Canadian Human Rights Tribunal

Performance Report

For the period ending March 31, 2003

Martin Cauchon
Minister of Justice

Table of Contents

Chairperson's Message

The last year has been a significant one for the Canadian Human Rights Tribunal. A number of important developments will result in significant changes to the way that the Tribunal carries out its mandate.

The first of these developments is the decision of the Supreme Court of Canada regarding the Tribunal's institutional independence. Questions have existed for many years as to whether the Canadian Human Rights Tribunal enjoys a sufficient degree of institutional independence from both the government and the Canadian Human Rights Commission so as to be able to afford litigants appearing before the Tribunal a fair and impartial hearing. This has resulted in numerous jurisdictional challenges being brought before the Tribunal and in the courts. With the recent decision of the Supreme Court of Canada in the *Bell Canada* matter, the cloud surrounding the Tribunal appears to have lifted.

Changes at the Canadian Human Rights Commission will undoubtedly have a profound impact on the business of the Tribunal in the months and years ahead. The Tribunal has no control whatsoever over the number of cases that come before it for decision. The decision to refer a case to hearing is one made by the Commission. Recent changes in the Commission's approach to the referral process means that the Tribunal is projecting a 300-percent increase in its workload for 2003–2004 over that experienced in 2002–2003. This will obviously have a tremendous impact on the work of the Tribunal, and raises serious questions as to the adequacy of our current funding levels.

The decision of the Commission to limit its participation in the majority of cases coming before the Tribunal to the delivery of an opening statement also represents a significant change to the way in which human rights cases are litigated. In the past, the interest of the Commission in a particular case was often closely aligned with that of the complainant, meaning that many complainants were able to appear before the Tribunal without having to hire their own counsel. This went a long way towards 'leveling the playing field', as most complainants are people of modest means, and are simply not able to afford legal representation, whereas at the federal level, most respondents are large corporations or government departments, well-resourced and usually well-represented at Tribunal hearings.

The limited participation of the Commission at Tribunal hearings means that the majority of complainants will end up trying to represent themselves. There is no doubt that some complainants will be too daunted by the prospect, and will simply abandon their complaints. Other complainants may lack the psychological, emotional or intellectual wherewithal to proceed. For these complainants — people who the Supreme Court has described as the disadvantaged and the disenfranchised — meaningful access to the redress mechanisms established in the *Canadian Human Rights Act* may prove illusory.

Cases that do proceed to a hearing will inevitably take longer to complete, as self-represented litigants struggle to cope with an unfamiliar process. This will result in a greater cost to the public purse, as well as increased expense for respondents.

The Tribunal has taken a number of steps to try to meet the challenges presented by the changes to the Commission's approach. The Tribunal has reinstated its mediation program, in order to assist parties in coming to a negotiated resolution of their dispute, without the need for a Tribunal hearing. We are also reviewing our forms and procedures, to see what can be done to make the process more accessible to non-legally trained individuals, while still safeguarding the fairness of the process. Consideration is also being given to the increased use of technology, such as video-conferencing, in order to assist the parties, who may be in geographically remote locations.

Our role as neutral adjudicators, however, means that there is only so much that the Tribunal can do without compromising our impartiality, and thus the integrity of the process. Given the current statutory framework and budgetary limitations, the actions of the Commission are clearly a well-meaning attempt to address the concerns that have repeatedly been voiced regarding the delays in the complaints process. Nevertheless, we remain concerned that this approach will result in other types of delay, and could seriously undermine the integrity of the human rights complaints system.

In response to long-standing concerns as to the efficacy of the human rights complaints process, the *Canadian Human Rights Act* Review Panel was asked to review the current process, and to recommend ways to improve the system. This Panel, under the chairmanship of the Honourable Gérard La Forest, gave the matter careful study and consulted with numerous stakeholders. In June of 2000, the Review Panel came up with detailed recommendations for a comprehensive overhaul of the complaints processing system. The government has had the report of the La Forest Panel in its hands for over three years. The time for 'cut and paste' solutions is long past. Canada prides itself on its human rights record. However, if the promise of equality contained in the *Canadian Human Rights Act* is to ring true, it is time for a comprehensive, well thought-out overhaul of the human rights complaints process.

Anne L. Mactavish

Context

Our Mandate

The Canadian Human Rights Tribunal is a quasi-judicial body that hears complaints of discrimination referred by the Canadian Human Rights Commission (CHRC), and determines whether the activities complained of violate the *Canadian Human Rights Act* (CHRA). The purpose of the Act is to protect individuals from discrimination and to promote equal opportunity. The Tribunal is the only entity that may legally decide when a contravention of the Act has occurred.

Our Jurisdiction

The Act applies to federal government departments and agencies, Crown corporations, chartered banks, railways, airlines, telecommunications and broadcasting organizations, and shipping and inter-provincial trucking companies. Complaints may relate to discrimination in employment or in the provision of goods, services, facilities and accommodation that are customarily available to the public. The Act prohibits discrimination on the basis of race, national or ethnic origin, colour, religion, age, sex, marital status, family status, sexual orientation, disability or conviction for which a pardon has been granted. Complaints of discrimination based on sex include allegations of wage disparity between men and women doing work of equal value in the same establishment.

Parliament's passage of amendments to the Act in 1998 provided for a more highly qualified Tribunal that, we believe, is generating a more consistent body of jurisprudence through its decisions and written rulings. In the years since the amendments were passed, we've perceived greater acceptance of the Tribunal's quasi-judicial interpretation of the Act by the reviewing courts. Eventually, this acceptance will benefit complainants and respondents in the Tribunal process. The result will be a more timely, fair and equitable disposition of complaints at a reduced cost to the justice system.

Although we are pleased with the progress made since the legislative amendments of 1998, there is still much to do in providing Canadians with the best service possible, particularly efforts to demystify the Tribunal process to the average Canadian. This has proven to be more difficult than originally thought, owing to the quasi-constitutional nature of our work. When coupled with the recent unprecedented increase in unrepresented parties appearing before the Tribunal, however, this objective becomes even more critical. Although the Tribunal must interpret and apply the law as defined by the statute and the jurisprudence, we are trying to find ways to allow our non-legal clientele to better understand the process and thereby increase their participation in it. In the last three months of 2002–2003, the Tribunal commenced a major review of its procedures and practices with a view to simplifying them for the benefit of those not

familiar with the judicial process. To date, based on comments from our clients, we do not believe we have fulfilled our obligations in this regard. We must find better ways of serving Canadians.

Our Organizational Structure

Members

The Canadian Human Rights Tribunal is a small, permanent organization, comprising a full-time Chairperson and Vice-Chairperson and up to 13 full- or part-time members. All members besides the Chairperson and Vice-Chairperson worked part-time until December 2001, when the Minister appointed two more full-time members to the Tribunal. These appointments greatly improved our efficiency in managing and scheduling cases. Under the statute, both the Chairperson and Vice-chairperson must have been members of the bar for more than 10 years. In addition to the full-time positions, eight part-time members from across the country currently serve on the Tribunal. The level of expertise and skill of our members is undoubtedly at the highest level it has been since the creation of the Tribunal in 1978.

To be eligible for appointment by the Governor-in-Council, all members of the Tribunal are required to have expertise in and sensitivity to human rights issues.

In addition, members attend regular meetings for training and briefing sessions on such topics as decision-writing techniques, evidence and procedure, and in-depth analysis of human rights issues. Throughout their three- or five-year terms, all Tribunal members are given opportunities for professional development.

Registry Operations

Administrative responsibility for the Tribunal rests with the Registry. It plans and arranges hearings, acts as liaison between the parties and Tribunal members, and provides administrative support. The Registry is also accountable for the operating resources allocated to the Tribunal by Parliament.

Corporate, Financial, Legal and Information Technology Services

Tribunal and Registry operations are supported by Corporate Services, Financial Services, Legal Services and Information Technology Services.

Corporate Services provides support to the Tribunal in facilities management, communications, materiel management, procurement of goods and services, information management, security, reception, and courier services. It also assists the Registrar’s

Office in the development and implementation of government-wide initiatives such as the Service Improvement Initiative and Modern Comptrollership.

Financial Services provides the Tribunal with accounting services, financial information and advice.

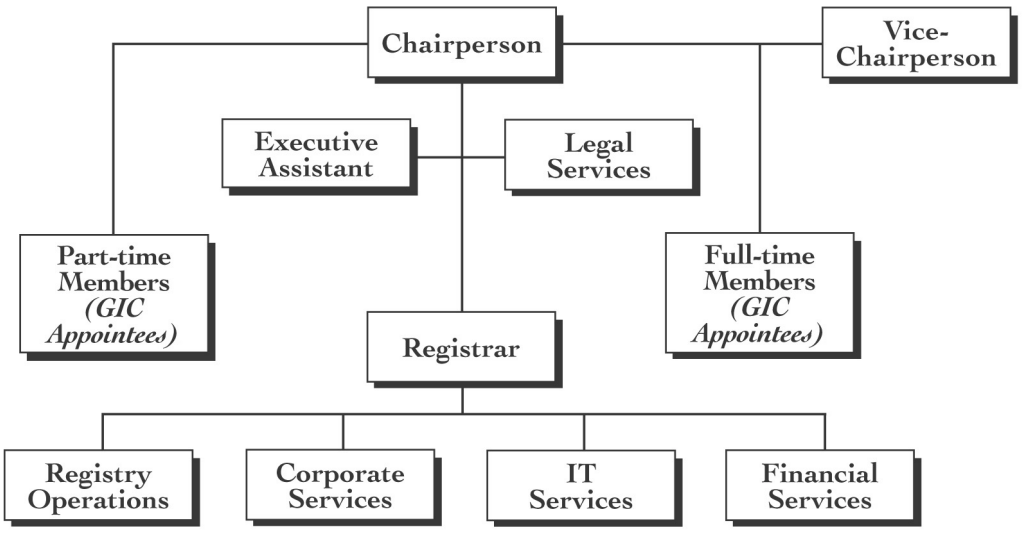
Legal Services provides the Tribunal with legal information, advice and representation.

