Human Rights Commission

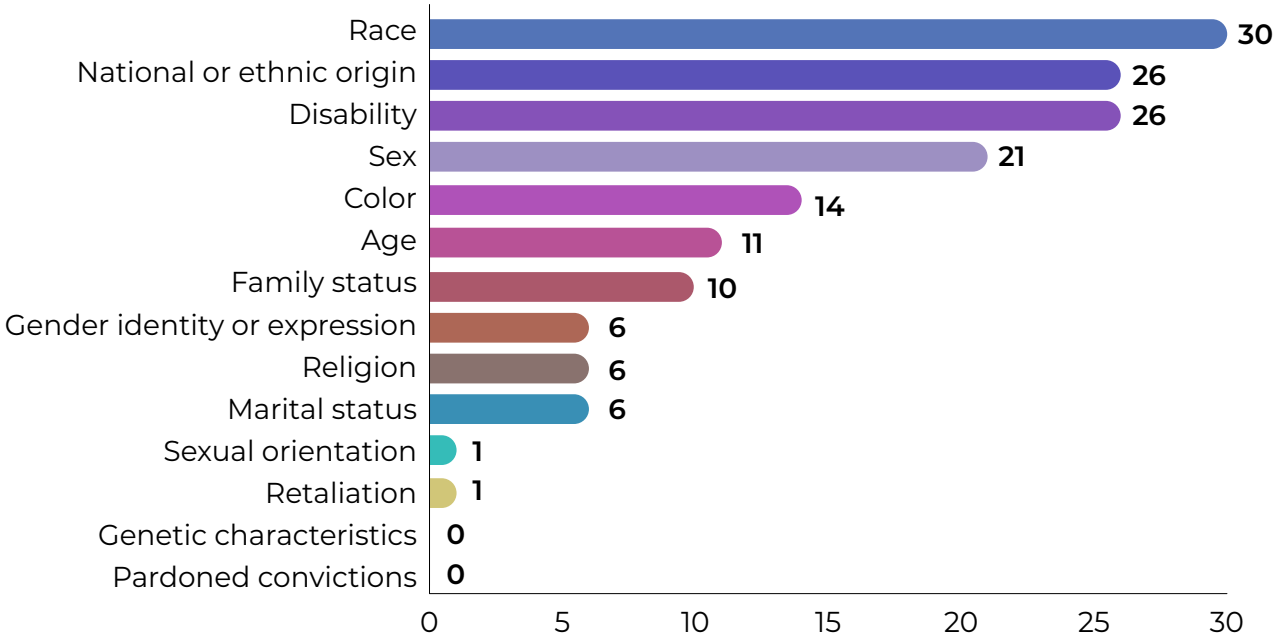
In 2023, the Tribunal received 66 complaints from the Commission. This represents a significant decrease compared to the 140 complaints referred to the Tribunal in 2022. The Tribunal has no indication that the lower number of referrals from the Commission represents a new trend, and it must be prepared to see an increase in referrals in 2024.

The Commission also referred 56 complaints to the Tribunal for a second time. These complaints were previously referred to the Tribunal in 2020 and 2021. The Tribunal did not open new case files for these complaints this year and has not counted these cases as new referrals.

New complaints by categories of discrimination in 2023

Of the 66 new complaints received by the Tribunal, almost half (32 or 48% of complaints) identified at least one of race, national or ethnic origin or colour as the ground of discrimination. Complaints can identify multiple grounds of discrimination, and many complaints allege discrimination related to race, national or ethnic origin and colour. Disability was the second most frequently cited ground of alleged discrimination (26 or 39% of complaints). This is a change from 2022 when disability was the most common basis for a complaint.

Intersecting grounds create additional complexity in the Tribunal's cases. Even treating race, national or ethnic origin and colour as a single ground, 61% of complaints cited at least two distinct grounds of discrimination. For example, a case could cite race and disability as different grounds of discrimination.



Representation

This year, almost half of complainants did not have lawyers. There were also 8 complaints with self-represented respondents. The Tribunal expects to see an increasing number of self-represented parties going forward.

The Commission represents the public interest. When the Commission fully participates in a case, it attends case management and the hearing. When the Commission only partially participates, it attends case management but not the hearing. The Commission also sometimes does not participate at all. This year, the Commission decided to fully participate in a larger proportion of complaints than in 2022 (56% vs. 34%). However, the lower number of referrals this year means the Commission has chosen to fully participate in fewer cases this year (37 vs. 48).

Out of 66 CHRA complaints, the Commission fully participated in **37 complaints**.

56%

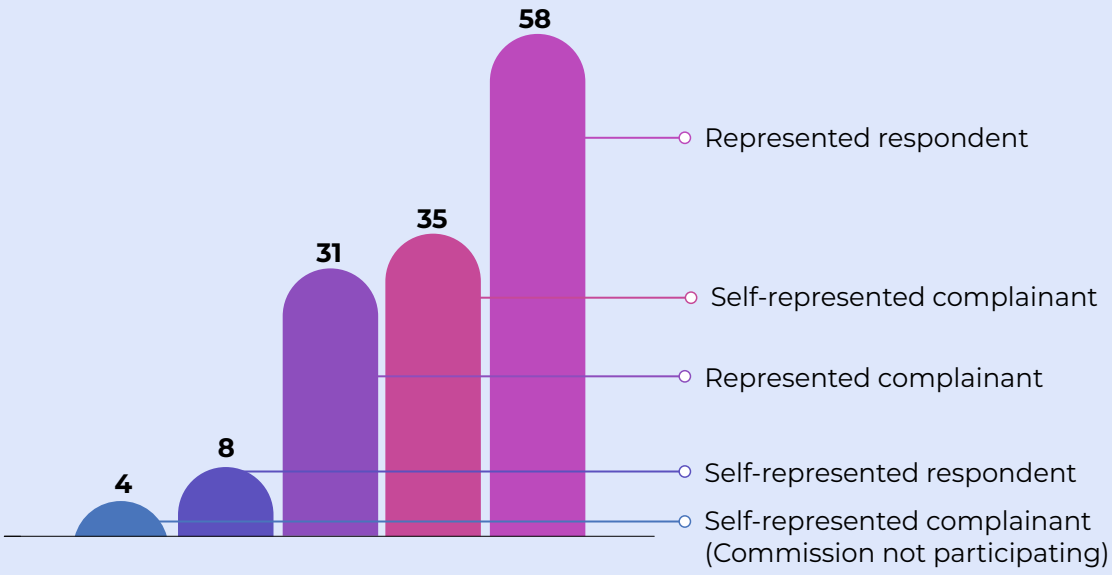
12%

The Commission elected to not participate in **8 complaints**.

