CANADIAN HUMAN RIGHTS TRIBUNAL

Annual Report 2002

"To provide Canadians with an improved quality of life and an assurance of equal access to the opportunities that exist in our society through fair-minded and equitable interpretation and enforcement of the *Canadian Human Rights Act* and *Employment Equity Act.*"

Canada

The Canadian Human Rights Tribunal is a quasi-judicial body that hears complaints of discrimination referred to it by the Canadian Human Rights Commission 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 equality of opportunity.

The Tribunal has a statutory mandate to apply the CHRA based on the evidence presented and on current case law. Created by Parliament in 1977, the Tribunal is the only entity that may legally decide whether a person has contravened the statute.

The Act applies to federal government departments and agencies, Crown corporations, chartered banks, airlines, telecommunications and broadcasting organizations, 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 general public. The CHRA 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 performing work of equal value in the same establishment.

In 1996, the Tribunal's responsibilities were expanded to include the adjudication of complaints under the *Employment Equity Act*, which applies to federal government employees and to federally regulated private sector employers with more than 100 employees. Employment Equity Review Tribunals are assembled as needed from the pool of adjudicators that make up the Canadian Human Rights Tribunal.

March 31, 2003

The Honourable Dan Hays, Speaker
The Senate
Ottawa, Ontario
K1A 0A4

Dear Mr. Speaker:

I have the honour to present to you the 2002 Annual Report of the Canadian Human Rights Tribunal in accordance with subsection 61(3) of the *Canadian Human Rights Act*.

Yours sincerely,

Anne L. Mactavish
Chairperson

March 31, 2003

The Honourable Peter Milliken, Speaker
House of Commons
Ottawa, Ontario
K1A 0A6

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Message from the Chairperson

For a second year, the Canadian Human Rights Commission has referred a great many more cases to the Tribunal for hearing than has historically been the case. There has, as well, been a significant increase in the settlement rate. Last-minute settlements continue to pose significant challenges for the Tribunal as we endeavour to ensure that resources are allocated in an efficient and cost-effective manner. The appointment of two additional full-time members has proven to be of invaluable assistance in that regard.

It appears unlikely that there will be any move in the near future to implement the recommendations of the *Canadian Human Rights Act* Review Panel. In the absence of legislative change, the Tribunal has initiated an examination of ways in which the complaints process could be significantly expedited.

The question of the independence and impartiality of the Canadian Human Rights Tribunal remains an ongoing concern. Although the Federal Court of Appeal has found that the Tribunal is sufficiently independent from both the government and the Canadian Human Rights Commission to allow it to provide Canadians with fair and impartial hearings, the Supreme Court of Canada has granted leave to appeal the Federal Court of Appeal decision. The appeal was heard early in the new year, and we hope that 2003 will bring a final resolution to the independence issue.

Needless to say, at this juncture, the ultimate outcome of Bell Canada's challenge is unknown. What is clear is that the Tribunal will continue to operate in an atmosphere of uncertainty until the Supreme Court rules on the question. This cloud of uncertainty can only serve to undermine the credibility of the Canadian Human Rights Tribunal, and does nothing to enhance public confidence in the institution.

As I have repeated for several years, Canadians involved in the human rights process are entitled to have their cases heard by an independent and impartial Tribunal. The only way to resolve the concerns with respect to the institutional independence and impartiality of the Tribunal quickly, and with certainty, is through legislative action.

Anne L. Mactavish

Delivering human rights protection:

How are we doing?

The Tribunal had a remarkably productive year in 2002, even as it continued to wait for judicial and policy decisions that will have important consequences for Tribunal operations. It welcomed two full-time members, issued 12 decisions and 23 rulings, conducted a client satisfaction survey, published a plain-language guide to Tribunal proceedings, restructured its financial and human resources functions, and developed a plan to implement modern comptrollership.

The Tribunal continued to operate in a climate of uncertainty for the second consecutive year, waiting, on the one hand, for a directive from the Department of Justice in response to the recommendations of the *Canadian Human Rights Act* Review Panel and, on the other hand, for a definitive answer from the courts on whether the Tribunal is sufficiently free of institutional bias to render fair and impartial decisions. In the interim, the rate of case referrals from the Canadian Human Rights Commission has fluctuated widely and the rate of settlement of Tribunal cases remains at an all-time high.

Although the number of cases that ultimately proceed to hearings is declining, the volume of pre-hearing motions is rising. As a result, Tribunals are spending proportionately more time deliberating and issuing procedural rulings and less time focusing on the merits of the case. Curiously, however, a recent survey finds that lawyers — the very people responsible for filing these procedural motions — are dissatisfied with how much time is lost in legal wrangling before hearings begin.

Enhancing Tribunal operations

Two full-time Tribunal members joined the Tribunal Chairperson and Vice-Chairperson at the start of 2002, greatly improving the Tribunal's efficiency in managing and scheduling cases. Cases were able to proceed swiftly since there was always a full-time Tribunal member charged with shepherding them through the system. However, a 40-percent drop in case referrals from 2001 lightened the Tribunal's caseload, making it difficult to genuinely assess the efficacy of the new system. According to the Canadian Human Rights Commission, the Tribunal will likely see more than 100 new case referrals next year, affording a better opportunity to assess the new case management system.

Amendments to the *Canadian Human Rights Act* (CHRA) in 1998 gave the Tribunal Chairperson the authority to institute rules of procedure governing the conduct of Tribunal hearings. Draft rules introduced in 1999 sought to address bottlenecks by sharpening the focus of hearings and minimizing the need for adjournments. The rules encouraged pre-hearing disclosure of evidence and identification of all issues well before the hearing. Three years of testing indicated that the rules reduced logistical problems related to disclosure, while legal and procedural motions were handled smoothly and expeditiously. In early 2002, the Tribunal therefore submitted the rules to the Department of Justice for review and eventual publication in the *Canada Gazette*. Before the rules were approved, however, a client satisfaction survey commissioned by the Tribunal in the fall of 2002 (*see* Service Improvement Initiative) revealed shortcomings that had not come to light earlier. In addition, the Chairperson convened a roundtable meeting with counsel who regularly appear before the Tribunal to obtain their views on how the rules were working. With this new information, the Tribunal plans to introduce further refinements to the rules in 2003.

Allegations of institutional bias: Status report

In January 2003, the Supreme Court of Canada heard Bell Canada's application alleging that certain provisions of the CHRA compromised the institutional independence and impartiality of the Tribunal. The Federal Court of Appeal had dismissed a similar application in 2001. Many Tribunal cases were adjourned indefinitely in November 2000 when the Federal Court Trial Division ruled that the Tribunal was precluded from making an independent judgement since it was bound by interpretive guidelines issued by the Canadian Human Rights Commission. The Court also found that the institutional independence of the Tribunal was undermined by a section of the Act giving the Tribunal Chairperson the power to extend a Tribunal member's expired term of appointment to enable the member to finish hearing a case.

A final decision from the Supreme Court is not expected before the summer. The Tribunal therefore found itself in essentially the same position at the end of 2002 as it had 12 months earlier, operating in an atmosphere of uncertainty that undermines its credibility as a public institution. Although the Department of Justice intervened in the Supreme Court case to defend the statute, the Tribunal remains of the view that the most effective way to resolve the concerns about its institutional independence and impartiality is through legislative action.

Report of the *Canadian Human Rights Act* Review Panel: Awaiting a response

Two and a half years after the *Canadian Human Rights Act* Review Panel recommended sweeping changes to the way the federal government enforces human rights, the Tribunal continues to await the response of the Department of Justice. *Promoting Equality: A New Vision* recommended a new process for resolving human rights disputes, one designed to end the Canadian Human Rights Commission's "monopoly on complaint processing." Chaired by former Supreme Court of Canada Justice the Honourable Gérard La Forest, the review panel proposed that public legal assistance be made available for complainants to bring their cases directly to the Tribunal. It recommended that the Commission cease to investigate complaints; rather, both the initial screening

of claimants and the investigation phase would be undertaken by the Tribunal. The changes would eliminate potential "institutional conflicts between the Commission's role as decision maker and advocate," according to the review panel.