Information Technology Services's main priority is ensuring that the Tribunal has the technology required to perform efficiently and effectively. The section advises Registry staff and members on the use of corporate systems and technology available internally and externally, and offers training. It also provides procurement and support services for all computer hardware, software and information technology services.

Information Technology Services is also involved in implementing government initiatives such as Government On-Line and the Electronic Filing Project Advisory Committee. This committee includes government agencies involved in either court or administrative law activities.

Human resources services are contracted out to Public Works and Government Services Canada.

Figure 1 presents the Tribunal's organization chart.



Our Strategic Outcome

Every government organization must have a core reason for existing and Canadians want to know what they receive from or gain by these organizations. This information for the Tribunal is summarized in the following chart.

Strategic Outcome

The Tribunal's strategic outcome is to provide Canadians with an improved quality of life and an assurance of equal access to the opportunities that exist in our society through the fair-minded and equitable interpretation and enforcement of the *Canadian Human Rights Act* (CHRA) and the *Employment Equity Act* (EEA).
The Tribunal achieves this strategic outcome by:

- providing Canadians with a dispute-resolution process that allows for complaints of discrimination to be heard and to be ruled on fairly and impartially;
- producing decisions that set legal precedents, clarify ambiguities in the interpretation of the CHRA and EEA or identify necessary changes to the CHRA and EEA, and that provide Canadians with a better understanding of their rights and obligations under both Acts; and
- ordering parties to pay damages where appropriate.

In 2002–2003, $3,778,881 in financial resources and 24 full-time equivalents were used to achieve this outcome.

Key Partners

The Tribunal is a separate and independent agency. It may inquire only into complaints referred to it by the Canadian Human Rights Commission, usually after a full investigation by the Commission. Decisions and rulings rendered by the Tribunal can be reviewed by the Federal Court of Canada.

Key Targets and Overall Results

Key targets identified in the Report on Plans and Priorities for 2002–2003 for achieving the strategic outcome included:

- rendering Tribunal decisions within four months of the conclusion of a hearing 90 percent of the time;
- commencing a hearing within five months of a referral 80 percent of the time;
- working with the Department of Justice on possible amendments to the CHRA in response to the La Forest Report; and
- providing all clients with quality service through the provision of fair and accurate information on Tribunal procedures and practices.

Results achieved within the reporting period are detailed in the section on Performance Accomplishments under the following performance indicators:

- provide a timely hearing and decision-making process;
- produce well-reasoned decisions, consistent with the evidence and the law;
- develop applications of innovative processes to resolve disputes;
- ensure that service is satisfactory to the members, to the parties involved and to the public;
- improve equality of access; and
- improve public awareness and the use of the Tribunal's public documents.

Program, Resources and Results Linkages

The Tribunal has only one program — to conduct hearings and render decisions on those hearings. The following major decisions were reached in 2002–2003:

- The Federal Court endorsed a Tribunal decision with respect to the rights of transsexual inmates within the correctional system both in regard to the placement of these individuals in the population as well as their access to gender re-assignment surgery while incarcerated (the Tribunal's findings were originally discussed in its Performance Report for 2001–2002).
- The Tribunal ordered an individual to cease communicating Web site material that associated homosexuals with pedophilia, bestiality and the sexual predation of children.
- The Federal Court endorsed a Tribunal ruling that allows a complainant who succeeds in proving his or her case to recover the costs of counsel or any legal costs incurred in the course of filing the complaint of discrimination.
- The parties to *PSAC* v. *Government of the Northwest Territories* reached a settlement in June after lengthy negotiations. The Tribunal issued a consent order confirming the settlement on June 25, 2002, and adjourned the hearing.

Management Practices

Modern Comptrollership: In 2002, the Tribunal made a commitment to adhere to modern comptrollership principles. A capacity assessment was conducted in June 2002 and an action plan was developed in November 2002 (these documents are available at www.chrt-tcdp.gc.ca/about/reports_e.asp). The capacity assessment provided the Tribunal with an analysis of its strengths and identified areas requiring special attention. The action plan sets out the necessary steps for improving management practices. Action plan items completed during the reporting period include:

- preparing an employment equity plan;
- identifying roles and responsibilities and service standards for all positions;
- updating competency profiles for core positions;

- developing training plans;
- documenting risks and mitigation measures; and
- preparing a risk policy.

Government On-Line: The Tribunal's Web site was redesigned to conform to the requirement that all government Web sites have a common look and feel.

Service Improvement Initiative: A client satisfaction survey, administered during the fall of 2002, yielded some encouraging news. The final report analyzing survey results, completed at the beginning of January 2003, shows an overall client satisfaction level of 73 percent. This finding places the Tribunal among the most responsive private and public sector service providers, based on the survey *Citizens First 2000*. The Tribunal began to develop a strategy for identifying priorities and responding to concerns identified in the survey. However, our strategy had to change because of the Canadian Human Rights Commission's policy of not fully participating in all Tribunal hearings. This meant that the requirements of our clients, specifically the unrepresented parties, dramatically changed. We are now refocusing our efforts on developing new services and products for unrepresented parties. Our current perception is that client satisfaction with our services has declined over the past few months as a result of the change in Commission policy, which has directly affected the way the Tribunal conducts its business.

Recent Tribunal Decisions and Their Effect on Canadians

Over the course of 2002–2003, the Tribunal issued 10 decisions that answered the question "did discrimination occur in this case?" Tribunal decisions put an end to disputes between complainants and respondents (subject to rights of judicial review before the Federal Court of Canada) as to whether the Act was infringed in a particular instance. The decisions also have an impact beyond the parties to the case, bringing real benefits to Canadian society as a whole.

Simply put, Tribunal decisions provide concrete meaning to a fairly abstract set of legal norms. The *Canadian Human Rights Act* prohibits discriminatory practices and offers justifications for allegedly discriminatory conduct, but it does not give examples or illustrations. For that matter, the Act does not even define the word "discrimination." It is only by reading Tribunal decisions that Canadians can learn the true ambit of their rights and obligations under the legislation. In this regard, a decision dismissing a complaint is just as noteworthy as a decision that finds a complaint to be substantiated.

The following changes to practices, policies and procedures were made as a result of recent Tribunal decisions:

- The Federal Court endorsed a Tribunal decision with respect to the rights of transsexual inmates within the correctional system both in regard to the placement of these individuals in the population as well as their access to gender re-assignment surgery while incarcerated (The Tribunal's findings were originally discussed in its Performance Report for 2001–2002).
- The Tribunal ordered an individual to cease communicating Web site material that associated homosexuals with pedophilia, bestiality and the sexual predation of children.
- The Federal Court endorsed a Tribunal ruling that allows a complainant who succeeds in proving his or her case to recover the costs of counsel or any legal costs incurred in the course of filing the complaint of discrimination.

The following cases serve as examples of the nature of the complaints brought before the Tribunal and the effects of Tribunal decisions on all Canadians.

Butler v. *Nenqayni Treatment Centre* — October 28, 2002 (Mactavish)

Results for Canadians

This case illustrates that although employers have a duty to accommodate disabled employees, this duty is not without limits. Where accommodating the employee would raise serious safety concerns, retaining the employee in the workplace could cause undue hardship and would not be required under the CHRA. Moreover, in some cases employees may have a duty to cooperate in the search for accommodation by providing the employer with relevant, reliable information about their physical capabilities.

Patricia Butler had worked for several years in a daycare centre run in conjunction with the treatment centre when she injured her back in an accident and was off work for several months while recovering. When she returned, the complainant had ongoing difficulties with her back and was unable to lift children other than small infants. About a year after she returned to work, there was a change in the treatment centre's senior management. When the new executive director became aware of the complainant's back injury and her limited ability to lift children, she became concerned about the children's safety and about the complainant's inability to help evacuate the children in the event of a fire or other emergency. She therefore arranged for the complainant to try alternate positions around the treatment centre, but the complainant either had no interest in these jobs or found them unsuitable given her injury. Eventually, the executive director informed the complainant that she would not be able to work in the daycare centre unless she provided medical evidence that she was fit for work. The complainant obtained a note from a health care practitioner, but never provided it to the executive director. Ms. Butler never returned to work at the centre and launched a human rights complaint alleging that her employment with the centre had been terminated because of a perceived disability. The Tribunal found that the executive director had acted in good faith in raising the safety concerns associated with the complainant's working in the daycare centre (i.e., inability to

lift children safely or respond to an emergency). It considered her insistence on medical information prior to reintegrating the complainant into the daycare an eminently reasonable next step in the accommodation process. The Tribunal concluded that, by failing to provide this information, the complainant had failed in her duty to facilitate accommodation. The Tribunal therefore dismissed the complaint.