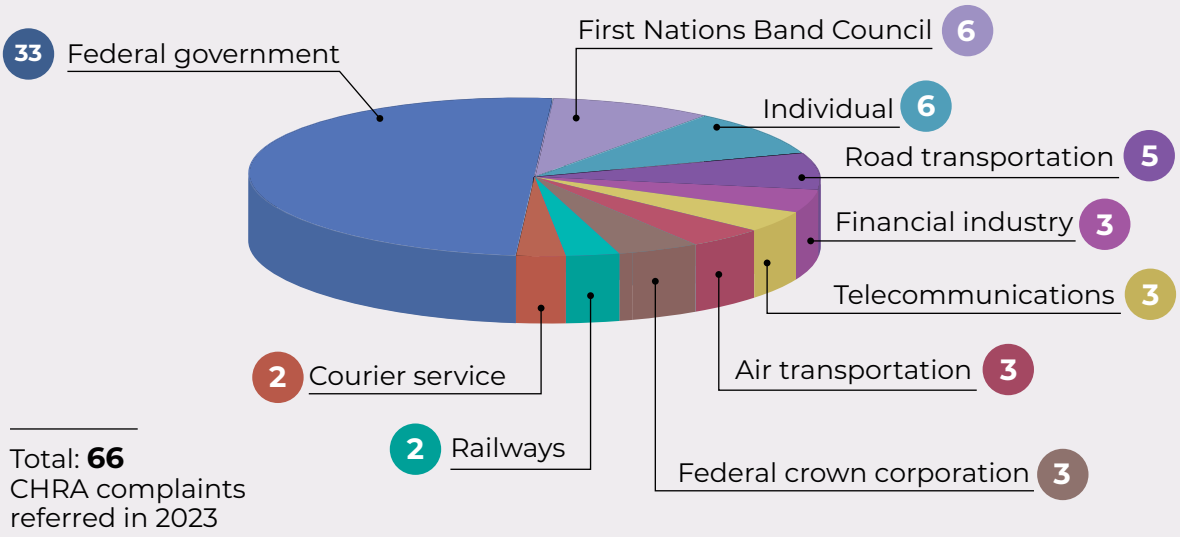
The Commission partially participated in the remainder of the **21 complaints**.

32%

Representation for complaints referred in 2023

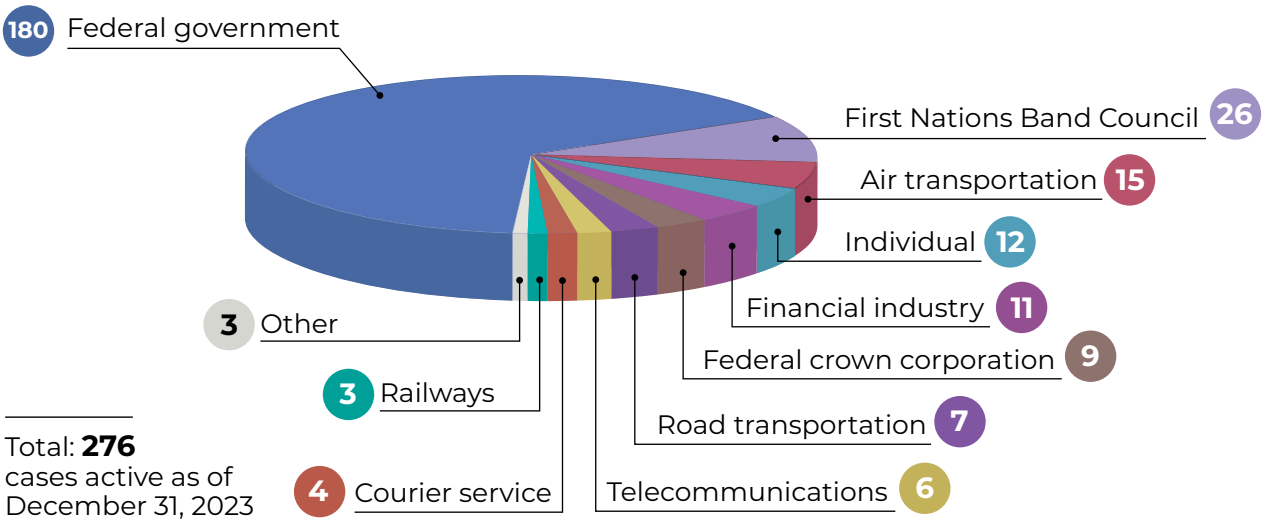


Types of respondents in 2023



Total: **66**
CHRA complaints
referred in 2023

Types of respondents (active cases)



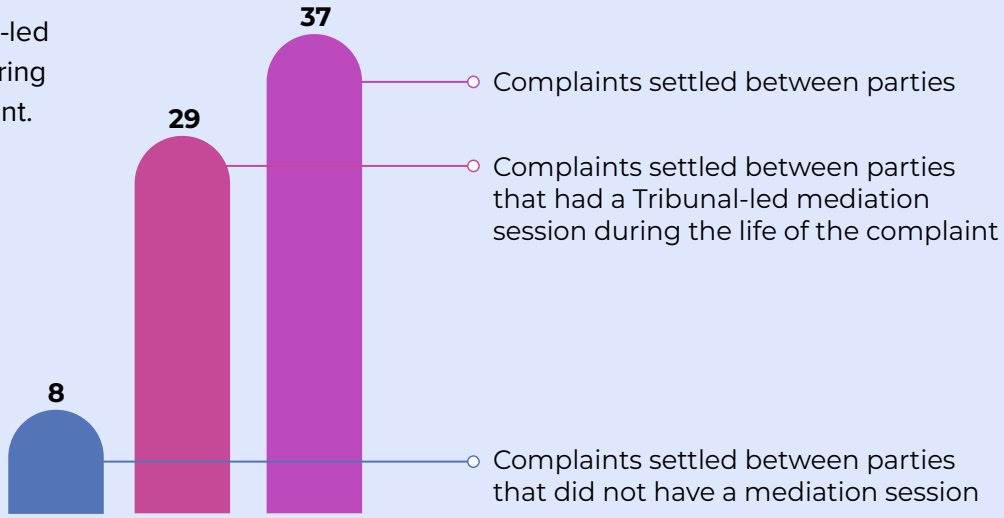
Total: **276**
cases active as of
December 31, 2023

Mediation results

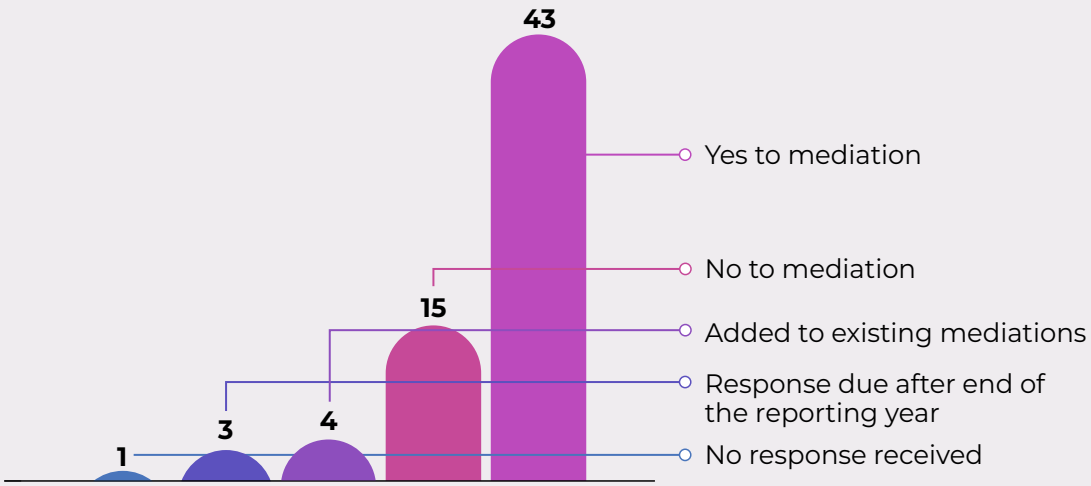
In 2023, 81 mediations were held involving 84 complaints. Of these, 39 or 46% of complaints were settled, and the files were closed. One complaint was settled for which the Commission's approval of the settlement is outstanding as of December 31, 2023. Taking this case into account results in 84 cases settled during mediation in 2023 for a success rate of 49%. Some files settle later in the process, and this investment in alternative dispute resolution is paying dividends.