Such profound changes would significantly transform the structure and function of the Tribunal. Not only would the larger caseload necessitate the appointment of more members, but the Tribunal would also need to increase its research and administrative capacity. Moreover, it would have to develop new methods of operation, including a new system of case management. Much work has been done over the last year with respect to implementation of the review panel's recommendations. In May 2002, the Minister of Justice announced that he planned to introduce amendments to the Act in the fall of 2002. However, such amendments have not yet been introduced. The Tribunal remains prepared to implement a new system whenever amendments are brought forward and approved by Parliament.

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In anticipation of the Department of Justice's response to the recommendations, the Tribunal is continuing to examine various case management models. Many jurisdictions have struggled with the same issues as those the review panel raised. Last May, British Columbia's Attorney General introduced amendments to the province's Human Rights Code that would eliminate the British Columbia Human Rights Commission and make the British Columbia Tribunal directly responsible for receiving, mediating and adjudicating cases. The Attorney General's rationale was to rebuild public confidence in the human rights system by expediting enforcement and making the process more accessible, fair and affordable. The new process under the *British Columbia Human Rights Act* became effective on January 1, 2003. The Tribunal will be monitoring the situation in British Columbia carefully over the next year to evaluate the process and benefit from lessons learned if and when the time comes to implement a federal system.

Keeping the public informed

Responding to public complaints about the inadequacy of its search engine, the Tribunal retained the services of an Internet service provider capable of supporting a faster and more powerful search engine. Based on the government's Common Look and Feel guidelines as well as a client satisfaction survey placed on the Web site, the Tribunal redesigned its site in 2002. The redesigned site will be operational in early 2003. Recognizing the special needs of the legal community, the Tribunal has implemented a new format for classifying and identifying its decisions and rulings on the Web to simplify access to these resources. A section on active cases is updated regularly and contains links to Tribunal rulings and decisions as they become available. The new search engine also makes it possible to search for decisions by keyword (*see* www.chrt-tcdp.gc.ca/decisions).

In June 2002, the Tribunal published *What happens next?* a plain-language guide that describes what happens when a human rights case is referred to the Tribunal from the Canadian Human Rights Commission. The new resource explains the steps that a participant in the

proceedings must take as the process unfolds. With a recent increase in the number of unrepresented parties, both complainants and respondents, it became paramount that we develop a document to help these parties understand both the legalese and how the process works. We believe the guide has enabled complainants and respondents to participate more fully in the process. A Braille version is also available.

Financial and human resources services

Major administrative changes took place during the first three months of the year. Until the end of March 2002, the Tribunal's financial and human resources services had been provided through a contractual agreement with the Office of the Commissioner of Federal Judicial Affairs. When the Tribunal was notified late in 2001 that this agreement would be terminated, it took steps to procure replacement services, contracting with a division of Public Works and Government Services Canada to provide most human resources services, including payroll and benefits and human resources planning services. The Public Service Commission of Canada also agreed to delegate staffing authority to the Tribunal. The Tribunal's in-house financial services section became operational on April 1, 2002.

Government-wide initiatives

With a slightly reduced workload occasioned by fewer case referrals than expected, the Tribunal was able to devote much institutional attention to two major government-wide initiatives.

Modern Comptrollership

The Tribunal began work this year to implement management practices that are compatible with the federal government's Modern Comptrollership initiative, which became a government-wide project in the summer of 2001. The idea behind the initiative is to integrate financial management with appropriate control systems, such as performance measurement and risk management, to enable managers to make better decisions, and to give rise to better programs, services and public policy. The first step in modernizing management is assessing the state of current practices. To that end, in 2002, the Tribunal commissioned a capacity assessment that identified the most urgent priorities for management reform. (The results of this assessment can be found on our Web site.) From there, the Tribunal developed an action plan describing activities, time lines and resource allocations for achieving desired outcomes.

Service Improvement Initiative

The Treasury Board of Canada recently developed a framework to help departments and agencies achieve measurable improvements in client satisfaction. The initial goal of the Service Improvement Initiative is a 10-percent increase in client satisfaction by 2005. The process involves surveying clients, analyzing their feedback, identifying priorities, and developing and implementing a service improvement plan. The Tribunal launched this process in the fall of 2002. Because the Tribunal deals with relatively few clients, the Tribunal sent questionnaires to everyone who had participated in a case before the Tribunal in the previous two-year period. Although there was no feedback from any of

the 17 lawyers for the Canadian Human Rights Commission, complainants, respondents and respondents' counsel replied in sufficient numbers to make a meaningful analysis possible. Overall, the level of satisfaction with the Tribunal's hearing preparation services was 72 percent. The survey included questions on such issues as timeliness, accessibility, and perceptions about fairness, courtesy, competence and helpfulness.

About 80 percent of survey respondents found the hearing preparation service helpful. As for client satisfaction with the Tribunal's written and verbal communications during the hearing preparation process, 85 percent of complainants and respondents were satisfied, as compared with 65 percent of counsel. Areas singled out for improvement included the time taken to issue decisions and the length of the hearing preparation process. About half of all survey respondents considered the duration of the hearing preparation process to be unacceptably long. To satisfy the vast majority of clients, the Tribunal would need to complete hearing preparation in three to four months. On the other hand, 61 percent of survey respondents whose cases proceeded to a hearing were satisfied with how long the hearing took, and 76 percent of them felt that the Tribunal's hearing preparation services met their needs.

Comments included on some surveys suggested that some clients are confused about the respective roles of the Tribunal and the Canadian Human Rights Commission. Several clients believed the Tribunal to be responsible for parts of human rights enforcement that are in fact outside its purview. After correcting for these errors, overall client satisfaction with Tribunal services is in the order of 80 percent. Because of the relatively small numbers of survey respondents, the Tribunal will take steps to ensure that the concerns they raised are indeed representative before initiating corrective action.

In 2003, in response to the results of the survey, which continued to show the public's confusion about the respective roles of the Commission and the Tribunal, we will develop a communication strategy to address this problem.

New developments and emerging trends

Tribunal caseload

In 2002, the Tribunal received fewer case referrals from the Canadian Human Rights Commission than anticipated. It received 55 new cases, down from 83 in 2001, but significantly higher than the average of 25 referrals per year from 1996 through 2000. Meanwhile, the high rate of case settlement observed in 2001 continued throughout 2002, contributing to an overall reduction in hearing days. Nevertheless, since the majority of cases that settled did so at the eleventh hour, the Tribunal's pre-hearing workload did not diminish, nor did the costs associated with reserving hearing rooms and securing the availability of Tribunal members. Based on the projections from the Commission, the Tribunal expects as many as 100 new cases to be referred to it for adjudication in 2003.

Disability cases

As predicted in previous annual reports, the 1998 amendments to the CHRA introducing a duty to accommodate have prompted a notable increase in the number of disability-related cases referred to the Tribunal. Between 2000 and 2002, the Commission referred 81 discrimination cases related to disabilities to the Tribunal, more than for any other ground of complaint. By the end of 2002, 40 percent of the Tribunal's active caseload related to discrimination on the ground of disability. Tests developed by the Tribunal and the courts have ceased to be definitive in light of the CHRA amendments and recent rulings by the Supreme Court of Canada, both of which will now invite interpretation by the Tribunal. The next few years will find the Tribunal establishing new ground rules for accommodation of persons with disabilities and seeking to define the point of undue hardship. These may differ significantly from one type of respondent to the next and from one kind of disability to another.