***Rampersadsingh* v. *Wignall* — November 26, 2002 (Hadjis)**

Carol Rampersadsingh, a Trinidadian of East Indian origin, alleged that her co-worker Dwight Wignall had discriminated against her by harassing her on the grounds of national or ethnic origin and sex, in contravention of section 14 of the CHRA. The complainant and respondent were employed as postal workers at a mail facility. Over the course of two evening shifts, Mr. Wignall directed racial slurs at the complainant and ridiculed her for colouring her hair blonde. He also made comments about her appearance that disparaged her sexual attractiveness. Other comments suggested that some physical harm would befall the complainant. The Tribunal found that these comments were not sexual in nature and that they formed part of the reciprocal jousting banter that passed between the parties during the first shift they worked together. To substantiate a complaint of harassment, the complainant must show that the respondent ought to have known his behaviour was unwelcome. The Tribunal found that, on the first shift, the respondent had no basis for perceiving that his comments were unwelcome. On the second shift, however, the respondent's comments noticeably upset the complainant. Nevertheless, the Tribunal held that any offensive, unwelcome comments made by the respondent did not constitute conduct of sufficient severity or persistence as to create a hostile or poisoned work environment. Among the factors considered in its decision were the facts that the alleged harassment was limited to offensive language (jokes, insults and slurs), that the complainant was not in a relationship of subordination to the respondent and that the parties worked in a large facility with hundreds of other employees. The events in question took place on two consecutive evenings late in November 1995 and the parties had almost no contact after that. Although the respondent may subsequently have engaged in immature taunting behaviour in a few isolated encounters, the behaviour had neither sexual nor racial overtones. The Tribunal dismissed the complaint.

Results for Canadians

It is often stated that although, in general, for conduct to be considered harassment it must be repeated, isolated incidents will be deemed to be harassment if they are of sufficient gravity. The *Rampersadsingh* case explores the inverse relationship between the gravity of the conduct (including its invasiveness and the degree of power imbalance) and its temporal characteristics — that is, the degree to which it formed a pattern over a length of time. Both indices help to establish whether a work environment was, in effect, "poisoned." This case also reaffirms the principle that harassment is by definition "unwelcome" conduct, and that an employee who is found to be consenting to the conduct may be unable to claim harassment.

Hill v. *Air Canada* — February 18, 2003 (Groarke)

The complainant was employed as a mechanic with the respondent. Mr. Hill believed his work environment was overtly racial. He also believed that menial tasks were being assigned to him, which he considered beneath his dignity. The complainant also experienced problems with his supervisor and alleged that he was supervised more closely than other employees. However, the Tribunal was of the view that Mr. Hill's provocative attitude was partly responsible for this increased level of supervision. The complainant also argued that he was denied the position of Aircraft Planner III because of racial motives. However, the evidence suggested that Mr. Hill was not qualified for the position and had fared badly on the interview. The Tribunal found that the complaint of discrimination was not substantiated, and that the evidence in support of the complaint was vague and impressionistic. Although there was a lack of minorities employed in senior positions with the respondent, the Tribunal could not infer from this that the complainant was discriminated against. Rather, the Tribunal was of the view that Mr. Hill's problems were a product of his own making. Similarly, the Tribunal ruled that the conflict between Mr. Hill and his supervisor was not a product of race, but of Mr. Hill's attitude towards his work and his resentment of authority. The harassment complaint was based on the racial jokes and graffiti in the workplace. In dealing with a harassment complaint, the Tribunal adopts the perspective of a reasonable victim. In this case, the respondent had put in place a harassment policy. The Tribunal was of the view that management made a serious, albeit limited, attempt to deal with the racial issues in the workplace. The evidence regarding the graffiti was that it was only a problem in the washrooms and that the respondent took steps to control it. As for the racial jokes, the evidence showed that they were a general rather than a specific problem in the respondent's workplace: many mechanics, including the complainant, were not respectful of other employees. It would not be acceptable for Mr. Hill to come before the Tribunal to seek relief for activities in which he willingly participated. Accordingly, the Tribunal dismissed the complaints.

Results for Canadians

Employers retain the right to refuse to promote an unqualified employee, and to hold an employee accountable for his or her poor attitude, provided that the employer's assessment is not tainted by prohibited considerations such as race. In addition, an employee who actively contributes to the creation of a poisoned work environment may encounter difficulty in complaining about such an environment.

Desormeaux v. *Ottawa-Carleton Regional Transit Commission* — January 14, 2003 (Mactavish)

The complainant was employed with the respondent as a bus operator for nearly nine years. The complainant was frequently absent from work because of a variety of illnesses

and injuries, including migraines, kidney stones, gall bladder problems, ovarian cysts, viruses, a broken ankle, a back injury, bronchitis and stress. Her employment was terminated in 1998 because of her chronic absenteeism. She alleged that this constituted discrimination on the basis of disability. At issue in this case was whether the complainant was disabled, and whether the respondent accommodated the complainant to the point of undue hardship. The respondent argued that no *prima facie* case of discrimination had been established because the complainant could not be considered to be suffering from a disability. However, after considering evidence from the complainant's physician, the Tribunal determined that the migraines from which the complainant suffered did indeed constitute a disability within the meaning of the CHRA. The headaches caused her to become significantly incapacitated and interfered with her ability to do her job. The Tribunal also found that this disability was a factor in terminating her employment. This established a *prima facie* case of discrimination. Moreover, the Tribunal found that the respondent had not accommodated the complainant to the point of undue hardship. Although the Tribunal accepted that intermittent absenteeism could potentially create undue hardship for an employer, that was not the case here. The Ottawa-Carleton Regional Transit Commission had a large and interchangeable work force. The services provided by the respondent were time-sensitive, but a system was in place to compensate for driver absences. The complainant's absences would not cause an excessive drain on the system. Furthermore, the respondent did not explore the possibility of providing a non-driving job to the complainant. The complaint was therefore substantiated. The complainant was reinstated to her former position and awarded damages for lost wages and special compensation. (Judicial review pending.)

Results for Canadians

In determining whether someone suffers from a disability, it is important not to let disputes over medical diagnoses obscure the functional examination of whether the person's condition actually interferes with his or her work. This case also shows how one may not assume that prolonged absenteeism necessarily creates undue hardship for an employer where the employer has not demonstrated in concrete terms the significance of the impact of such absenteeism on its operations.

***Parisien* v. *Ottawa-Carleton Regional Transit Commission* — March 6, 2003 (Hadjis)**

The complainant was employed with the respondent as a bus operator for more than 18 years. The complainant suffered through several traumatic episodes from 1979 until 1994, including the end of his engagement, the death of his mother, a violent assault by a bus passenger, the sudden death of his father and death threats made by another passenger. Following the last of these incidents, the complainant began experiencing stomach pains and felt sick. He subsequently went on a leave of absence based on medical certificates issued by his family physician that referred to his state of anxiety and job tension. The complainant was later diagnosed with post-traumatic stress disorder (PTSD) by a

psychiatrist and psychologist. He received therapy and was later deemed ready to return to work. However, other unsettling incidents on the job led to a recurrence of his anxieties. He underwent more therapy and in January 1996 his doctors cleared him for a return to work. The respondent terminated his employment in February 1996 because of chronic absenteeism. The complainant established a *prima facie* case of discrimination: there was no question that PTSD constituted a disability and that this was a factor in terminating the complainant's employment. The evidence showed that the decision was based on his past record of attendance, which was inextricably linked to his disability. The Tribunal found that the respondent, in contravention of the requirements of its Attendance Management Program, had not made every effort possible to accommodate the complainant. There was no evidence that the respondent consulted the doctors regarding the possibility of alternate employment. Furthermore, the respondent had a large and interchangeable work force designed to cope with absenteeism. The Tribunal accordingly found that accommodation of the complainant would not impose undue hardship on the respondent. The complainant was reinstated to his former position and awarded damages for lost wages and special compensation. (Judicial review pending.)

Results for Canadians

This case explores the resumption of duties by an employee who has been absent because of a disability and is found "fit" to return to work. Although the employee may be fit, if the employer uses the employee's record of past absences to form a prognosis of poor future attendance, the employee's disability continues to play a role in the employer's treatment of him or her. Furthermore, an employer who dismisses an employee based on predicted future absences cannot justify the dismissal by showing that it took place when the employee was "fit" and attending work (and therefore not "disabled"). Ultimately, the case demonstrates that a true appreciation of discrimination — and accommodation — on the basis of disability can require an examination of whether the employer is drawing on the past to predict the future. Scrutiny of the events immediately surrounding the dismissal may not give the entire context.

Risk Management Issues

At the commencement of fiscal year 2002–2003, the Tribunal continued to face three major risks: 1) workload issues; 2) amendments to the legislation; and 3) a forthcoming decision by the Supreme Court on the Tribunal's independence. All three risks were expected to have a substantial impact on how the Tribunal conducts its business and its ability to fulfill its mandate. Two new and certainly more imminent risks that arose late in the fiscal year have had a dramatic impact on Tribunal operations: an increase in unrepresented parties and an increase in case referrals of as much as 300 percent. Both are workload issues, but go far beyond what was perceived to be a risk at the start of the year. The following is a brief synopsis of these risks and what the Tribunal is doing to address them.