Complaints settled in 2023

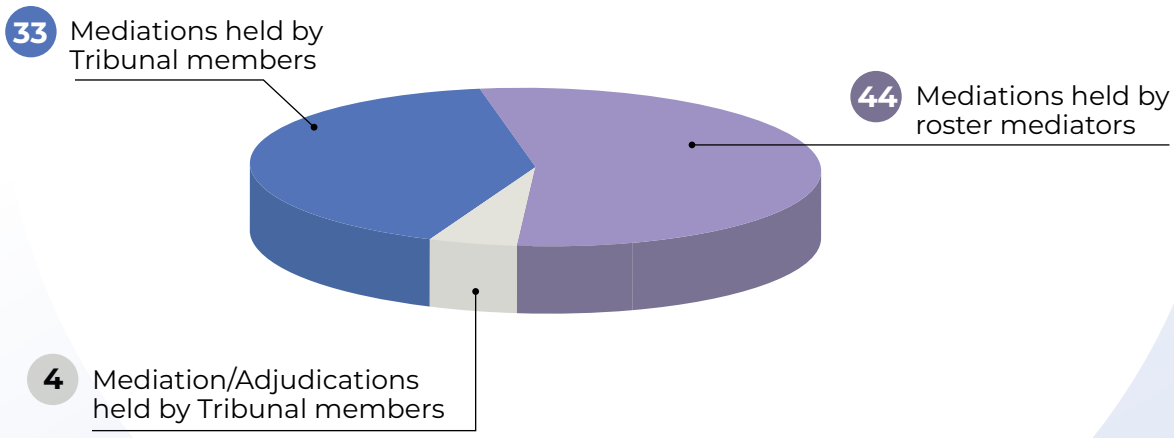
78% of complaints settled between the parties had a Tribunal-led mediation session during the life of the complaint.



Mediation



In 2023, of the 81 mediations conducted, 44 were conducted by roster mediators

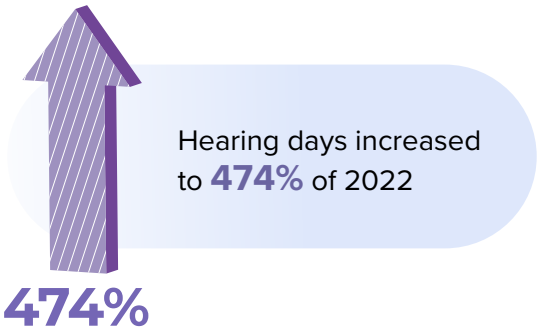


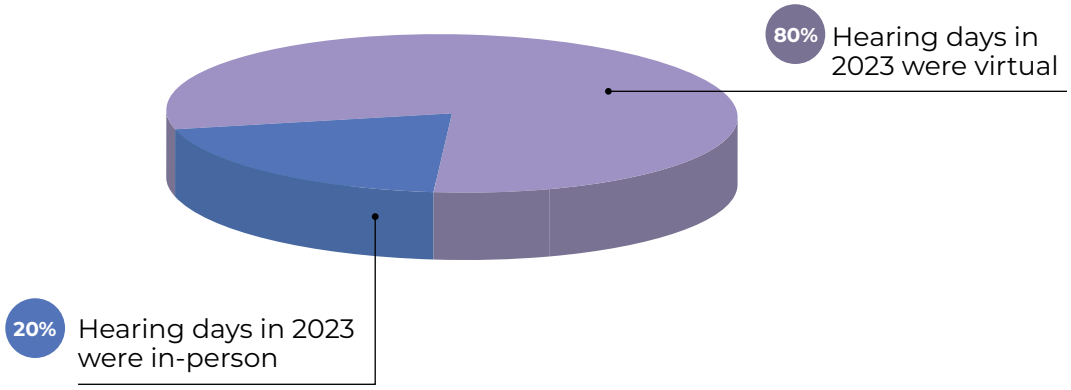
Hearings

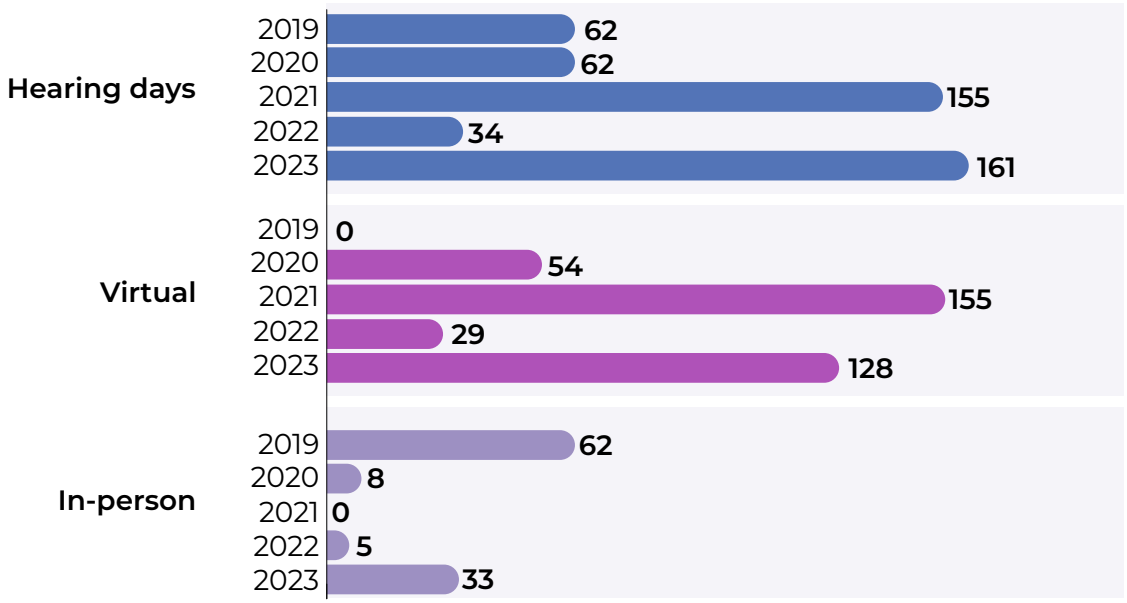
In 2023, the Tribunal held hearings in 19 cases. These cases involved a total of 161 hearing days. This amounts to 474% of the hearing days held in 2022. One hearing—Woodgate et al v. RCMP—had 38 hearing days.

The Tribunal conducted the majority of its hearing days through virtual hearings in 2023. The Tribunal offers the parties in-person and virtual hearings, and a hybrid process may also be appropriate in some cases.

The type of hearing greatly affects the number of hearing days. Hearings involving government respondents required—on average—more than twice as many hearing days in 2023. Similarly, cases involving allegations of discrimination in the provision of services took—on average—twice as many days as those involving allegations of discrimination in employment.