Employment equity

Proclamation of the *Employment Equity Act* in 1996 broadened the Tribunal's responsibilities and members of the Tribunal became responsible for adjudicating employment equity applications as well. The Act applies to all federal government employees and to federally regulated private sector employers with more than 100 employees. Since 2000, the Employment Equity Review Tribunal has received seven applications,

five from employers and two from the Canadian Human Rights Commission. To date, no hearings have been held because, so far, the parties have reached settlements before hearings commenced. Two preliminary hearings were held, but the parties subsequently reached a settlement.

Rising incidence of pre-hearing motions: What's it all about?

The incidence of pre-hearing motions continues to rise, fueled on the one hand by a deepening climate of litigiousness and, on the other, by the uncertainty precipitated by Bell Canada's challenge to the institutional independence of the Tribunal in the Supreme Court of Canada. Since the original Bell Canada motion was heard in the Federal Court, it has become less unusual for respondents' counsel to challenge the Tribunal's jurisdiction. It has thus become commonplace for the Tribunal to issue three or four rulings per case in response to pre-hearing and interim motions concerning jurisdiction, disclosure, delay, adjournments and recognition of interested parties, among other matters.

Cases

In 2002, the Tribunal received fewer case referrals than it had projected. Based on the trend of the last few years and on the projections of the Canadian Human Rights Commission, the Tribunal had anticipated about 100 new cases. In fact, 55 cases were referred in 2002. What's more, last year's historically high settlement rate did not decline as expected in 2002, but remained at about 85 percent.

Table 1 Public hearings facts and figures

Year	1999	2000	2001	2002	Estimated 2003
Cases referred to the Tribunal	37	70	83	55	90
Employment Equity Review cases	0	3	4	1	4
Total cases	37	73	87	56	94
Cost per case ($ thousands)	50	40	45	22	25
Total number of hearing days	218	278	244	168	225
Percentage of cases in which the parties settled	76.4	76.4	81	85	75

Tribunal decisions rendered

Date of decision: 18/01/2002

Members: Claude Pensa, Reva Devins

Disseminating hate messages over the World Wide Web contrary to s. 13 of the CHRA

Citron and Toronto Mayor's Committee on Community and Race Relations v. Zündel

The respondent, Ernst Zündel, submitted material to an Internet Web site that questioned the accuracy of prevailing views about the Holocaust and accused Jews of spreading defamatory propaganda about their treatment in order to extort reparations. The material on this Web site also asserted that Jews had conspired to commit fraud, spread communism and dominate world affairs and that Jews were a general cause of human suffering.

The Canadian Human Rights Commission and the complainant, Sabina Citron, alleged that Mr. Zündel had telephonically communicated material that was likely to expose individuals to hatred or contempt on a prohibited ground, contrary to s. 13 of the CHRA.

The Tribunal found that, while Mr. Zündel was not the owner of the Web site, he exercised a significant amount of control over what was posted on it. Moreover, by causing material to be transmitted via the Internet, Mr. Zündel caused the material to be communicated telephonically over federally regulated facilities. Finally, the Tribunal concluded that, by portraying Jews as liars, swindlers, extortionists and parasites, Mr. Zündel's material was likely to expose Jews to hatred or contempt on discriminatory grounds.

Mr. Zündel advanced several arguments to strike down the constitutionality of s. 13 of the Act. But the Tribunal rejected these arguments, noting that the Supreme Court of Canada had upheld s. 13 in 1990 as a justifiable infringement of freedom of expression and that, insofar as s. 13 places limits on freedom of conscience and religion, it does so to protect the dignity of others. The Tribunal found the respondent's evidence of s. 13's supposed "chilling effect" on freedom of speech unconvincing and also found that s. 13 was not so vague as to violate the principles of fundamental justice.

The Tribunal ordered Mr. Zündel and those acting in concert with him to stop communicating the material that formed the subject of the proceedings.

Dumont v. Transport Jeannot Gagnon Inc.

Date of decision: 01/02/2002

Member: Roger Doyon

Employment: Trucking

Discrimination on the basis of disability or perceived disability

The complainant, Gino Dumont, worked for the respondent as a transcontinental semi-trailer truck operator. One day on the job, acute discomfort caused him to be hospitalized. The problem was eventually diagnosed as a perforated lung. After receiving further medical treatment and missing less than a month's work, the complainant obtained a medical certificate stating that he would be fit to resume work in less than a week. The certificate contained no restrictions or limitations. Mr. Dumont alleged that, upon presenting the certificate to the respondent, the latter told him that business was too slow to take him back, and eventually admitted that he did not plan to rehire the complainant in light of the complainant's medical problem. By contrast, the respondent alleged that Mr. Dumont had never produced a medical certificate, had said he would need six months to convalesce and had essentially resigned.

The issue came down to one of credibility. The Tribunal found the complainant more credible than the respondent and concluded that the respondent had refused to continue to employ the complainant because he feared a recurrence of the complainant's lung ailment. The Tribunal upheld the complaint of discrimination on the basis of disability or perceived disability and ordered the payment of lost wages. However, it refused to order the payment of non-pecuniary damages, as Mr. Dumont's testimony did not indicate that his feelings or self-respect had been harmed.

The Canadian Human Rights Commission filed an application requesting judicial review of the Tribunal's decision on non-pecuniary damages and the Federal Court set aside the decision in December 2002, ordering that the matter be returned to the Tribunal to be determined by a different panel.

Premakumar v. Air Canada

Date of decision: 04/02/2002

Member: Anne L. Mactavish

Employment: Airlines

Discrimination on the grounds of race, colour, or national or ethnic origin

Kanags Premakumar applied for a job with the respondent as a station attendant. He was granted an interview, the details of which he recalled clearly. Based on the favourable feedback he received during the interview, he believed he would be hired, but he wasn't. He filed a complaint with the Canadian Human Rights Commission alleging discrimination on the grounds of race, colour, or national or ethnic origin.

His interviewers, who had no independent recollection of the interview itself, attributed the complainant's lack of success to a probable poor performance in the interview, but their assertions were not credible.

Observing that the complainant was at least as qualified as many of the candidates hired, and indeed, better qualified than some, the Tribunal also noted that statistical evidence showed that visible minority representation in this occupational group at Air Canada was below average, both for the airline as a whole and for this occupation in the airline industry overall.

Ultimately, the Air Canada interviewers were unable to provide a satisfactory explanation for why the complainant had not been hired. Their notes were inadequate, they could not remember the interview and their answers regarding the complainant's missing "soft skills" were speculative. The Tribunal therefore upheld the complainant of discrimination on the grounds of race, colour, or national or ethnic origin, and ordered the complainant to be paid wages for the job he would have had but for the discrimination. It also ordered the respondent to issue a written apology and pay damages for pain and suffering.

Date of decision: 14/02/2002

Member: Pierre Deschamps

Employment:
Canadian Armed Forces

Discrimination on the basis of marital status

Gagnon v. Canadian Armed Forces

Martin Gagnon, a member of the Canadian Armed Forces (CF), alleged that his employer had discriminated against him on the ground of marital status when it treated him adversely for helping his wife (also a CF member) pursue a sexual and personal harassment grievance against her employer. This support consisted mainly of trying to seek legal advice from various CF officials on his wife's behalf, and endeavouring to obtain a new posting for her. The complainant alleged that his actions adversely affected his career advancement.

Mr. Gagnon provided evidence of a senior officer's opinion that the complainant's continued intervention in his wife's case would destroy his career. Another officer made comments that clearly indicated that the complainant should not expect a promotion for some time. Soon afterward, the complainant and his wife arranged for a transfer to Ottawa, where the complainant has held several different positions.

The Tribunal concluded that both senior officers resented Mr. Gagnon's involvement in his wife's case and intended to make him pay for it. It held that the facts in this case could support a complaint on the basis of marital status as the spouses shared a common workplace, were

members of the same organization, and belonged to a discrete group. Although it upheld this aspect of the complaint, the Tribunal did not consider the complainant's numerous transfers within Ottawa to be evidence of discrimination. Nor did it find that Mr. Gagnon's subsequent lack of promotion in Ottawa was caused by any interference by the military hierarchy in his performance evaluations. The Tribunal ordered the CF high command to write a letter of apology and to compensate the complainant for pain and suffering.