Workload Issues

The number of cases being referred to the Tribunal has risen dramatically in the past year. In the first six months of 2003 alone, 101 new cases have been referred to the Tribunal, double the total number of referrals received all year in 2002. We are projecting about 152 new referrals in the calendar year.

The Commission's decision to fully participate in only 20 to 25 cases per year has also added significantly to the Tribunal's workload. Complainants who would have relied on Commission counsel to present the case will now be required to lead evidence by calling witnesses to prove their allegations. Much more time is needed to explain the process to unrepresented parties, the filing of documents with the Tribunal is delayed, additional case management exercises are required and the hearings themselves generally move much more slowly. This increase in both cases and additional workload was unexpected. The impact has been immense. We are hiring new staff and making major revisions to our operating policies and procedures.

In past reports we explained why the Tribunal discontinued offering mediation to parties appearing before it. Although the reasons given are still present and continue to cause concern, the new situation facing the Tribunal (primarily unrepresented parties and a huge increase in cases) resulted in the reintroduction of mediation in March 2003. To meet the concerns cited in previous reports, we have introduced revised operating procedures for our mediation process, such as more detailed written mediation briefs, pre-mediation case conference calls and publication of the generic results of settlements. We also developed and delivered a very intensive training session on mediating human rights matters for members of the Tribunal.

We believe that mediation, especially when it involves unrepresented parties, allows for a more equitable and informal resolution of complaints. For cases that we cannot resolve through mediation, the more formal hearing process is still a necessary and viable option, allowing for the establishment of important legal precedents that can be used to resolve future complaints based on similar grounds or circumstances.

We are very closely monitoring our workload issues and the reintroduction of mediation to ensure that we will not compromise the quality of our services. The Tribunal may require additional resources, at which time a detailed report will be submitted to the appropriate funding authorities within government. They have already been made aware of the current situation.

Legislative Amendments

In June 2000, a panel of human rights experts, chaired by the Honourable Gérard La Forest, submitted a comprehensive report to the Minister of Justice on reforming the *Canadian Human Rights Act*.

The report made many recommendations, but of primary importance to the Tribunal was the recommendation of a "direct access model" for the filing of claims. In other words, individuals who believe they have suffered from discrimination would no longer file the claim with the Commission for investigation and decision, but would instead file their claim directly with the Tribunal. The Tribunal's workload under such a model would increase from 100 cases each year to as many as 1,000. The effect on the Tribunal would be enormous. The Minister of Justice, in early 2002, indicated that legislative amendments would be introduced in the fall of 2002. This did not happen. It is now possible that the amendments will be introduced in 2004. The contents and scope of the amendments are unknown.

Since the release of the report, the Tribunal has been developing various models to respond to a variety of options that the government may select as the most appropriate for Canadians. Based on this preliminary work, we feel reasonably confident that we can respond in a timely fashion once the government determines the future it envisages for the Tribunal.

Decision of the Supreme Court of Canada

In January of 2003, the Supreme Court of Canada heard an appeal by Bell Canada that alleged that certain provisions of the *Canadian Human Rights Act* create a situation whereby the Tribunal does not possess the requisite institutional independence and impartiality. (The Federal Court of Appeal dismissed Bell's appeal in May 2001.) Had the Supreme Court agreed with Bell Canada, the Tribunal would have been unable to continue to hold hearings and render decisions. At that point, the Act would have become unenforceable.

On June 26, 2003, the Supreme Court rendered its decision on the Bell Canada appeal. It dismissed Bell's arguments and held that the Act, as currently worded, does not violate the principles of institutional independence and impartiality. This ruling serves to eliminate a key legal risk to the Tribunal's operational jurisdiction; it indicates that the legislative machinery that governs the *Bell Canada* pay equity case and, to a significant degree, many other cases, is sound. Such a finding introduces a new element of stability into the Tribunal's risk profile.

The Supreme Court's decision on the Bell Canada appeal is available at www.lexum.umontreal.ca/csc-scc/en/rec/html/2003scc036.wpd.html.

Key Activities in Support of Our Strategic Outcome

To achieve our strategic outcome, the Tribunal must perform the following key activities:

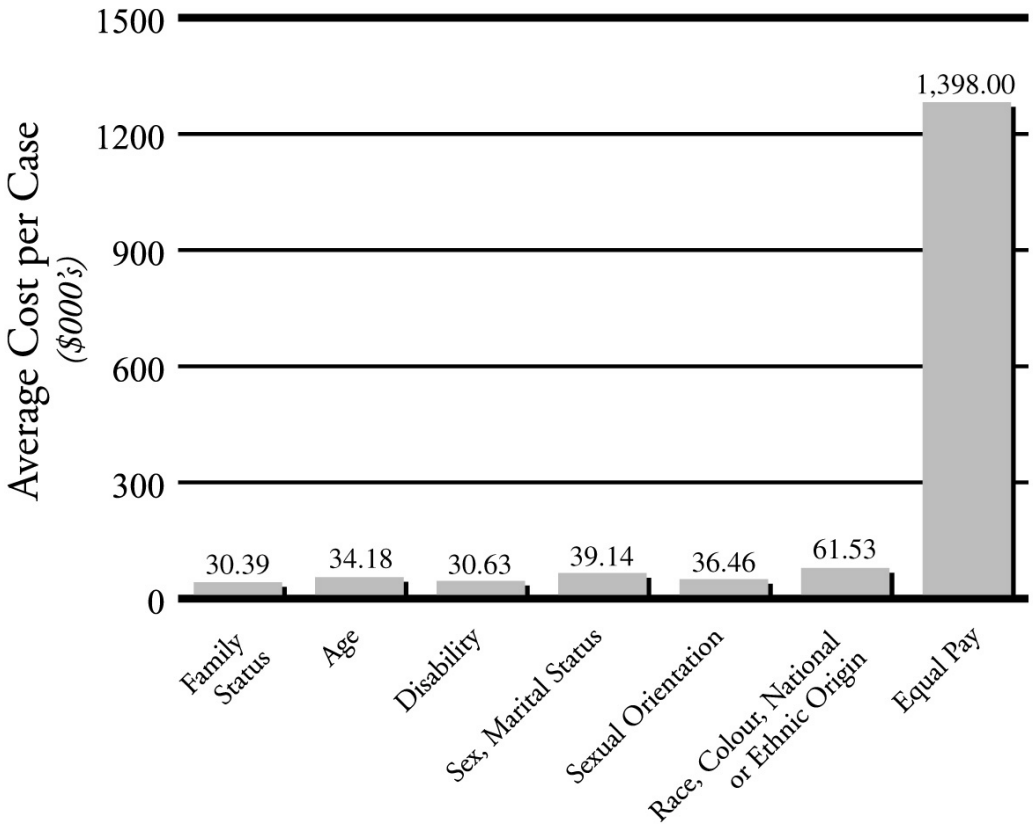
- revising operating procedures;
- developing rules of procedure; and
- managing the Tribunal's workload.

Revised Operating Procedures

The Registry regularly monitors the cost (*see* Figure 2) and effectiveness of its procedures, making changes and improvements as required. Although we are reasonably content with our progress in this area, we still need to constantly review and improve our operating practices.

With the very recent increase in unrepresented parties, we are again reviewing our rules and procedures to make the system much more usable for those not familiar with our legal process. We admit we have much work to do in meeting the needs of unrepresented parties.

Figure 2. Average Cost per Case by Ground



Rules of Procedure

(www.chrt-tcdp.gc.ca/about/tribunalrules_e.asp)

Amendments to the *Canadian Human Rights Act* in June 1998 gave the Tribunal Chairperson the authority to institute rules of procedure governing the conduct of Tribunal hearings. This jurisdiction extends to rules governing notice to parties, summons of witnesses, production and service of documents, pre-hearing conferences, and the introduction of evidence.

To test our new rules, we introduced interim rules to assess their effectiveness before publishing them as official rules. Since their introduction in 1999, our interim rules have reduced operational problems related to disclosure and have facilitated the handling of legal and procedural motions. There have been no specific challenges to the rules, which indicates, to some extent, an acceptance by those who use them. However, the Tribunal continually monitors the effects of the rules and adjusts them to provide the best possible service.

It was our intention during the last reporting period to submit the interim rules to the Regulatory Section of the Department of Justice for approval and publication in the *Canada Gazette* as required under subsection 49.9(3) of the Act. However, two events prevented this from happening.

First, it was deemed prudent to convene another meeting with counsel who appear before the Tribunal to ascertain whether any concerns about the operation of the rules had arisen since our last stakeholder consultation a few years ago. Two meetings were held, one in December 2002 and another in January 2003. The feedback from users led us to believe that certain modifications were necessary before submitting the rules to the Department of Justice.

Second, the Canadian Human Rights Commission's decision in early 2003 to limit its participation in Tribunal hearings has made it necessary to revise our rules of procedure. The current rules assume that the Commission is fully participating in the hearing, and provide the option of exempting complainants from the pre-hearing pleading and disclosure obligations to the degree that complainants wish to rely on the Commission's case. We need to craft rules that are clear but flexible enough to reflect the reality that the complainant may be the only party leading evidence in support of the complaint, or that the Commission may be participating only with respect to a particular issue. Until this is accomplished, publication of the rules of procedure in the *Gazette* would be premature.