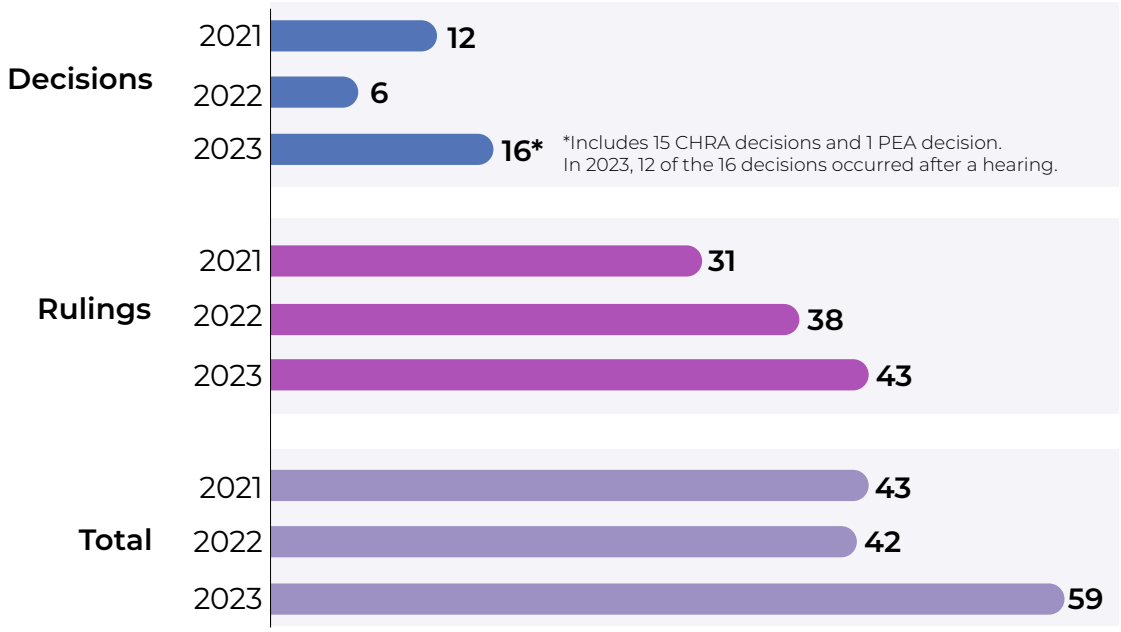




Rulings and decisions

In 2023, Tribunal members released 41 rulings. Rulings are any published reasons that do not decide the final outcome of the case. They usually address a procedural issue that parties need to resolve before a hearing. The Tribunal also issues directions to parties as they move through the steps of the process.

In contrast to a ruling, a decision is when a Tribunal member issues written reasons that decide the core issues in the case. A decision usually sets out whether discrimination occurred and, if so, determines what remedy should be ordered because of the discrimination. The Tribunal issued 16 final decisions in 2023. Those 16 decisions include the Tribunal's first *Pay Equity Act* decision.



Hearings by respondent type in 2023

The federal government was the respondent in 42% of the hearings and was the respondent in 64% of the number of total hearing days held.

8	5	2	2	1	1
42%	26%	11%	11%	5%	5%
Federal government	**First Nations Band Council**	**Air transportation**	**Financial industry**	**Federal crown corporation**	**Road transportation**

SECTION 5

Quality adjudication

While the speed of proceedings matters, so does the quality of how we adjudicate. Beyond having expertise in human rights law, a Tribunal member must have active adjudication and strong case management skills to ensure all parties can meaningfully access our process. Effective case management supports efficient and proportionate hearings. These skills are also central to a fair, timely and accessible human rights system.

Last year, we continued to focus our in-person training to build member competencies in the areas of reasons writing, case management and active adjudication.

We also held regular professional development sessions for members in the areas of expert evidence, confidentiality orders, family status discrimination and addressing conflicting jurisprudence.

In addition, the Tribunal revamped its onboarding program to be prepared for new Tribunal members. The program focuses on building the core skills required to be an effective adjudicator through practical training and mentorship. The goal of the onboarding is to quickly build competencies for new members to help address the current backlog of cases at the Tribunal.

"Effective case management supports efficient and proportionate hearings. These skills are also central to a fair, timely and accessible human rights system."

SECTION 6

Equity, diversity, inclusion and accessibility

The Canadian Human Rights Tribunal is committed to upholding principles of equity, diversity, inclusion and accessibility in all aspects of its work and at all stages of its process.

Adjudicative bodies such as the Tribunal have a duty to ensure procedurally fair access for all participants and to accommodate the needs of all parties. As was recently confirmed in the judicial context by Justice Mactavish of the Federal Court of Appeal:

> Courts must…remain mindful of their duty to accommodate the needs of the disabled so as to ensure that they receive the same level of procedurally fair justice as that accorded to other Canadians…[T]hese principles… are about making our fellow human beings feel included, welcome and empowered in one of the most fundamental institutions of our democratic state.
>
> *Haynes v. Canada (Attorney General)*, 2023 FCA 158 at paras. 31 and 32.

In 2023, we continued working on making our processes inclusive, accessible and easier to use for all Canadians:

- We began working on tools to better explain our processes to participants in our proceedings.
- We updated our website, which will be launched in 2024.
- The Chairperson began holding early case management conference calls with the parties in all files involving self-represented litigants to support their ability to navigate the Tribunal process and answer their questions.

We also continued training our members to build an understanding of the diverse identities and experiences of parties, witnesses and those impacted by our work. Training topics included: Indigenous laws in the human rights context; supporting litigants experiencing a mental health crisis; understanding the experience of inmates in the correctional context; and implicit bias.

SECTION 7

Mediation

Mediation is a voluntary and confidential option for parties who want to try to resolve their complaint before it goes to a hearing. The parties control the process and can decide the outcome. There is certainty in the result, and the parties receive closure and can move forward.

The parties work with a Tribunal mediator to settle the complaint or part of the complaint. If the parties do not settle the complaint, they proceed to a hearing.

The Tribunal can appoint a mediator early in the process. A Tribunal mediator can also work with the parties as the case moves forward in case management to try to facilitate settlement at any stage.

As the Supreme Court has written, inordinate delay is contrary to the interests of society (*Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29 at para 46). Mediation is one of the only ways the Tribunal can address backlogs and delays in the hearing of its complaints. It is also far quicker, more cost-effective and saves the parties, the Tribunal and the public time and money.

This is why, in 2023, we continued to build on 2022's creation of a roster of experienced human rights mediators. These external mediators conducted more than half of all mediations the Tribunal held over the course of the year. They helped the parties consider options and provided valuable insight since they are all experienced human rights adjudicators themselves. The roster mediators have also allowed our small number of Tribunal members to focus on hearing cases.

Some complaints are highly complex and include allegations of systemic discrimination. Even if mediation does not initially settle the entire complaint, it is never a waste of time or a failure. Mediation can help reduce the number of issues in dispute. This means the parties can move through case management and to a hearing more quickly. Mediation can also lay the foundation for the parties to resolve the case between them. This year, of the 38 complaints resolved between the parties, 76% had previously benefited from a Tribunal-assisted mediation.

The Tribunal hopes to keep offering mediation services to its parties as an alternative to litigation.

SECTION 8

Case management and proportionality

Many of the complaints that the Commission refers to the Tribunal engage novel issues of law and allegations of multiple and intersecting grounds of discrimination. Complaints alleging systemic discrimination in the delivery of a government service often involve voluminous disclosure and lengthy witness lists, including experts. These cases can also have significant public interest ramifications. These files are complex and require active and ongoing case management to move them forward efficiently.

Beyond the complexity and scope of the complaints before the Tribunal, there is a significant disparity in terms of the representation and resources available to complainants and respondents. Most complainants are self-represented. The Commission participates at the hearing in roughly one half of the complaints it refers to the Tribunal. This reality also means that Tribunal members must take an active approach to adjudication to ensure all parties, including those who are self-represented, can fairly and fully participate in our process. This includes managing and shaping the hearing, providing information to self-represented litigants to help them understand the process, and keeping the hearing on track in a fair and even way. In other words, Tribunal members must remain impartial but be engaged, adapting to the needs of the parties before them.