A judicial review application has been filed raising issues as to the Tribunal's interpretation of "marital status" and the requirement of an apology being given in respect of the conduct of persons who were not parties to the case.

Lincoln v. Bay Ferries Ltd.

Date of decision: 20/02/2002

Member: J. Grant Sinclair

Employment: Ferryboats

Discrimination on the grounds of race, colour, or national or ethnic origin

The complainant had worked for close to 17 years in the engine room of a ferryboat and for nearly 7 years as the boat's chief engineer. The former owner of the vessel decided to privatize the ferry service and the respondent took over the operation. As part of the change of control, all the crew on the ferry were terminated, with an understanding that the respondent planned to draw significantly on the pool of former employees when it hired its own personnel.

The complainant applied for a post as chief engineer, but was offered the position of relief chief engineer, a post with fewer responsibilities and lower wages. The complainant declined the offer, which he found humiliating and tainted by racial discrimination. When his subsequent application for a job at another ferry company was unsuccessful, he believed that it was because the respondent had given him a poor reference.

In dismissing the complaint, the Tribunal noted that one of the respondent's human resources strategies had been to change the organization's management style. The respondent was looking for a chief engineer who had engineering experience on numerous vessels and had been exposed to a variety of management styles. Strong communication skills and flexibility were among its selection criteria and the Tribunal observed that the successful candidates embodied these qualities more than the complainant did. It also deemed the criteria reasonable, rather than a subterfuge for discriminatory conduct. The Tribunal did not accept the complainant's allegation that an unnamed person employed by the

respondent had given the complainant a poor reference after it learned that he had filed a human rights complaint against the respondent. Instead, the preponderance of evidence suggested that the complainant had been denied a job offer with the second company because he had failed to successfully complete an oral interview.

The complainant has filed an application for judicial review, contesting the Tribunal's approach to determining whether there had been discrimination in hiring.

Date of decision: 03/04/2002

Member: Shirish P. Chotalia

Employment: Tugboats

Discrimination on the ground of disability

Quigley v. Ocean Construction Supplies

The complainant was employed as a cook-deckhand on a tugboat owned by the respondent and was diagnosed with thoracic outlet syndrome (TOS), which caused him numbness much of the time and pain when he moved his arms and shoulders. The condition was aggravated by such activities as working with his arms elevated or carrying heavy objects. During his fifth leave period, the complainant decided to undergo surgery for his right-side TOS. After the surgery, the complainant experienced some improvement. He made further progress through physiotherapy and his family doctor still hoped he could return to work. Eventually his thoracic surgeon indicated to his employer that the complainant could return to work provided that he could have flexible hours and workload. The surgeon also indicated that the complainant had a worsening problem with left-side TOS and told the employer that it would be unsafe for the complainant to undergo a work trial on a two-person boat. Based on his overall performance and health issues, the respondent terminated the complainant's employment. The complainant alleged discrimination on the ground of disability.

In dismissing the complaint, the Tribunal found that the respondent had accommodated the complainant in a fair and reasonable manner throughout his absences, to the point of undue hardship. The decision to terminate was reasonable, given the complainant's prognosis, his insistence that he would only accept work as a shift deckhand and his pre-surgery performance.

An application for judicial review has been filed with respect to issues of post-termination evidence and individual testing.

Martin v. Saulteaux Band Government

Date of decision: 18/04/2002

Member: Anne L. Mactavish

Employment (failure to renew contract): Indian reserve

Discrimination on the ground of sex (pregnancy)

Nancie Martin, an elementary school teacher, complained that she had been discriminated against by her employer when her contract to teach on the respondent's reserve was not renewed for a third year because she was pregnant. The respondent asserted that it was the complainant's performance rather than her pregnancy that prompted its decision not to renew her contract and it put forward considerable evidence of her many professional and personal shortcomings. The Tribunal found this evidence unconvincing.

It determined that Ms. Martin had established a *prima facie* case of discrimination, demonstrating that she was indeed qualified to do the job and that her replacement was no better qualified. It also determined that the respondent had known of the complainant's pregnancy when it decided not to renew her contract and her pregnancy had motivated the band's decision.

The Tribunal ordered the Saulteaux Band Government to stop discriminating against pregnant employees, develop policy measures to prevent further incidents of discrimination on the ground of pregnancy, compensate Ms. Martin for lost wages, pay her an additional $4,000 in special compensation and provide Ms. Martin with a written apology.

Larente v. Canadian Broadcasting Corporation

Date of decision: 23/04/2002

Member: Roger Doyon

Employment: Broadcasting

Discrimination on the ground of age

The complainant worked as a recruitment officer in the respondent's human resources department. Management decided to reorganize the department, eliminating specialized sections and staffing the department with human resources advisors who would perform a range of duties. However, it was understood that funding cuts would necessitate eventual lay-offs in the department. The complainant began working as a human resources advisor and after a year received an evaluation that found her to be methodical, conscientious and hard-working. According to the evaluator, she also needed to improve her self confidence and her adaptation to her new responsibilities was not yet complete. When the time came to implement the lay-offs, the complainant and two other employees, all in their 40s, were laid off, while younger employees were retained. Prior to the lay-off, a supervisor had evaluated the expertise, versatility and succession potential of the complainant and the other members of her team. The Tribunal found that, while in her chief's view

the complainant had compared unfavourably to one of her colleagues, the chief's view was unfounded, since his decision had been based on an assessment of the relative progress of the complainant and her colleagues, which he could not possibly have based on observations of the two employees.

After considering all the evidence, the Tribunal concluded that the complainant possessed the requisite expertise, knowledge and experience to retain her post as a human resources advisor, and had likely been laid off because of her age. The complaint was therefore upheld, and the Tribunal ordered reinstatement and damages for pain and suffering.

Date of decision: 17/06/2002

Member:
Athanasios D. Hadjis

Employment:
Telecommunications/ broadcasting

Discrimination on the basis of sex (sexual harassment)

Woiden et al. v. *Lynn*

The four complainants were employed at the office of a digital television service provider. They alleged that they had been harassed on the ground of sex by a senior manager. The respondent manager did not participate in the hearing.

The Tribunal found that the respondent had persistently and seriously exposed the complainants to unwelcome conduct of a sexual nature, so as to create a hostile work environment. It heard evidence that he had offered to increase one complainant's salary if she slept with him and had arranged for another to accompany him to secluded locations outside the workplace, where he then made sexual overtures and physical advances. The Tribunal heard evidence that he hugged complainants, touched their shoulders, leered at them, attempted to look under their clothing and directed sexual gestures toward them. He also made comments about the complainants' personal lives, made sexual remarks about their appearance and uttered numerous vulgar obscenities in their presence.

The Tribunal ordered the payment of lost wages, expenses for legal fees and medical certificates, damages for pain and suffering, and damages for wilful or reckless conduct. It further ordered the respondent to attend training and counselling sessions on workplace harassment and to write letters of apology. The Tribunal also found that the respondent had discriminated against one of the complainants on the ground of family status by requiring her to work extended hours and not offering reasonable accommodation of her childcare responsibilities.

The respondent has applied for judicial review of this decision on the ground that he did not receive adequate disclosure of the case against him and was thus unable to make an informed decision as to whether to participate in the hearing.