Tribunal Workload

As reported in last year's Performance Report, there continues to be a dramatic increase in the number of new cases being referred to the Tribunal by the Canadian Human Rights

Commission. As a comparison, 15 cases were referred in 1996, 74 in 2000, 87 in 2001 and 55 in 2002, with 152 new cases projected for 2003.

In 1996, the Tribunal's responsibilities were expanded to include the adjudication of complaints under the *Employment Equity Act*, which applies to employers with more than 100 employees. Employment Equity Review Tribunals are created as needed from members of the Tribunal. The Chairperson appointed the first Employment Equity Review Tribunal in February 2000. Since then, the Chairperson has appointed eight such tribunals. Requests for the appointment of Employment Equity Review Tribunals can be initiated either by the Canadian Human Rights Commission or the employer. The subject of the inquiry usually relates to a review by the Tribunal of a direction given by the Commission to the employer with respect to an employment equity plan. The Tribunal, after hearing evidence and oral argument from the two parties, may confirm, rescind or amend the Commission's direction.

Workload Issues

In last year's report, we advised of a serious concern with the significant increase in the number of new cases being referred to the Tribunal for hearing. We stated that, although we were still able to meet our time lines for the processing of cases, we were concerned that if this increase were to continue, it could affect the quality of our services to Canadians. To address this problem, the Tribunal completed a detailed analysis of its capabilities, based on existing resources, and presented its findings to Treasury Board. Through beneficial negotiation and cooperation, the Board responded favourably to a revised operating and business plan designed to meet our workload concerns.

Table 1 identifies changes in the number of referrals from the Commission since 1996.

Table 1. New Cases, 1996 to 2003

	1996	1997	1998	1999	2000	2001	2002	2003 Projected	Totals
Human Rights Tribunals/ Panels	15	23	22	37	70	83	55	**150**	455
Employment Equity Review Tribunals appointed	0	0	0	0	4	4	0	**2**	10
Totals	15	23	22	37	74	87	55	**152**	**465**

***** The number of cases before the Canadian Human Rights Tribunal depends entirely on how many cases are referred by the Canadian Human Rights Commission. As noted, the number of referrals since 1996 has generally continued to increase. For 2003, the number of referrals of human rights and employment equity cases is projected to be 152, which is a 1000-percent increase over 1996 referrals.

Settlements

The rate of settled cases appears to have stabilized in 2002–2003. The Commission, after referring complaints to the Tribunal, has continued to settle cases before the commencement of a hearing at a rate of 65 percent. With the reintroduction of Tribunal mediation, the settlement of cases solely by the Commission has dropped sharply, as expected. In a few cases where settlements were not reached through Commission negotiations, the Commission has withdrawn from the cases, leaving complainants to go on to a hearing and present the cases on their own. With the Commission now deciding not to fully participate in all hearings, the complainants will be made aware much earlier in the process of the Commission's intentions.

What is the impact on Canadians of private confidential settlements? At this point, we are not really sure. Although settlements have always been an important ingredient in a proper litigation process, the current numbers may be showing too much of a tendency to settle human rights disputes. (The rates of settlement are shown in Table 2.) Because it allows for a complete review of the evidence and a published decision, the hearing process may have a much wider impact on ending discriminatory practices. There will always be cases that are settled. We expect about 65–70 percent of cases will be settled through the Tribunal mediation process. We are confident that, with members conducting the mediation, systemic and policy issues will be fully addressed and explored. Although we cannot control final settlements, the fact that all issues are placed on the table for discussion provides the parties with at least some confidence that similar discriminatory practices or acts are much less likely to occur.

Canadians have placed their trust in the Commission and the Tribunal to ensure that their rights and society's rights are fully protected within the meaning of the *Canadian Human Rights Act.* We must continue to ensure that our actions prove that trust is properly deserved.

Table 2. Rates of Settlement, 1995 to 2002

Year of Referral	No. of Cases	Settled	Hearing Commenced	Pending	Percentage Settled
1995	26	11	14	1	40.7
1996	15	4	11	0	26.7
1997	22	18	4	0	81.8
1998	18	11	7	0	61.1
1999	35	26	8	1	76.4
2000	70	47	21	2	69.1
2001	83	66	13	4	83.5
2002	55	25	14	16	64.0
Total	**324**	**208**	**92**	**24**	**69.3**

Note: "Percentage Settled" does not include pending cases.

Negotiated settlements between parties are beneficial and meet the requirements of the Act so long as each settlement meets the needs of the complainant and respondent and serves the public interest. One without the others does not, based on the intent of the Act, serve the interests of Canadians.

The direct effect of so many settlements on the Tribunal has primarily been a reduction in the number of hearing days held in the past year. As noted in the attached financial statements, these have left the Tribunal with a surplus in its operating budget for 2002–2003. This will not occur in 2003–2004 because of the unprecedented increased in cases referred by the Commission and the re-introduction of Tribunal-sponsored mediation.

With 72 percent of all settlements in the past two years being reached by the parties and approved by the Commission within two weeks of the commencement of the hearing, the time and effort put into planning and organizing hearings has not decreased (*see* Tables 2 and 3). With settlements arriving so close to the scheduled date of the hearing, the Tribunal is also obliged to pay for last-minute cancellation fees for professional services and facilities contracted to conduct the hearing.

Table 3. Length of Notice Given to Tribunal of Confirmation That a Settlement Has Been Reached, 2001 and 2002

Length of Notice	No. of cases	Percentage of cases
Settled at hearing	10 cases	9.2
One day's notice	17 cases	15.5
Two to five days' notice	37 cases	33.9
Two weeks' notice	15 cases	13.7
Two weeks' to one month's notice	7 cases	6.4
More than one month's notice	23 cases	21.1
Total number of cases settled in 2001 and 2002	**109 cases**	

Note: The total number of new cases referred to the Tribunal was 70 in 2000, 83 in 2001 and 55 in 2002, for a total of 208.

Performance Accomplishments

The mission of the Tribunal is to provide Canadians with a fair and efficient public inquiry process for the enforcement of the *Canadian Human Rights Act* and the *Employment Equity Act*.

The Tribunal has one main activity — to conduct public hearings and render decisions. Its principal goals in carrying out this responsibility are to conduct hearings as expeditiously and fairly as possible, and to render fair and impartial judgements that will stand up to the scrutiny of the parties involved and the courts. In other words, whatever the result of a particular case, all parties should feel they were treated with respect and fairness.

The Tribunal's most recent Report on Plans and Priorities outlined the following major goals or targets, which would demonstrate progress in achieving our strategic outcome as stated in the "Context" section of this report:

- commencing a hearing within five months of a referral 80 percent of the time;
- rendering Tribunal decisions within four months of the conclusion of a hearing 90 percent of the time;
- working with the Department of Justice on possible amendments to the CHRA in response to the La Forest Report; and
- providing all clients with quality service through the provision of fair and accurate information on Tribunal procedures and practices.

Our results for 2002–2003 were as follows:

- We did not meet our first objective: only two of the 11 cases that commenced hearings in 2002–2003 did so within the five-month time frame, and 8 of the 11 commenced within six months of the referral. As noted later in this section, we are now of the view that six months is a more reasonable time frame.

- We rendered 78 percent of the Tribunal's last 19 decisions within the four-month time frame; nine of these were also the most recently rendered decisions. We are making progress in this area and believe that in 2003–2004 we will release 90 percent of our decisions within four months of the conclusion of the hearing process.

- The Department of Justice has not moved forward with the drafting of amendments to the CHRA. There have been some very preliminary discussions and we do not anticipate any substantive discussions until late in 2004–2005.

- The Tribunal has carried out many changes to its public information to better serve our clientele. This includes a complete redesign of our Web site, with upgraded search capabilities and new information, a guide on how the Tribunal operates, revised

operating procedures, and mediation services. In development are a media kit, pamphlets designed to help unrepresented parties, e-filing and samples of legal documents.

The next section expands on what we said we would do and the results to date.

1. Provide a timely hearing and decision-making process

Since January 1998, the Tribunal has been committed to reducing the time to complete a case to 12 months (from the date of referral to the release of a decision). Although the average number of days to complete a case was 232 in 2001 and 173 in 2002 — both well within the one-year target — the range of times varied widely.

A large number of cases were settled without the need for a hearing. For cases requiring a full hearing and decision, the average time to close in 2001 was 384 days, with six cases requiring more than one year to finalize. In 2002, the average was 272 days with none exceeding our one-year time frame. Although our performance improved in 2002, many cases remain active and our numbers for 2003 still will not be fully satisfactory: not all cases will be completed within the year. In a number of the longer proceedings, these delays have been beyond the Tribunal's direct control — the result of requests for more time from the parties, Federal Court applications or the complexity of the case, for example.

For cases with unrepresented parties, we will find it increasingly difficult to close cases within one year. At the end of 2003–2004, we will review our target to determine whether it is still viable and valid. Next year's Performance Report will indicate how we have been doing with our increased case load and with those cases involving unrepresented parties.