"The Commission participates at the hearing in roughly one half of the complaints it refers to the Tribunal. This reality also means that Tribunal members must take an active approach to adjudication to ensure all parties, including those who are self-represented, can fairly and fully participate in our process."

Given this reality, the Tribunal must carefully manage its limited resources so that it can execute its mandate and serve all parties. The Tribunal is a relatively small organization (only four full-time adjudicators and 24 full-time and two part-time dedicated support staff), and a few big cases can consume the majority of its resources.

As the Supreme Court of Canada held, one of Parliament's key purposes in choosing to

delegate decision-making in specialized areas such as human rights to administrative tribunals was the expectation that cases would be decided expeditiously and efficiently (*Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29 at paras 46 and 64).

To address the growing backlog and the limited resources available to hear and decide complaints in a timely way, last year we did the following:

- Trained Tribunal members on proportionate case and hearing management. According to this approach, the resources and time allocated to disclosure, evidence, arguments and the hearing depend on the relative complexity and importance of the case.
- Initiated early case management calls in all files with self-represented parties to answer questions and help parties navigate the Tribunal process. The goal of these proactive calls is to minimize motions and other causes of delay, and to ensure everyone understands their rights and obligations in the Tribunal process.
- Offered mediation-adjudication in all files and at all stages of the process where the member hearing the case tries to mediate to help parties resolve the complaints or reduce the issues in dispute.

The parties also have a role to play in support of the efficient and timely management of Tribunal files by making reasonable, proportionate requests and by supporting case management measures designed to resolve the complaint more quickly. This cooperation also reduces the costs and time for all parties involved.

As the Tribunal has stated, "[th]e principle of proportionality requires that all actors involved in the justice system use it appropriately in order to improve access to that system and must conduct themselves so as to reduce the time and costs associated with legal proceedings as much as possible. These actors include lawyers and litigants, but also the decision-maker, who must manage their proceeding actively and effectively" (*Temate v. Public Health Agency of Canada*, 2022 CHRT 31 at para 9).

SECTION 9

The Chairperson's Roundtable

This year, the Chairperson established a Roundtable as a forum to get input about the Tribunal's policies and processes. The Roundtable includes representatives of the Canadian Human Rights Commission (the "Commission") and representatives who regularly represent complainants and respondents before the Tribunal.

The discussions are focused on feedback to help the Tribunal improve how it delivers service to its parties. The Roundtable never discusses individual cases or legislative change.

The first meeting was held in September. The Roundtable plans to meet at least twice a year.

The full terms of reference are available on the Tribunal's website. The Roundtable is currently composed of the following members:

People who regularly represent respondents

(Respondent representatives)

Brian G. Johnston,
Stewart McKelvey,
Halifax, NS

Kevin Staska,
Department of Justice,
MB

Sean Stynes,
Department of Justice,
Ottawa, ON

Maryse Tremblay,
Borden Ladner Gervais,
Montréal, QC

Michelle Henry,
Borden Ladner Gervais,
Toronto, ON

People who regularly represent complainants

(Complainant representatives)

Busayo Faderin,
Koskie Minsky,
Toronto, ON

Wade Poziomka,
Ross & McBride,
Hamilton, ON

Malini Vijaykumar,
Nelligan Law,
Ottawa, ON

Bijon Roy,
Champ Law,
Ottawa, ON

Fo Niemi,
CRARR Service,
Montréal, QC

People who represent the Commission

(Commission representatives)

Sheila Osborne-Brown,
Canadian Human Rights Commission,
Ottawa, ON

Brian Smith,
Canadian Human Rights Commission,
Ottawa, ON

SECTION 10

Summaries of some 2023 decisions

The following cases are examples of the variety of matters and complexity of issues our Tribunal members decide. The Tribunal's decisions are published on our website.

Dorey et al. v. Employment and Social Development Canada, 2023 CHRT 23

The Tribunal dismissed these complaints.

Jamus Dorey, Karolin Alkerton, David Huntley and Roderick McGregor, the Complainants, said the Registered Disability Savings Plans discriminate against them because they are too old to receive related grants. Employment and Social Development Canada said this case should be dismissed because it does not challenge a service as the term is used in the *Canadian Human Rights Act*.

Registered Disability Savings Plans are intended to support the long-term savings and financial security of Canadians with disabilities and their families. They allow funds to grow tax-free. Canadians with disabilities can make contributions until the age of 59.

The Government of Canada offers matching grants for low-income Canadians with disabilities. The Government of Canada pays these grants directly into a Registered Disability Savings Plan. Low-income Canadians with disabilities are only eligible for the grants until the age of 49.

All these rules about Registered Disability Savings Plans are set out in legislation and regulations—the *Income Tax Act*, the *Canada Disability Savings Act* and the *Canada Disability Savings Regulations*.

The Tribunal dismissed the complaints. The complaints challenge mandatory age-based limitations in the law. The Complainants say it is unfair that 49 is the cut-off age for grants under the legislation and regulations.

A complaint can't succeed if it is only challenging a mandatory requirement in a law. Government of Canada employees must follow the law. There needs to be some discretion in how the Government of Canada interprets a law for there to be discrimination under the *Canadian Human Rights Act*. Employment and Social Development Canada doesn't have any discretion in the age limits for Registered Disability Savings Plans. This means Employment and Social Development Canada isn't providing a service. Not everything the

Government of Canada does for the public good is a service under the *Canadian Human Rights Act*. Because Employment and Social Development Canada is not providing a service in this case, the complaints were dismissed.

The Tribunal decided it was more efficient to deal with the legal issues in this case as a motion instead of at the hearing. The Tribunal must be fair and efficient. Dealing with the legal issues early supports the Tribunal's obligation to run cases quickly and informally.

Young v. VIA Rail Canada Inc., 2023 CHRT 25

This case is about discrimination and harassment on the basis of sex and sexual harassment in the work environment. It also concerns the employer's responsibility.

Ms. Young and Mr. Sawchuck were both employed as locomotive attendants at VIA Rail ("VIA"). Ms. Young complained of Mr. Sawchuk's conduct towards her at their workplace over a two-year period. Several incidents showed this offensive conduct. For example, Mr. Sawchuk observed Ms. Young in a way that was not required for his job. He refused to leave the locomotive cab when she asked him. Mr. Sawchuk swore at Ms. Young and made rude and unprofessional comments in person and over the radio, including using gendered slurs and sexist language. He belittled her in front of her colleagues because of the tone of her voice as a woman and criticized her clothing. Mr. Sawchuk stood very close to Ms. Young in circumstances that caused her distress. He demanded that communications be broadcast on the open radio, even when close by. Mr. Sawchuk criticized Ms. Young publicly for carrying out a manoeuvre he had instructed. He tried to intimidate her in ways that put safety at risk.

The Tribunal found that the individual incidents, taken on their own, might appear unimportant. However, their cumulative impact over almost two years showed a pattern, a campaign of harassment and abuse. Taken together, these incidents constituted adverse treatment. Sex was a factor in that adverse treatment. It need not be the primary factor or an intentional cause. For these reasons, Mr. Sawchuk's conduct amounted to discrimination on the basis of sex in the course of employment.

The conduct was unwelcome and persistent, and Ms. Young notified the employer of it. Because of this, the Tribunal found that Mr. Sawchuk's conduct was also harassment on the basis of sex. However, it was not sexual in nature and therefore not sexual harassment.