Schnell v. Machiavelli and Associates Emprize Inc. and Micka

Date of decision: 20/08/2002

Member: J. Grant Sinclair

Disseminating hate messages contrary to s. 13 of the CHRA

The complainant alleged that the respondents maintained a Web site containing material likely to expose homosexuals to hatred or contempt contrary to s. 13 of the CHRA. The pages in question suggested that the world would be better without same-sex couples; that gay couples evoke disgust; that homosexuals have a perverse agenda which advances the legalization of pedophilia; that gay and lesbian educators practise a repugnant lifestyle and are seeking to entice and victimize children; and that the homosexual community wishes to return society to an era where men had sex with boys and animals. The Tribunal found that such comments spoke of extreme ill will, detestation, enmity and contempt towards homosexuals and did not admit of any redeeming qualities of gay men or lesbian women.

In upholding the complaint, the Tribunal noted that the corporate respondent Machiavelli, who was both the registrant of the Web site domain name and the client of the Internet service provider, was a proper co-respondent, being one of a group of persons acting in concert. The Tribunal found that the activity in question satisfied all of the criteria detailed in s. 13: that elements of the telephone system were used to up-load the Web site and to gain access to it, thus involving telephony through a federal telecommunications undertaking; that merely up-loading a Web site qualified as communication under the statute, even though it was necessary for the recipient of the messages to take active steps to access the site; and that the Web site involved "repeated" communication, since it comprised a series of messages as part of a large-scale, public dissemination scheme designed to gain converts. Despite the respondents' arguments to the contrary, the Tribunal found s. 13 to be constitutional, as decided previously by the Supreme Court of Canada, and that various distinguishing aspects of Web site communication and amendments to the Act did not suggest a different result. The Tribunal upheld the complaint and ordered the respondents and those found to have acted in concert with them to cease communicating material of the nature that was before the Tribunal.

Date of decision: 28/10/2002

Member: Anne L. Mactavish

Employment: First Nations addiction treatment and rehabilitation centre

Discrimination on the ground of disability/duty to accommodate

Butler v. Nenqayni Treatment Centre Society

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 to 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

Date of decision: 26/11/2002

Member:
Athanasios D. Hadjis

Employment: Canada Post

Discrimination by harassment on the grounds of national or ethnic origin and sex, contrary to s. 14 of the CHRA

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 s. 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. But the Tribunal found that these 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.

Rulings on preliminary and interim motions and objections

In addition to its decisions on the merits of complaints, the Tribunal delivered 23 decisions on procedural, evidentiary or jurisdictional issues, often referred to as preliminary and interim rulings. As noted previously, the incidence of pre-hearing and interim motions is rising, and these have begun to account for a significant proportion of the Tribunal's workload. Among the issues addressed in these rulings were undue delays in the proceedings, amendments to the complaint, challenges to the jurisdiction of the Tribunal and objections relating to the legal effect of a previous determination in respect of the matter at issue.

There were two noteworthy trends among the 2002 motions. The first is a decline in the number of respondents seeking adjournments or stays in the proceedings on the ground that the Tribunal lacked the independence and impartiality to adjudicate fairly. The incidence of such motions had soared when the Federal Court of Canada upheld Bell Canada's challenge in 2000, and the decline in 2002 is likely attributable to the endorsement of the current statutory scheme implicit in the Federal Court of Appeal's reversal in May 2001 of the Trial Division's decision. Motions seeking stays or adjournments on independence grounds have not ended entirely, however, because the Supreme Court of Canada granted leave in December 2001 to hear an appeal of the Federal Court of Appeal's reversal in the Bell Canada challenge. Such motions are therefore expected to continue until the Supreme Court resolves the issue definitively in 2003.

The second trend is an increase in motions seeking either (1) the disclosure of the complainant's medical records (including psychological records) or (2) an order obliging the complainant to submit to an independent medical examination. Motions of this kind obliged the Tribunal to reconcile the privacy interests of the complainant with the respondent's right to answer the case against it.

Pay equity update

Hearings continued in two of the Tribunal's three major pay equity cases throughout most of 2002. These cases continued to consume a disproportionate share of Tribunal resources. Meanwhile, the parties to *Public Service Alliance of Canada (PSAC)* v. *Government of the Northwest Territories* reached a settlement in June.

Nearly a decade after it began, the Tribunal's longest-running case, *PSAC* v. *Canada Post Corporation* (Schecter, Leighton and Rayner), wound down this year as both sides finished presenting their evidence. Final arguments are expected to be heard early in 2003.

Date referred: 30/03/1992

Number of hearing days in 2002: 26

Number of hearing days to date: 400

In *Canadian Telephone Employees' Association (CTEA) et al.* v. *Bell Canada* (Sinclair and Deschamps), hearings continued throughout 2002 and the Tribunal issued its sixth and seventh procedural rulings in the case. The CTEA withdrew its complaint against Bell Canada on October 22, 2002. But the complaints of the Communications, Energy and Paperworkers Union of Canada and Femmes-Action continued to stand, and further hearing days have been scheduled for 2003. Hearings in this case are expected to continue for a further two to three years.

Date referred: 04/06/1996

Number of hearing days in 2002: 46

Number of hearing days to date: 123

In *PSAC* v. *Government of the Northwest Territories* (Groarke, Hadjis and Théberge), more than 13 years after the public service union filed its complaint against the Government of the Northwest Territories and five years after the case was referred to the Tribunal, the territorial government acknowledged that employees in female-dominated occupational groups had received less in wages than employees in male-dominated occupational groups performing work of equal value. A settlement was reached on June 25, 2002, based on a mutually acceptable method of calculating wages and payment for providing redress to the employees affected by the complaint.

Date referred: 29/05/1997

Number of hearing days in 2002: 3

Total number of hearing days: 106

Judicial review by the Federal Court

In 2002, the Federal Court Trial Division reviewed four decisions of the Tribunal. One of these review proceedings dealt with a procedural matter arising from an earlier judicial review and three others set aside the original rulings of the Tribunal. The Federal Court of Appeal rendered one decision on appeal from the Trial Division's review of a Tribunal ruling and upheld the original determination of the Tribunal.

Canada (Attorney General) v. *Green 2002* (Lemieux, J.) June 12, 2002, 2002 FCT 664

Date of Tribunal decision: 26/06/1998

In 1998, the Tribunal ordered the respondent to pay the complainant a "gross-up" sum to compensate her "from the date of the discriminatory practice" for the adverse income tax consequences of receiving a lump sum award for lost wages. The Tribunal reserved jurisdiction to hear submissions on the issue if the parties were unable to agree on a figure. The respondent sought judicial review of the Tribunal decision in the Federal Court, and in a 2000 decision, the Court varied, among other things, the gross-up award, on consent, by changing the start date to the day the wage loss actually began. The Court also directed that all the awards, as varied, should be implemented as soon as practicable and that it could be spoken to if difficulties arose. A dispute subsequently emerged in relation to the gross-up amount, prompting the respondent to seek direction from the Court.

Date of Federal Court decision: 12/06/2002

The Court noted that (i) the Tribunal had specifically reserved jurisdiction in relation to the gross-up; (ii) the Court's 2000 decision did not invalidate the Tribunal's retention of jurisdiction in relation to the gross-up (but rather only changed the commencement date); and (iii) the dispute in question appeared to relate to whether the gross-up applied to the interest award, something that was not raised in the earlier Court proceedings. The Court concluded that the dispute was not one of the issues contemplated to be resolved by the Court in its 2000 decision, and consequently the Tribunal had the jurisdiction to deal with it. The respondent has commenced new proceedings in the Federal Court challenging the jurisdiction of the Tribunal to resolve the issue.

Caza v. *Télé-Métropole Inc. and Malo* (Tremblay-Lamer, J.) May 13, 2002, 2002 FCT 547

Date of Tribunal ruling: 29/04/2002

Several days into the hearing of this case before the Tribunal, the Canadian Human Rights Commission brought a motion seeking the disqualification of the member hearing the matter on the grounds of bias. When the Tribunal denied the motion, the Commission sought judicial review of this decision. When the Tribunal refused to adjourn pending the disposition of the judicial review application, the Commission asked the Court to stay the Tribunal proceedings.