Table 4 shows an overall decline in the average number of days required to process and close case files. Although the number of referrals has increased more than threefold, from 37 in 1999 to a projected 152 cases in 2003, the number of available members and staff has remained constant. In 2001, two of our part-time members became full-time. Most cases, therefore, are being assigned to full-time members, who can devote as much time as necessary to each case.

With the increased case load, part-time members will be called on more frequently than in the past to adjudicate cases, which will increase our operating cost and add to our delays in processing cases. The Tribunal is considering asking the Minister to appoint more full-time members, and will decide whether to make this request in the late fall of 2003.

Table 4. Average Days to Complete Cases, 1996 to 2002

	1996	1997	1998	1999	2000	2001	2002
From date of referral from the Canadian Human Rights Commission							
Direction to parties	22	24	40	15	7	12	6
Time to settle a case	170	152	245	232	230	202	150
To first day of hearing	234	93	280	73	213	293	169
Time for decision to be submitted from close of hearing	189	75	103	128	164	84	89
Average processing time to close file	266	260	252	272	272	208	174

Until the winter of 2002, the Tribunal's case management process allowed us to schedule hearings as quickly as the parties were prepared to move forward. In the past, we have boasted about our ability to hold a hearing on any issue within five days, and in some cases within 24 hours, of receiving a referral or a request for motion. Today, with the dramatic increase in the number of cases, we regret we can no longer live up to this statement. In fact, for a brief time in late 2002–2003, new cases were placed on hold while we attempted to catch up with our existing case load. We have hired new staff on a temporary basis to ensure that we continue to do our best in meeting service standards and the needs of our clientele. However, without additional, permanent resources, we will continue to create a backlog for the first time in the Tribunal's history. This is not an acceptable level of service for Canadians.

To date, we have not received any complaints about the delay in moving cases through the system. In part, this is because the lawyers who will be present at the hearing do not usually become involved in the case until after it is referred to the Tribunal by the Canadian Human Rights Commission. For the process to be meaningful and effective, parties must be given sufficient time to prepare complete, well thought-out cases. New procedures incorporating questionnaires have allowed the scheduling process to be completed within four to six weeks after a case is referred from the Commission. We believe, if procedural fairness is to be given to all parties, it is unrealistic to expect that the scheduling process in place at the end of 2001–2002 can be improved, since hearing dates are determined more by the availability of counsel than by the Tribunal. Hearings have typically started three to five months after referral. Based on current workload and new operating procedures related to mediation, the time required to commence a hearing is expected to be six months. We believe this new time line is realistic. We are prepared to move more quickly at the request of individual parties.

Motion interventions and procedural challenges are also common and continue to cause delays in the process. However, with the sensitivity and importance of the issues we deal with, these types of legal challenges are to be expected. With the many unrepresented parties now appearing before the Tribunal, logistical and operational problems are now adding to delays. For example, we received a complaint from an individual who worked at a location in the North. Since filing the complaint, the complainant has moved to another province. The Commission is no longer a full party to the proceedings and will not pay for the complainant to travel to the North. The respondent, who owns a very small business and is without legal counsel, is also not prepared to travel because this individual's witness, whose travel costs would have to be paid by the respondent, lives in a small isolated community in the North. Video conferencing is not available. Needless to say, this is a logistical nightmare for the Tribunal. To further complicate the matter, the respondent's representative is not fully conversant in either French or English, which minimizes the effectiveness of a telephone conference. We have developed and submitted several options to the parties for consideration. However, the case has now been delayed for more than seven months. If the Commission were a full participant, it would have arranged for the complainant to travel to the North, and either mediation or a formal hearing would have concluded by now. The reality is that this type of situation is going to become more frequent. With so many unrepresented parties, the Tribunal is going to be faced with many new challenges and we must become more creative in finding workable solutions to these problems.

Decisions of the Canadian Human Rights Tribunal in 2002–2003

In 2002–2003, the Tribunal rendered 10 decisions on the merits of cases.

The decisions below are listed by the main ground that the complaint relates to. Other grounds, if any, as well as release dates, are also provided.

National or Ethnic Origin; Sex
Rampersadsingh v. *Dwight Wignall* (November 26, 2002)

Race
Hill v. *Air Canada* (February 18, 2003)

Disability
Butler v. *Nenqayni Treatment Centre Society* (October 28, 2002)
Desormeaux v. *Ottawa-Carleton Regional Transit Commission* (January 14, 2003)
Parisien v. *Ottawa-Carleton Regional Transit Commission* (March 6, 2003)
Quigley v. *Ocean Construction Supplies* (April 3, 2002)

Sex
Martin v. *Saulteaux Band Government* (April 18, 2002)

Family Status
Woiden et al. v. *Dan Lynn* (June 17, 2002)

Age
Larente v. *Canadian Broadcasting Corporation* (April 23, 2002)

Sexual Orientation
Schnell v. *Machiavelli and Associates Emprize Inc. and John Micka* (August 20, 2002)

The full text of Tribunal decisions can be found at www.chrt-tcdp.gc.ca/tribunal/index_e.asp.

With these kinds of uncontrollable delays, expecting that *all* cases can be completed in a 12-month period is not realistic. However, based on new operating procedures and some

recent rulings from the courts, the Tribunal is cautiously optimistic that, once we adjust to the new realities, we can complete *most* cases within the 12-month time frame. In the winter of 2002, as previously reported, the Minister appointed two new full-time members to the Tribunal. This has helped us tremendously in the processing of cases. As mentioned previously, we may find it necessary to ask the Minister to consider additional full-time appointments to the Tribunal.

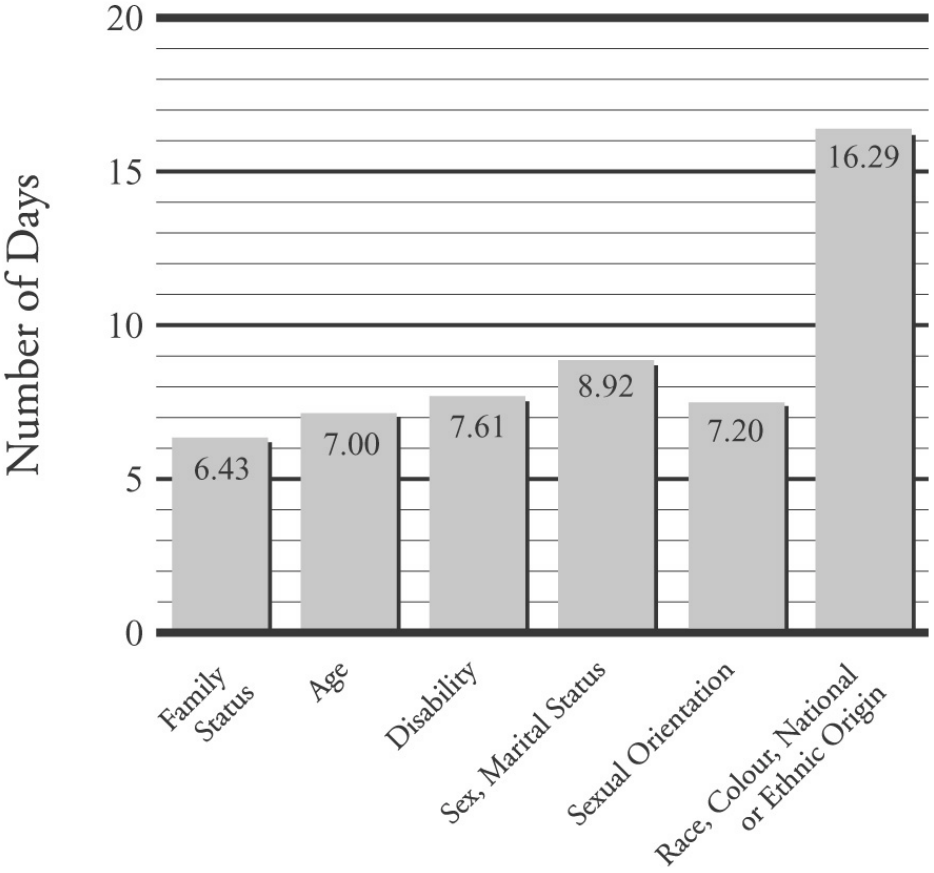
The Tribunal generally only becomes involved in cases that are complex, often with national implications. Imposing tighter time constraints on such cases might exert undue pressure on the parties involved, thereby denying Canadians natural justice and the right to be heard. Parties need time to prepare their cases. Unreasonable time lines lead to poor presentations of cases and poor judgements. This benefits neither the interest of Canadians nor the human rights process. Unreasonable and unnecessary delays do not serve Canadians either. The challenge for us is to find the right balance in each case. With case management now in the control of full-time members, we are much more likely to find that balance.

We have not been able to develop a perfect system that will allow for a more expeditious adjudication process. There just may not be one. However, we will continue to review our procedures, listen to comments from our clientele and strive for a system that best meets the needs of Canadians.

Figure 3 sets out, on average, the number of days required to hear a case by the major grounds. Most grounds are comparable except for complaints based on race, colour, or national or ethnic origin. These complaints generally involve a systemic problem and multiple discriminatory actions over a long period. Consequently, the number of witnesses called in these types of cases is much greater than for other grounds. In cases where race or colour or national or ethnic origin is not the basis for the complaint, the discriminatory act is generally a single occurrence.