The Tribunal found VIA responsible for the actions of its employee, Mr. Sawchuk. VIA did not show that it exercised all due diligence to prevent those actions or to mitigate their effects. VIA did not take Ms. Young's concerns sufficiently seriously. VIA did not address the situation diligently to prevent the discriminatory conduct. VIA had a workplace harassment policy but chose to apply its code of conduct instead. Its response also came after months of escalating harm. In addition, there were few documents and details about the investigation, and the final decision was not made independently.

The Tribunal ordered VIA to pay $12,000 for pain and suffering, $3000 for its reckless conduct, $6,359.85 for lost overtime wages,

and interest. It also ordered systemic remedies aimed at making sure VIA has in place adequate human rights and anti-harassment policies and procedures.

Abadi v. TST Overland Express, 2023 CHRT 30

The Tribunal found that coworkers of Mr. Abadi at TST Overland Express (TST), a trucking company, harassed him for fourteen years. The Tribunal also found that TST discriminated against Mr. Abadi based on his disability when TST ended Mr. Abadi's employment.

Starting in 2006, coworkers ridiculed Mr. Abadi for his accent, origin and having immigrated to Canada. In 2009 or 2010, the company dispatcher put posters on a bulletin board in the workplace. The posters had company pictures of or drawings about Mr. Abadi with discriminatory comments added to them. People at work called him by demeaning names. They said that individuals in news reports about terrorism were his cousins and referred to a former Libyan leader as his uncle. They suggested that, when visiting his family, he might be visiting a terrorist camp and become a terrorist. About 85% of the drivers at TST called him by demeaning names. This continued until TST ended his employment.

The conduct was unwelcome, occurred repeatedly and related to actual or perceived race, national or ethnic origin and religion. TST did not have an effective harassment policy in place. TST's on-site management was aware of the harassment, did nothing to stop it and tolerated it. TST did not show due diligence to prevent, mitigate or avoid the effects of the harassment. The Tribunal rejected TST's arguments that the harassment happened so long ago that it would be unfair for the Tribunal to rule on it.

In 2019, TST ended Mr. Abadi's employment when he did not return on time from a vacation. The physical impairment that Mr. Abadi developed while on vacation was a disability that had prevented him from returning to work on time. Initially, Mr. Abadi told TST that no flights were available. After TST notified Mr. Abadi that he must return to work within three days, Mr. Abadi sent pictures to TST that showed his medical condition. Mr. Abadi's explanation for why he did not share his medical details earlier was understandable given his experience of having been harassed. Disability was a factor in TST's decision to end his employment.

TST did not establish any defences. Mr. Abadi had sought two weeks of unpaid leave so that he could get medical clearance to fly home. TST established no bona fide occupational requirement that would have prevented this accommodation. The information Mr. Abadi had sent was enough to let TST know that he had a health issue. TST did not ask for more medical information when making the decision to end his employment. There was no evidence that accommodating Mr. Abadi's request would have caused TST undue hardship. TST's termination of Mr. Abadi was a discriminatory practice.

In contrast to the findings on disability, the Tribunal did not find that actual or perceived race, origin and religion were factors in TST's decision to end Mr. Abadi's employment.

Mr. Abadi held other jobs after working at TST, but they were not comparable to his job at TST. During a six-month trip to visit family, Mr. Abadi did not make reasonable efforts to find comparable employment. This trip broke the causal link between the discrimination and his loss of income. The Tribunal ordered $44,731

in lost wages and directed the parties to calculate amounts for vacation leave and pension contributions for the months between the end of his employment and his six-month trip. The Tribunal also ordered $17,000 for pain and suffering, $12,000 for TST's recklessness, and interest from the date of termination.

Bilac v. N/C Tractor Services Inc., Currie and Abbey, 2023 CHRT 43

Mr. Bilac, a transgender man, filed a complaint against NC Tractor, his employer, Mr. Currie, the owner of NC Tractor, and Ms. Abbey, an employee of NC Tractor (the "Respondents").

Mr. Bilac alleges that the Respondents harassed him on the basis of gender identity or expression and failed to provide a harassment-free work environment, contrary to section 14 of the *Canadian Human Rights Act* (CHRA).

The Tribunal agreed with Mr. Bilac and found that both Mr. Currie and Ms. Abbey engaged in harassment against Mr. Bilac. Specifically, the Tribunal found that Mr. Currie and Ms. Abbey repeatedly misgendered Mr. Bilac. They also engaged in "deadnaming" against Mr. Bilac, which involved referring to him by his assigned name at birth. In addition, Mr. Currie also engaged in discriminatory harassment against Mr. Bilac on the basis of gender identity or expression by making comments and asking questions that communicated Mr. Currie's belief that Mr. Bilac was not really a man.

The Tribunal also found that the Respondents failed to meet the conditions in section 65(2) of the CHRA to avoid fault for the discriminatory harassment. Specifically, the Tribunal found that NC Tractor did not engage in "all due diligence" to prevent the harassment since nothing was done to prevent the deadnaming and misgendering that occurred while Mr. Bilac was employed.

As a remedy, the Tribunal reviewed the authorities and ordered $15,000 in damages for pain and suffering under section 53(2)(e) of the CHRA and $3,000 in damages for special compensation under section 53(3) of the CHRA. The Tribunal did not order compensation for lost wages because it found that there was no causal connection between the discrimination and the lost wages he claimed. The Tribunal did not order Mr. Currie and Ms. Abbey to undergo training because their employment status was unknown, and NC Tractor was no longer a functional company. However, if NC Tractor becomes operational under Mr. Currie in the one year following the decision, then he is required to contact the Canadian Human Rights Commission in order to receive training for him and his employees about harassment in relation to trans and gender diverse individuals.

The Tribunal also found NC Tractor and Mr. Currie jointly and severally responsible to pay 80% of the pain and suffering award and 100% of the special compensation award. By contrast, the Tribunal found Ms. Abbey responsible for only 20% of the award for pain and suffering. This is because the Tribunal found that Mr. Currie was responsible for more discriminatory behaviour than Ms. Abbey.

Unifor v. SaskTel, 2023 CHRT-PEA 1

This is the first inquiry into a referral from the Pay Equity Commissioner that the Tribunal has carried out under the *Pay Equity Act* (PEA). The Commissioner asked the Tribunal to determine whether the PEA applied to SaskTel. SaskTel is a provincial Crown corporation, that is to say, a company that is owned by a provincial government.

Unifor represents workers at SaskTel. Unifor argued that SaskTel is a federal undertaking and should be required to prepare a pay

equity plan and comply with the PEA. SaskTel argued that because it is a provincial Crown corporation, the PEA does not apply to it. The Commissioner did not make submissions.

The Tribunal concluded that Unifor had not overcome the presumption of Crown immunity, that is, the legal rule that the PEA would not apply to SaskTel unless Unifor proved that certain indicators should apply. The PEA does not explicitly state that it applies to entities like SaskTel. The PEA also does not show that Parliament clearly intended that it should apply to a provincial Crown corporation such as SaskTel. Lastly, the interpretation that SaskTel is not bound by the PEA does not mean that the PEA is wholly frustrated (its purpose cannot be achieved) or that the interpretation is absurd.