Date of Federal Court decision: 13/05/2002

In deciding the application, the Court noted first that a serious issue was at stake; the Court's review of the transcript revealed four occasions when the complainant was denied the opportunity

to make submissions, 294 apparent interventions by the Tribunal during the cross-examination of the complainant, and a remark made by the Tribunal suggesting a comparison of the complainant to a figure publicly accused of terrorist acts. The Court noted further that obliging the complainant and the Commission to proceed with a hearing before a member whose conduct suggested a lack of impartiality could only create irreparable harm, i.e., harm that could not be corrected by a subsequent decision once it appeared that the process had been seriously affected. Finally, the Court noted that the public interest did not require the Commission to proceed with a hearing that might later prove invalid were the Court ultimately to decide that there had been an apprehension of bias on the part of the Tribunal. The Court granted the stay, noting that the issue of bias took precedence over the public interest in proceeding with the hearing.

Vaid v. *Parent and House of Commons* (Létourneau, Linden and Rothstein JJ. A.) November 28, 2002, 2002 FCA 473

Date of Tribunal ruling:17/04/2001

The complainant alleged that the House of Commons discriminated against him on the basis of his race, colour and ethnic or national origin when it discontinued his employment. The respondents challenged the jurisdiction of the Tribunal to hear the complaint, asserting that parliamentary privilege exempted them from the application of the *Canadian Human Rights Act*. The Tribunal dismissed the objection, as did the Trial Division of the Federal Court.

Date of Federal Court of Appeal decision: 28/11/2002

Acknowledging that the Courts are barred from inquiring into questions that fall within the necessary sphere of matters that make the continued dignity and integrity of the House of Commons possible, the majority of the Federal Court of Appeal observed that this privilege extends only to matters that are necessary for the proper functioning of the legislature. Determining whether a given parliamentary power should be eligible for privileged status must be based on both its existence and its exercise, the Court said. The majority of judges concluded that the scope of the privilege claimed with respect to management of staff "...does not extend to an exercise of managerial powers involving human rights violations as presently alleged, which in fact, if proven, diminish the dignity and integrity of the House without improving its functioning." They also held that the *Parliamentary Employees Staff Relations Act* (PESRA) did not trump the *Canadian Human Rights Act* (CHRA), which had a broader focus than PESRA, as it forbade a variety of discriminatory practices (not solely employment-related) on a wide range of prohibited grounds. To override the application of the quasi-constitutional CHRA, the Court concluded, Parliament would have had to make a clear pronouncement to this effect in the PESRA, which it had not done. The appeal was dismissed. Justice Rothstein agreed with the result, but for different reasons. The respondents have sought leave to appeal this decision to the Supreme Court of Canada.

Dumont v. *Transport Jeannot Gagnon* (Tremblay-Lamer, J.) December 9, 2002, 2002 FCT 1280

Date of Tribunal decision: 01/02/2002

The Tribunal had upheld the complaint and ordered the respondent to pay damages for lost wages, but refused to order the payment of non-pecuniary damages for hurt feelings and loss of

self-respect because the complainant's testimony failed to convince the Tribunal that he had suffered such damages. Indeed, the Tribunal noted that the complainant's testimony "had not shown that he had suffered moral damages." The Canadian Human Rights Commission sought judicial review of the refusal to grant this award.

Date of Federal Court decision: 09/12/2002

The Court noted that while the legislation grants the Tribunal discretion in the awarding of the various remedies (where the complaint is substantiated), such discretion must be exercised judicially and in light of the evidence before the Tribunal. The Court found that the Tribunal had provided no reasons for refusing to make the hurt feelings award. Moreover, nothing in the complainant's testimony offered a rationale for the decision. The Court concluded that an unexplained refusal to consider compensation for hurt feelings, despite uncontradicted evidence that the complainant suffered prejudice in this regard, constituted an unreasonable exercise of discretion. The Court returned the matter to the Tribunal to be determined by a different panel.

CEP, CTEA and Femmes Action v. *Bell Canada* (Kelen, J.) July 11, 2002, 2002 FCT 776

Date of Tribunal ruling: 30/08/2000

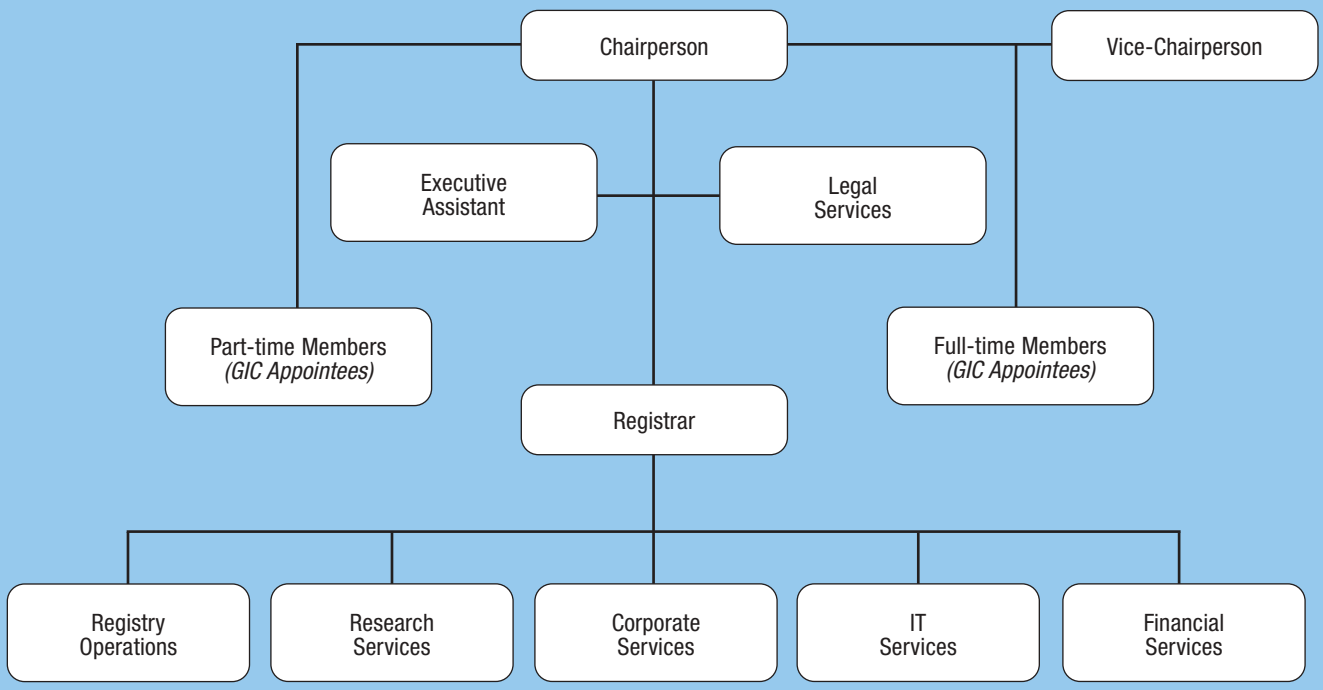
This case involved a review of a Tribunal ruling denying a motion by the Canadian Human Rights Commission to amend certain of the pay equity complaints against Bell Canada. While the complaints giving rise to the inquiry were still before the Canadian Human Rights Commission, three of them were amended. The Commission's investigation reports incorporated the amendments, but when the Commission referred the complaints to the Tribunal, two of the three retained their unamended form. During the Tribunal hearing, the Commission brought a motion requesting the replacement of the unamended versions with the amended versions. The Tribunal held that it did not have jurisdiction to grant the request. The Commission sought judicial review of this decision.