Since the introduction of full-time members to the Tribunal, we have seen a decrease in the number of days required to complete cases. The increased experience of these members combined with improved case management has allowed for greater efficiency in the hearing process.

Figure 3. Average Number of Days per Case by Ground (excluding pay equity)



2. Produce well-reasoned decisions, consistent with the evidence and the law

A review of legal developments over fiscal year 2002–2003 prompts several general observations.

Looking solely at the period under review, fiscal year 2002–2003, the number of decisions comes to 10. This is admittedly a sharp decline from the total for fiscal year 2001–2002 (20), but does not appear to be as significant when calendar-year statistics are taken into consideration. Calendar year 2002 finished with a total of 12 decisions rendered, a decrease from the 2001 total of 18 but still more than twice as many decisions as the number rendered in either 1999 or 2000 (*see* Table 5). So far in 2003, nine decisions have been completed. By putting aside 2002 as a year of extraordinarily high output, one may observe that we are now roughly where we were when last year's

Performance Report was being written (that is, close to 10 decisions rendered so far this calendar year).

In last year's Performance Report, we commented on the *Bell Canada* independence issue and the impact it might have on the Tribunal's workload. Arguably, the recent Supreme Court decision (June 2003) upholding the legislative scheme of the Act will serve to stabilize the Tribunal's process even more so than did the Federal Court of Appeal decision that preceded it. It seems reasonable to hope this decision may in future decrease the time it takes to complete a case, as well as increase the confidence of parties in the system.

The Federal Court issued four judgements in 2002–2003 that concerned decisions made by the Tribunal on substantive human rights matters. Of the four, two decisions set aside the aspect of the Tribunal's ruling contested before the court. The results of the two other court decisions are slightly more complicated. They each dealt with two separate issues arising from the Tribunal decision under review. In one case, the Tribunal's decision was upheld on both grounds; in the other case, it was upheld on one ground and set aside on the other. Given the small number of judgements, and their content, one does not get the impression that there is a generalized concern with the Tribunal's adjudication of human rights issues. (An observation to keep in mind for the future is that of the 10 human rights decisions issued in 2002–2003, judicial review has been sought in only three.)

In the past fiscal year, the Federal Court also issued four decisions dealing with procedural or jurisdictional rulings made by the Tribunal. One decision stayed the Tribunal's proceedings pending the hearing of an allegation of bias against the Tribunal member; however, the member's conduct was later found by the court not to be biased. A second decision dealt with an ongoing dispute as to the proper interpretation of a Tribunal order issued in 1998; the court was generally supportive of the Tribunal's jurisdiction to decide this dispute. A third decision found that the Tribunal erred in holding that it could not amend complaints that had been amended by the Commission but then referred in their unamended form. Here it is noteworthy that the Tribunal was corrected not for exceeding its jurisdiction, but for its reluctance to exercise it. Finally, in the fourth decision, the court upheld a Tribunal majority ruling that parliamentary privilege does not prevent complaints from being heard against the House of Commons or its Speaker. (For related statistical information, *see* Table 6, Judicial Review of Tribunal Decisions.)

Table 5. Decisions and Rulings Rendered by the Tribunal, 1999 to 2002

	1999	2000	2001	2002	Total
Decisions	4	6	18	12	40
Rulings	4*	22	26	24	76

Note: The Tribunal did not begin maintaining statistics on rulings rendered until October 1999.

3. Develop applications of innovative processes to resolve disputes

This performance indicator originally related to the provision of mediation services as an alternative to lengthy hearings. In the spring of 2000, the Tribunal suspended its mediation services. For the reasons outlined above, the Tribunal reintroduced its mediation services in late 2002–2003. Initial indications are that the mediation process has been well-received and that the quality of settlements for all parties has been excellent. We intend to do a major review of our mediation process sometime in 2004–2005 to determine its effectiveness and how the principles and integrity of the Act are being upheld.

4. Ensure that service is satisfactory to the members, to the parties involved and to the public

For our central mandate — to conduct fair and impartial hearings — we have not completed any formal studies or reviews. However, informal feedback from our clientele indicates Registry services are meeting the needs of parties. In accordance with the government's initiative on service delivery, we conducted a survey in the fall of 2002 based on the Common Measurement Tool developed by Treasury Board. The survey was administered to the Tribunal's primary clientele: complainants, respondents, complainant counsel, respondent counsel and counsel for the Canadian Human Rights Commission.

The results of the survey show that the level of satisfaction with the services provided by the Tribunal is 72 percent. The survey demonstrates that the Tribunal is doing very well in all areas assessed by the Common Measurement Tool, except perhaps in its communication about hearing services, with which only 60 percent of respondents were satisfied. At the time of the survey, the Tribunal had already started developing a guide that explains the entire case process in non-legal language. We are confident that *What happens next? A guide to the Tribunal process* (available on the Tribunal Web site at www.chrt-tcdp.gc.ca/about/tribunalrules_e.asp), will help to increase satisfaction in this area.

The clientele surveyed also seemed to be confused about the roles of the Tribunal and the Commission, as some comments pertained to a mandate or service offered by the Commission and not by the Tribunal. For this reason, the Tribunal engaged a firm to conduct an analysis of its communication tools and strategies. The Tribunal will be developing a formal communications plan to better respond to our clients' needs as well as to clarify our role.

The Tribunal has decided not to hold another survey this year, as suggested in the guidelines for the Service Improvement Initiative. This decision stems from concerns as to the validity of results based on responses from the relatively small number of clients

who would be available for a survey. We decided that a period of at least two years was necessary to establish a client base sufficient for the purpose of validating the results of a survey.

Informally, very few complaints have been received about our services. We did receive an informal complaint about the inability of callers to access the Tribunal's voice-mail system in French. The Tribunal identified the problem and took immediate action to solve it.

As indicated in last year's report, the Tribunal redesigned its Web site to better serve the needs of Canadians and to meet the requirement that all government Web sites have a common look and feel. The site provides a wide range of information on the current activities of the Tribunal, such as case information, rulings and decisions issued by the Tribunal, rules and procedures, mandatory reporting documents, and reports on various government-wide initiatives. A Web site survey conducted in 2002–2003 had encouraging results: 75 percent of respondents indicated that the site met their expectations and 80 percent said that the information was organized in a useful manner.

5. Improve equality of access

The Tribunal has made available in Braille the new guide *What happens next? A Guide to the Tribunal Process*. Accommodation at the Tribunal facilities was also improved. Although the Tribunal already had washrooms for disabled persons on every floor, it equipped the public washroom near the hearing room with an automatic door opener so that persons with disabilities would have even better access.

6. Improve public awareness and use of the Tribunal's public documents

Interest in the Tribunal's Web site, from the general public as well as from members of the legal, academic and human rights communities, continues to grow. It has nearly tripled since 1998, rising from an average of 800 visitors per week to 300 per day. The Web site offers quick access to decisions and procedural rulings, as well as to general information about the Tribunal and public documents such as annual and financial reports. The essential information that Canadians want to know about the Tribunal — how it works and what decisions the Tribunal has made related to grounds of discrimination or types of discriminatory practices — is easily accessible. As indicated earlier in this report, we will continue to improve and update the site.

Government-wide Initiatives

The government has directed departments and agencies to undertake the following major initiatives: Government On-Line, Service Improvement and Modern Comptrollership.

Government On-Line

We redesigned the Tribunal's Web site to meet the government-wide common look and feel requirements, which allow users of all government Web sites to navigate more easily and efficiently through vast amounts of information.

Service Improvement

A client satisfaction survey administered during the fall of 2002 yielded some encouraging news. The final report analyzing survey results, completed at the beginning of January 2003, shows an overall client satisfaction level of 73 percent. This finding places the Tribunal among the most responsive private- and public-sector service providers, based on the survey *Citizens First 2000*. The Tribunal has begun to develop a strategy to identify priorities and respond to concerns identified in the survey. Some of the initiatives currently under way and/or implemented have been reported under performance indicator 4 of the Performance Accomplishments. The results of the survey are available on the Tribunal Web site at www.chrt-tcdp.gc.ca/about/reports_e.asp.

Modern Comptrollership

Tribunal senior management is committed to implementing modern management practices that are compatible with the government-wide Modern Comptrollership Initiative. We feel this initiative will enable the Tribunal to improve its management framework for providing all Canadians with an effective and efficient human rights adjudication process.

A capacity assessment was conducted in June 2002 and an action plan was developed in November 2002 (these documents are online at www.chrt-tcdp.gc.ca/about/reports_e.asp). The capacity assessment provided the Tribunal with an analysis of its strengths and identified areas requiring special attention. The action plan set out the necessary steps for improving management practices. Action plan items that were completed during the reporting period included:

- preparing an employment equity plan;
- identifying roles and responsibilities and service standards for all positions;
- updating competency profiles for core positions;
- developing training plans for all staff;
- documenting risks and mitigation measures; and
- preparing a departmental risk policy.

Judicial Review in the Federal Court

Of the 12 decisions rendered by the Tribunal in 2002, five have been challenged by way of application to the Federal Court of Canada (*see* Table 6). One application has since been granted, one has been dismissed for delay and the other three remain to be decided.