The PEA adopts the definition of "federal undertaking" found in section 2 of the *Canada Labour Code*. This was not enough to bring SaskTel under the PEA. Section 2 of the Canada Labour Code does not refer to provincial Crown corporations. In contrast, later sections of the Canada Labour Code do explicitly address provincial Crown corporations and how the corresponding parts of the Canada Labour Code apply to them. These later sections bound SaskTel to the parts of the Canada Labour Code referred to in those sections. However, Parliament did not choose to refer to those explicit, later sections of the *Canada Labour Code* in the PEA.

The Tribunal also concluded that sections 2 and 3 of the *Telecommunications Act* did not mean SaskTel was bound by the PEA. Section 2 of the *Telecommunications Act* refers to telecommunications carriers that are subject to the legislative authority of Parliament. Section 3 of the *Telecommunications Act* goes on to bind provincial Crown corporations to the *Telecommunications Act*. Section 3 would be unnecessary if section 2 encompassed provincial Crown corporations on its own.

Unifor noted that Parliament did not exclude Crown corporations from the PEA when Parliament excluded an "undertaking or business of a local or private nature in Yukon, the Northwest Territories and Nunavut". The Tribunal concluded that this silence toward provincial Crown corporations did not mean that Parliament intended to bind provincial Crown corporations.

Unifor also quoted lawmakers who had referred to the purposes of the PEA when preparing to pass the law. References to "federally regulated employers" and section 2 of the *Canada Labour Code* did not displace the presumption of Crown immunity.

Unifor further argued that the Tribunal must consider the problem the PEA aims to address. Saskatchewan does not have a proactive pay equity regime. SaskTel replied that it is subject to Saskatchewan's human rights and employment equity regime. The Tribunal concluded this context was not enough to displace the presumption of Crown immunity.

In summary, the PEA does not explicitly bind SaskTel, does not contain a clear intention to bind SaskTel, and is not wholly frustrated or reduced to absurdity by this interpretation. If a legislative gap exists, it is not the Tribunal's role to fill it. SaskTel is not subject to the PEA.

Woodgate et al. v. RCMP

The complainants are members of the Lake Babine First Nation. They say the Royal Canadian Mounted Police (RCMP) discriminated against them by failing to properly investigate their claims of historic child abuse at Indian Day Schools. The complainants say that their race was a factor in the adverse impact they

experienced because the RCMP's stereotypes and biased attitudes toward Indigenous complainants caused deficiencies in carrying out its investigation. They say the RCMP failed to consider the Indigenous complainants cultural needs in its investigation. The complainants also say the RCMP favoured the alleged perpetrator of the abuse, a powerful non-Indigenous person.

Developments at the Tribunal in this case

The Tribunal held 38 hearing days this year, of which two weeks were in-person in Burns Lake, British Columbia.

The Tribunal issued four rulings this year in this case.

The first ruling (2023 CHRT 9) allowed the complainants to present an expert witness at the hearing. The witness planned to talk about the distrust Indigenous peoples have for the RCMP.

The second ruling (2023 CHRT 21) allowed the complainants to present evidence on a remedy they are seeking after the RCMP will have presented its main evidence. Complainant counsel mistakenly thought remedies would only be addressed after the Tribunal decided whether there was discrimination. As such, the complainants were not ready to present evidence about one specific remedy they want. The RCMP said it should not need to present its evidence until the complainants had finished their case.

The Tribunal addressed this as a request by the complainants to reopen their case. In this case, the Tribunal decided that the complainants' proposed approach most effectively balanced the Tribunal's truth-seeking functions with its obligation to proceed expeditiously and fairly. It avoided the significant delay that would come from delaying the RCMP's evidence to hear the complainants' evidence on remedy first. The RCMP also did not face significant prejudice because it can anticipate this evidence.

The third ruling (2023 CHRT 42) denied the RCMP's request to hold part of the hearing in-person. The RCMP wanted some of its witnesses to testify in-person because their evidence related to the community. The RCMP said in-person testimony would allow the witnesses to be seen and heard. It would also allow a natural dialogue after their testimony.

The Tribunal rejected the request. The RCMP did not show that it would be unfair for its witnesses to appear by Zoom. The Tribunal noted that the Zoom hearing was more accessible to the public because it was not able to broadcast the earlier in-person part of the hearing. In contrast, the additional costs required to attend the hearing in-person would be unfair to the complainants.

The fourth ruling (2023 CHRT 53) denied the Attorney General of British Columbia's request to be added as a respondent. Instead, the Tribunal added the Attorney General of British Columbia as an interested person (i.e., someone who makes arguments in the case but is not a complainant or respondent). The Tribunal does not have jurisdiction to award a remedy against the Attorney General of British Columbia because the *Canadian Human Rights Act* only applies to federally regulated entities. Therefore, the Attorney General does not need to be added as a respondent. Adding the Attorney General as an interested person allows it to provide relevant information on the complainants' proposed remedies that affect policing and the province's jurisdiction.

SECTION 11

Looking ahead

Our priority will continue to be to make our processes faster and easier to use. We will use alternative dispute resolution where we can to resolve complaints and simplify complex cases. We will also continue to work on how we case manage and triage files so that the Tribunal can manage and adjudicate complaints in a proportionate way.

We hope to welcome new adjudicators in 2024 who can help us reduce our backlog and reduce delays. We will also continue training our members to hold inclusive and accessible hearings and build capacity in the areas of effective case management and active adjudication to deliver quality adjudication.

The work of the Tribunal is accomplished by both members and mediators and the secretariat staff, without whom we could not do our work. My thanks to the whole team at the Tribunal who truly cares about the work and the people it serves.