Date of Federal Court decision: 11/07/2002

The Federal Court decision noted that an earlier decision of the Federal Court of Appeal had found that the unamended complaints had been referred to the Tribunal by mistake, that the mistake had not caused any prejudice to the respondent, and that the mistake could be easily corrected before the Tribunal. The Court then noted that the Tribunal had the jurisdiction to amend a deficient complaint at any time to bring the complaint into conformity with the nature of the proceedings before it. It also found that the Commission's request to amend was logical, given that at any time, the Commission could have referred the amended complaints to the Tribunal for inquiry. Acknowledging that the amended complaints were broader in scope than the original ones, the Court found that they had the same purpose (to achieve pay equity between certain groups of respondent employees) and concluded that the Commission's motion to amend was an attempt to rectify an obvious error, rather than to introduce wholly new complaints into a proceeding in midstream. The Court directed the Tribunal to allow the amendments.

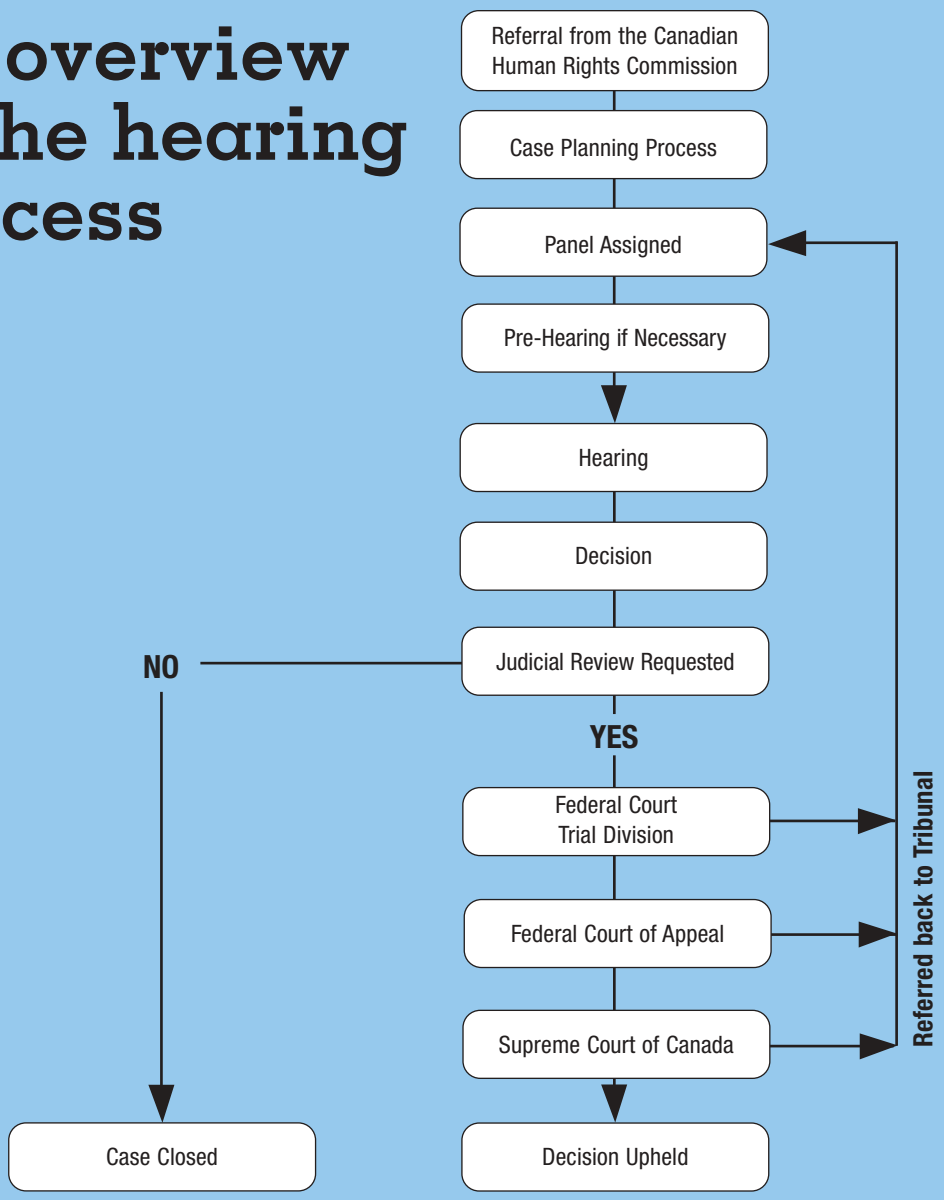
Appendix 1

Organization chart



Appendix 2

An overview of the hearing process



The roles of the Canadian Human Rights Tribunal and the Canadian Human Rights Commission have parallels in the criminal justice system. Like the police, the Commission receives and investigates complaints. Some of these turn out to be unfounded. But when the Commission believes that further inquiry is warranted and an agreement cannot be reached through conciliation, it refers the case to the Tribunal, which acts as the judge. The Commission then takes on the role of the Crown Attorney and argues the case before the Tribunal on behalf of the public interest.

The Tribunal may inquire only into complaints referred to it by the Commission, usually after the Commission has conducted an investigation. The Commission resolves most cases without the Tribunal's intervention. On average, only six per-cent of complaints received by the Commission make their way to the Tribunal. These generally involve complicated legal issues, new human rights issues, unexplored areas of discrimination or multifaceted evidentiary disputes that must be heard under oath.

Referral by the Canadian Human Rights Commission

To refer a case to the Tribunal, the Chief Commissioner of the Canadian Human Rights Commission sends a letter to the Chairperson of the Tribunal asking the Chairperson to establish a panel to institute an inquiry into the complaint. The Tribunal receives only the complaint form and the addresses of the parties.

Within two weeks of the date of the request, a case planning questionnaire is sent to all parties to the complaint. The completed questionnaires provide sufficient information for the Registry to schedule hearing and disclosure dates. If necessary, a member of the Tribunal (normally the Chairperson or Vice-Chairperson) will confer with the parties to respond to any specific issues identified by the parties that could not be resolved through the use of the questionnaire.

Mediation

In 2001, the Tribunal ceased its mediation services due to concerns that the public education aspect of its mandate was not being realized through settlement of cases on a confidential basis. The Tribunal continues to examine the advisability of the Canadian Human Rights Tribunal offering mediation services within the context of the *Canadian Human Rights Act*.

Hearings

The Chairperson assigns one or three members from the Tribunal as a panel to hear and decide a case. If required, additional pre-hearings may be held to consider preliminary issues, which may relate to jurisdictional, procedural or evidentiary matters. Hearings are open to the public.

During the hearing, all parties are given ample opportunity to present their case. This includes the presentation of evidence and legal arguments. In the majority of cases, the Commission leads evidence and presents arguments before the Tribunal to prove that the respondent named in the complaint has contravened the statute. All witnesses are subject to cross-examination from the opposing side. The average hearing lasts from 8 to 10 days. Hearings are normally held in the city or town where the complaint originated.

The panel sits in judgement, deciding the case impartially. After hearing the evidence and interpreting the law, the panel determines whether a discriminatory practice has occurred within the

meaning of the Act. At the conclusion of the hearing process, the members of the panel normally reserve their decision and issue a written decision to the parties and the public within three to four months. If the panel concludes that a discriminatory practice has occurred, it issues an order to the respondent, setting out the remedies.

Appeals

All parties have the right to seek judicial review of any Tribunal decision by the Trial Division of the Federal Court of Canada. The Trial Division holds a hearing with the parties to hear legal arguments on the correctness of the Tribunal's decision and its procedures. The Tribunal does not participate in the Federal Court's proceedings. The case is heard by a single judge, who renders a judgement either upholding or setting aside the Tribunal's decision. If the decision is set aside, the judge refers the case back to the Tribunal to be reconsidered in light of the Court's findings of error.

Any of the parties has the right to request that the Federal Court of Appeal review the decision of the Trial Division judge. The parties once again present legal arguments, this time before three judges. The Court of Appeal reviews the Trial Division's decision while also considering the original decision of the Tribunal.