Table 6. Judicial Review of Tribunal Decisions, 1999 to 2002*

	1999	2000	2001	2002	Total
Cases referred to the Tribunal	37	70	83	55	245
Decisions rendered†	4	5	18	12	39
Decisions challenged					
• upheld	0	1	2*	0	3
• overturned	0	1	2*	1	4
• challenge withdrawn or dismissed for delay	1	1	1	1	4
• still pending	0	0	2	3	5
Total challenges	1	3	7	5	16

* One of the cases counted as "overturned" for 2001 was actually upheld on one issue and overturned on the other. One of the cases counted as "upheld" for 2001 actually involved the Tribunal's decision being upheld on two separate grounds. These particularities are explained in greater detail in the discussion of the Tribunal's performance in producing well-reasoned decisions.

† The cases included in this entry are those for which the Tribunal wrote and submitted a final judgement. They do not include complaints that were withdrawn or settled.

Although statistics for 2003 are not yet complete, in the portion of the year belonging to fiscal 2002–2003 (January to March) three additional decisions were rendered by the Tribunal, two of which have been challenged in the Federal Court. The court has not yet rendered decisions in these cases.

Pay Equity Cases

Hearings in two of the Tribunal's three major pay equity cases continued through most of 2002–2003. These cases also continued to occupy a substantial share of the Tribunal's time and resources (*see* Figure 4).

Public Service Alliance of Canada (PSAC) v. *Canada Post*

After nearly a decade comprising 400 hearing days, this is the Tribunal's longest-running case. In 2002, there were 26 hearing days, during which all parties finished presenting their evidence. Written final submissions were completed early in 2003 and final

arguments will be heard in the spring and early summer. A final decision may be released by the end of 2004.

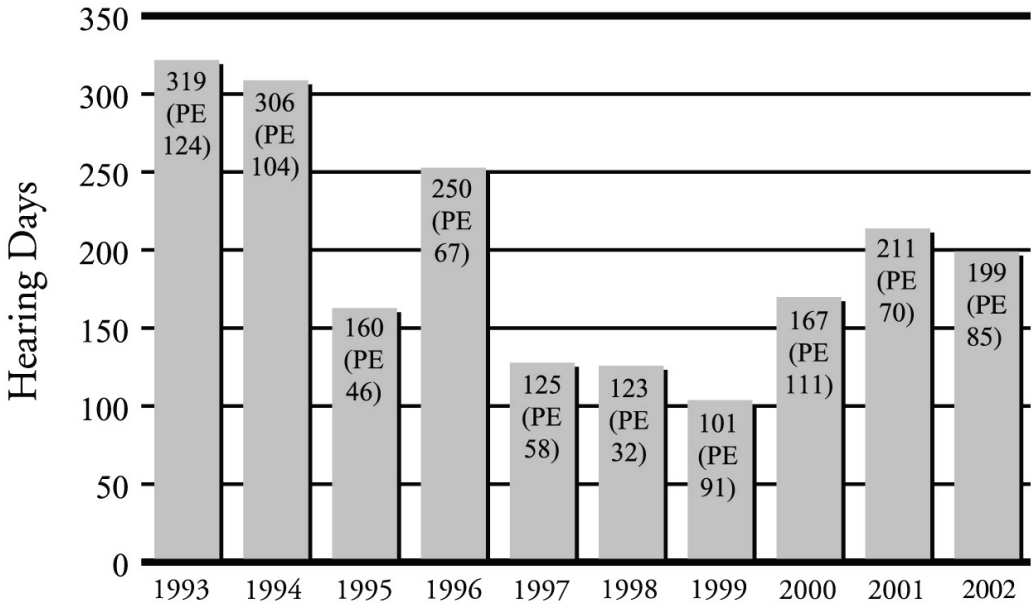
Canadian Telephone Employees' Association (CTEA) et al. v. *Bell Canada*

Hearings in this case continued throughout 2002–2003, resulting in 59 hearing days for a total of 129 since hearings began in 1998. A notable change took place in this case in October 2002, when the CTEA withdrew its complaint against Bell Canada. The complaints of the Communications, Energy and Paperworkers Union of Canada and Femmes-Action continued to stand. It is important to note that on June 26, 2003, during the writing of this Performance Report, the Supreme Court dismissed Bell Canada's appeal in regard to the Tribunal's independence and impartiality. Hearings are expected to continue for two to three years.

Public Service Alliance of Canada (PSAC) v. *Government of the Northwest Territories*

This case was adjourned for much of the first half of 2002. As a result of a lengthy period of negotiations, the parties came to a settlement on June 25, 2002. The total number of hearing days for this case was 105.

Figure 4. Number of Hearing Days per Year



Note: "PE" represents pay equity cases and includes *PSAC* v. *Treasury Board*, *PSAC* v. *Canada Post Corporation*, *CTEA et al.* v. *Bell Canada* and *PSAC* v. *Government of the Northwest Territories*.

Annex 1: Financial Performance

Canadian Human Rights Tribunal	
Planned Spending	$5,573,000
Total Authorities	*$5,841,578*
2002–2003 Actuals	$3,777,881

The Tribunal spent less than it was allotted in 2002–2003, lapsing approximately $800,000 in pay equity funding and $1,260,000 in operating funding.

Two key factors account for these lapses. First, the settlement of the *PSAC* v. *Government of the Northwest Territories* case in June 2002 reduced our expenditures on pay equity cases, as did the cancellation of a number of hearing days in the *Bell Canada* case at the request of counsel.

Second, there was a significant increase in the number of cases settled before reaching the hearing stage. The Tribunal's largest area of expenditure is directly attributable to the cost of conducting hearings. With the increase in settlements, the total number of hearing days and related expenses were lower than forecast, resulting in a lapse in operating funding. With the large increase in cases and the reintroduction of Tribunal mediation, however, we are expecting a deficit in 2003–2004 and will ask Treasury Board for additional funding.

Financial Summary Tables

The following tables are relevant to the operations of the Canadian Human Rights Tribunal:

1. Summary of Voted Appropriations

2. Comparison of Total Planned Spending to Actual Spending

3. Historical Comparison of Total Planned Spending to Actual Spending

4. Resources Used to Achieve Outcomes

Financial Table 1

Financial Requirements by Authority (in millions of dollars)			
	2002–2003		
Vote	Planned Spending	Total Authorities	Actual
Canadian Human Rights Tribunal			
15 Operating expenditures	5.2	5.5	3.4
(S) Contributions to employee benefits	0.3	0.3	0.3
Total Department	5.5	5.8	3.7
Total Authorities are Main Estimates plus Supplementary Estimates plus other authorities.			

Total authorities were greater than planned spending because the Tribunal obtained special funding for the implementation of the Modern Comptrollership Initiative and for compensation adjustments, and because the Tribunal carried forward unspent parliamentary appropriations from the previous year.

Financial Table 2

Departmental Planned versus Actual Spending (in millions of dollars)			
	2002–2003		
Business Lines	Planned	Total Authorities	Actual
Canadian Human Rights Tribunal			
FTEs	24	24	24
Operating	5.5	5.8	3.7
Capital	—	—	—
Voted Grants and Contributions	—	—	—
Subtotal: Gross Voted Expenditures	*5.5*	*5.8*	*3.7*
Statutory Grants and Contributions	—	—	—
Total Gross Expenditures	*5.5*	*5.8*	*3.7*
Less:			
Respendable Revenues	—	—	—
Total Net Expenditures	**5.5**	**5.8**	**3.7**
Other Revenues and Expenditures			
Non-respendable Revenues	(—)	(—)	(—)
Cost of services provided by other departments	0.6	0.6	0.6
Net Cost of the Program	**6.1**	**6.4**	**4.3**

Financial Table 3

Historical Comparison of Departmental Planned versus Actual Spending (in millions of dollars)

			2002–2003		
	Actual 2000–2001	Actual 2001–2002	Planned Spending	Total Authorities	Actual
Canadian Human Rights Tribunal	2.9	3.5	5.5	5.8	3.7
Total	2.9	3.5	5.5	5.8	3.7

Total Authorities are Main Estimates plus Supplementary Estimates plus other authorities.

Financial Table 4

Resources Used to Achieve Outcomes (in thousands of dollars)

Activity	Strategic Outcome — to guarantee access to equal opportunities
Pay Equity Hearings	686
All Other Hearings	1,376
Management and Administration	1,716
Total	**3,778**

Notes
- Costs for hearings include direct costs related to conducting the hearings, including salary costs of staff and full-time members.
- Administration includes all activities not directly related to conducting hearings, such as the Registrar, Corporate Services, Information Technology and Legal sections.
- All lapsed funds for 2002–2003 were from the pay equity and hearings allotments. Neither area should lapse funds in 2003–2004.

Annex 2: Other Information

Contact Information

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

Tel: (613) 995-1707
Fax: (613) 995-3484

e-mail: registrar@chrt-tcdp.gc.ca
Web site: www.chrt-tcdp.gc.ca

Legislation and Associated Regulations Administered

The appropriate Minister is responsible to Parliament for the following Acts:

Canadian Human Rights Act (R.S. 1985, CH–6, amended)
Employment Equity Act (S.C. 1995, C.44, given assent on December 15, 1995)

Statutory Annual Reports and Other Departmental Reports

The following documents can be found on the Tribunal's Web site:

Annual Report (1998, 1999, 2000, 2001 and 2002)
Report on Plans and Priorities (2003–2004 Estimates)
Rules of Procedure