SECTION 12

Tribunal composition and secretariat organization chart

Chairperson: Jennifer Khurana

Vice-Chairperson: Athanasios Hadjis

Full-Time Members

Colleen Harrington, Yukon

Kathryn Raymond, Nova Scotia

Part-time Members

Catherine Fagan, Newfoundland and Labrador

Marie Langlois, Quebec

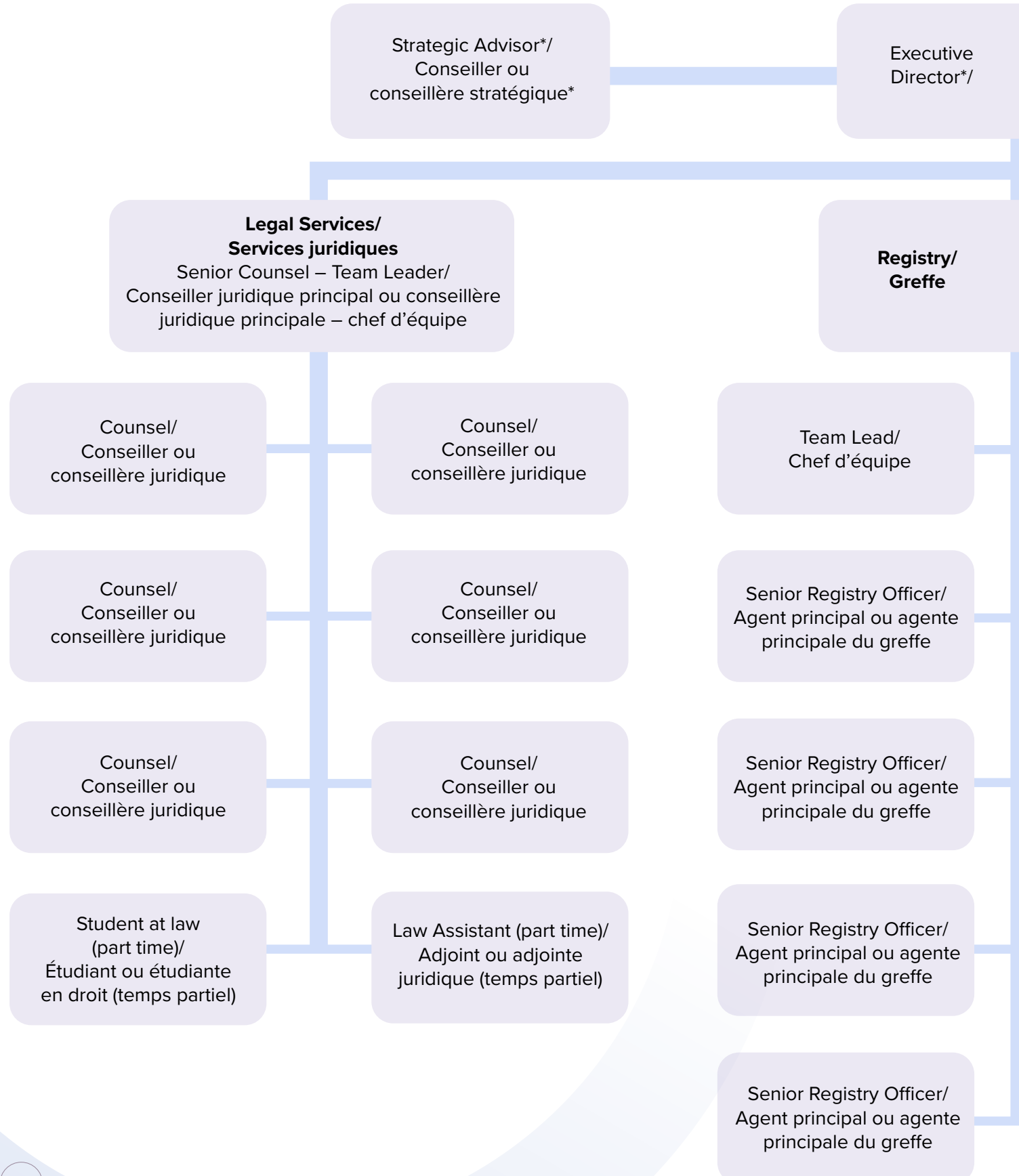
Kirsten Mercer, Ontario

Naseem Mithoowani, Ontario

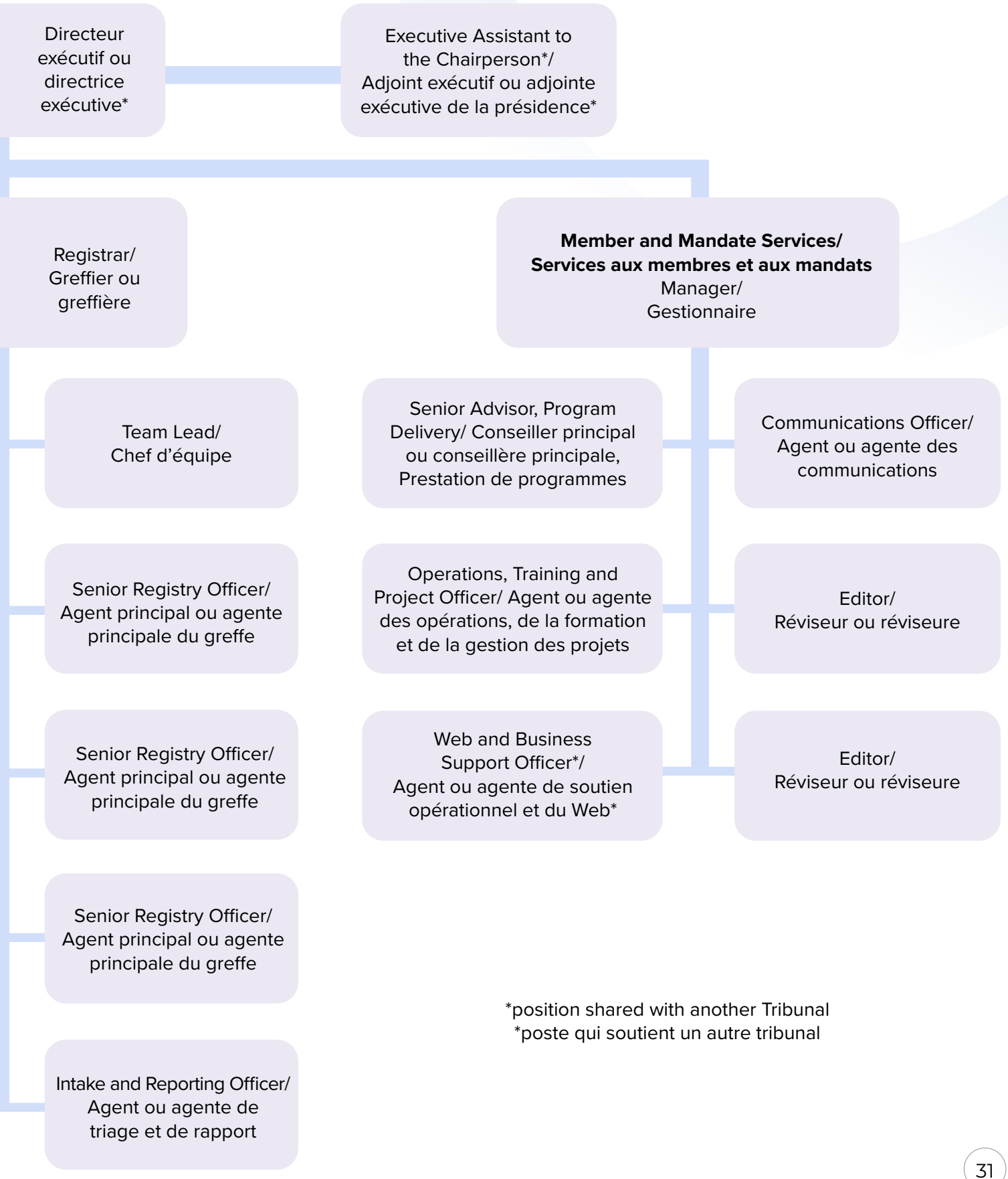
Jennifer Orange, Ontario

Daniel Simonian, Ontario

Paul Singh, British Columbia


Strategic Advisor*/
Conseiller ou
conseillère stratégique*
Executive
Director*/
Legal Services/
Services juridiques
Senior Counsel – Team Leader/
Conseiller juridique principal ou conseillère
juridique principale – chef d'équipe
Registry/
Greffe
Counsel/
Conseiller ou
conseillère juridique
Counsel/
Conseiller ou
conseillère juridique
Team Lead/
Chef d'équipe
Counsel/
Conseiller ou
conseillère juridique
Counsel/
Conseiller ou
conseillère juridique
Senior Registry Officer/
Agent principal ou agente
principale du greffe
Counsel/
Conseiller ou
conseillère juridique
Counsel/
Conseiller ou
conseillère juridique
Senior Registry Officer/
Agent principal ou agente
principale du greffe
Student at law
(part time)/
Étudiant ou étudiante
en droit (temps partiel)
Law Assistant (part time)/
Adjoint ou adjointe
juridique (temps partiel)
Senior Registry Officer/
Agent principal ou agente
principale du greffe
Senior Registry Officer/
Agent principal ou agente
principale du greffe

ts Tribunal Secretariat
lien des droits de la personne



*position shared with another Tribunal
*poste qui soutient un autre tribunal

SECTION 13

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