Any of the parties can seek leave to appeal the Federal Court of Appeal's decision to the Supreme Court of Canada. If the Supreme Court deems the case to be of national importance, it may hear an appeal of the judgement. After hearing arguments, the Supreme Court issues a final judgement on the case.

Appendix 3

Canadian Human Rights Tribunal members

Full-time members

Anne L. Mactavish
Tribunal Chairperson

A member of the former Human Rights Tribunal Panel since 1992, Anne Mactavish was acting President of the Panel in 1995 and President in 1996, before her appointment as Chairperson of the Canadian Human Rights Tribunal in 1998. During her years of legal practice in Ottawa, she specialized in civil litigation related to employment and commercial and health matters. A past president of the Carleton County Law Association, Ms. Mactavish has taught employment law at the University of Ottawa, as well as legal ethics and trial advocacy at the Bar Admission Course sponsored by the Law Society of Upper Canada.

J. Grant Sinclair, Q.C.
Vice-Chairperson

A member of the former Human Rights Tribunal Panel from 1989 to 1997, Grant Sinclair was appointed Vice-Chairperson of the Canadian Human Rights Tribunal in 1998. Mr. Sinclair has taught constitutional law, human rights and administrative law at Queen's University and Osgoode Hall, and served as an advisor to the Human Rights Law Section of the Department of Justice on issues arising out of the *Canadian Charter of Rights and Freedoms*. He has acted on behalf of the Attorney General of Canada and other federal departments in numerous Charter cases and has practised law for more than 20 years.

Paul Groarke

A member of the Tribunal since 1995, Dr. Paul Groarke became a full-time member in 2002. Since being admitted to the Alberta Bar in 1981, he has acted in a variety of criminal, civil and appellate matters. Currently on leave of absence from St. Thomas University in Fredericton, New Brunswick, Dr. Groarke is an Assistant Professor in the Department of Criminology and Criminal Justice. He has had a long-standing interest in human rights issues in the international arena and has authored numerous articles, publications and reports on a range of topics in his areas of expertise.

Athanasios D. Hadjis

Athanasios Hadjis obtained degrees in civil law and common law from McGill University in 1986 and was called to the Quebec Bar in 1987. Until he became a full-time member, he practised law in Montréal at the law firm of Hadjis & Feng, specializing in civil, commercial, corporate and administrative law. A member of the Human Rights Tribunal Panel from 1995 to 1998, Mr. Hadjis was appointed in 1998 to a three-year term as a part-time member of the Canadian Human Rights Tribunal and became a full-time member in 2002.

Part-time members

Shirish P. Chotalia
Alberta

Shirish Chotalia obtained an LL.B. from the University of Alberta in 1986 and an LL.M. from the same university in 1991. She was admitted to the Alberta Bar in 1987 and practises constitutional law, human rights law and civil litigation with the firm Pundit & Chotalia in Edmonton, Alberta. A member of the Alberta Human Rights Commission from 1989 to 1993, Ms. Chotalia was appointed to the Tribunal as a part-time member in December 1998 and reappointed in 2002. She is also the author of the annual *Annotated Canadian Human Rights Act*.

Pierre Deschamps
Quebec

Pierre Deschamps graduated from McGill University with a BCL in 1975 after obtaining a Bachelor of Arts in theology at the Université de Montréal in 1972. He is an assistant professor in the Faculty of Law at McGill University, as well as an assistant lecturer at the Faculty of Continuing Education. Mr. Deschamps was appointed to a three-year term as a part-time member of the Tribunal in 1999 and reappointed in 2002.

Reva Devins
Ontario

Reva Devins joined the former Human Rights Tribunal Panel in 1995 and was appointed in 1998 to a three-year term as a part-time member of the Canadian Human Rights Tribunal. Admitted to the Ontario Bar in 1985, she served as a Commissioner of the Ontario Human Rights Commission from 1987 to 1993 and as Acting Vice-Chair of the Commission in her final year of appointment. Ms. Devins was reappointed to the Tribunal in 2002.

Michel Doucet
New Brunswick

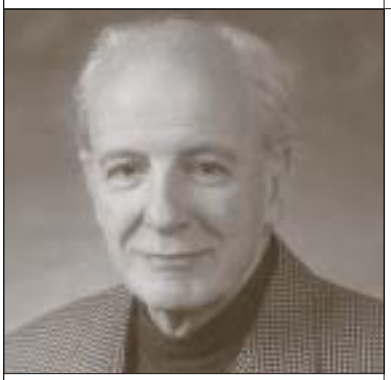
Michel Doucet was appointed to the Tribunal as a part-time member in 2002. He obtained a degree in political science from the Université de Moncton and a law degree (common law program) from the University of Ottawa. He acquired his LL.M. from Cambridge University in England. Mr. Doucet teaches at the Law School at the Université de Moncton and is an associate with the Atlantic Canada law firm of Patterson Palmer.

Roger Doyon
Quebec

Roger Doyon served as a member of the former Human Rights Tribunal Panel from 1989 to 1997 and was appointed in 1998 to a three-year term as a part-time member of the Canadian Human Rights Tribunal. A partner in the law firm of Parent, Doyon & Rancourt, he specializes in civil liability law and in the negotiation, conciliation and arbitration of labour disputes. Mr. Doyon also taught corporate law at the college level and in adult education programs from 1969 to 1995.

Sandra Goldstein
Ontario

Sandra Goldstein was appointed to a three-year term as a part-time member of the Tribunal in 1999. Educated in Toronto, Ontario, she has a background in social sciences, philosophy and health sciences. Ms. Goldstein has sat on several education boards and committees, and negotiated 10 collective agreements with academic and administrative staff. Between 1992 and 1998, she served as Chief Conciliator at the Canadian Human Rights Commission, Pay and Employment Equity Directorate. She now runs a management consulting firm providing advice on human rights and pay and employment equity. Ms. Goldstein's three-year term ended in February 2002.



Claude Pensa, Q.C.
Ontario

Claude Pensa joined the former Human Rights Tribunal Panel in 1995 and was appointed to a three-year term as a part-time member of the Canadian Human Rights Tribunal in 1998. Called to the Ontario Bar in 1956 and appointed Queen's Counsel in 1976, Mr. Pensa is a senior partner in the London, Ontario, law firm of Harrison Pensa.

Eve Roberts, Q.C.
Newfoundland and Labrador

A member of the former Human Rights Tribunal Panel from 1995 to 1997, Eve Roberts was appointed to a three-year term as a part-time member of the Canadian Human Rights Tribunal in 1998 and reappointed in 2002. Mrs. Roberts was called to the Alberta Bar in 1965 and to the Newfoundland Bar in 1981. A partner in the St. John's, Newfoundland, law firm of Patterson Palmer Hunt Murphy until she retired in 1997, Mrs. Roberts also served as Chair of the Newfoundland and Labrador Human Rights Commission from 1989 to 1994.

Appendix 4

The Tribunal Registry

The Registry of the Canadian Human Rights Tribunal provides administrative, organizational and operational support to the Tribunal, planning and arranging hearings, providing research assistance, and acting as liaison between the parties and Tribunal members.

Registrar

Michael Glynn

Manager, Registry Operations

Gwen Zappa

Counsel

Greg Miller

Executive Assistant

Monique Groulx

Registry Officers

Linda Barber
Diane Desormeaux
Holly Lemoine
Roch Levac
Carol Ann Middleton

Registry Officer — Equal Pay

Nicole Bacon

Administrative and Hearings Assistant

Francine Desjardins-Gibson

Network and Systems Administrator

Julie Sibbald

Data Entry Assistant

Alain Richard

Information and Communications Officer

Ramona Jauneika-Devine

Corporate Services Officer

Bernard Fournier

Administrative Assistants

Thérèse Roy
Jacquelin Barrette

Chief, Financial Services

Doreen Dyet

Analyst, Financial Services

Nancy Hodgson-Grey

Appendix 5

Tribunal 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