



# **Competition Tribunal**

**2000-2001  
Estimates**

Part III – Report on Plans and Priorities

## The Estimates Documents

Each year, the government prepares Estimates in support of its request to Parliament for authority to spend public monies. This request is formalized through the tabling of appropriation bills in Parliament. The Estimates, which are tabled in the House of Commons by the President of the Treasury Board, consist of three parts:

**Part I – The Government Expenditure Plan** provides an overview of federal spending and summarizes both the relationship of the key elements of the Main Estimates to the Expenditure Plan (as set out in the Budget).

**Part II – The Main Estimates** directly support the *Appropriation Act*. The Main Estimates identify the spending authorities (votes) and amounts to be included in subsequent appropriation bills. Parliament will be asked to approve these votes to enable the government to proceed with its spending plans. Parts I and II of the Estimates are tabled concurrently on or before 1 March.

**Part III – Departmental Expenditure Plans** which is divided into two components:

- (1) **Reports on Plans and Priorities (RPPs)** are individual expenditure plans for each department and agency (excluding Crown corporations). These reports provide increased levels of detail on a business line basis and contain information on objectives, initiatives and planned results, including links to related resource requirements over a three-year period. The RPPs also provide details on human resource requirements, major capital projects, grants and contributions, and net program costs. They are tabled in Parliament by the President of the Treasury Board on behalf of the ministers who preside over the departments and agencies identified in Schedules I, I.1 and II of the *Financial Administration Act*. These documents are to be tabled on or before 31 March and referred to committees, which then report back to the House of Commons pursuant to Standing Order 81(4).
- (2) **Departmental Performance Reports (DPRs)** are individual department and agency accounts of accomplishments achieved against planned performance expectations as set out in respective RPPs. These Performance Reports, which cover the most recently completed fiscal year, are tabled in Parliament in the fall by the President of the Treasury Board on behalf of the ministers who preside over the departments and agencies identified in Schedules I, I.1 and II of the *Financial Administration Act*.

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

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# Competition Tribunal

2000–2001  
Estimates

A Report on Plans and Priorities

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John Manley  
Minister of Industry

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# Section I Messages

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## Minister's Portfolio Message

In the global economy, innovation is an essential determinant of long-term economic growth, improved productivity and, ultimately, our quality of life. Preparing Canadians for the knowledge-based economy remains one of the government's top priorities in the years ahead. My portfolio of government

organizations is promoting the growth of a strong, dynamic Canadian economy and helping Canadians take advantage of the opportunities offered by the global knowledge-based economy. We have laid a solid foundation through our continuing investments in knowledge and innovation.

An essential ingredient for our knowledge-based growth, both as an economy and as a society, is Connecting Canadians, an initiative designed to make Canada the most connected country in the world. Leading-edge applications will create jobs and growth, and strengthen productivity performance. Connecting Canadians also allows us to reach out to all citizens, and redefine and enhance how we provide services to, and interact with, Canadians.

I am pleased to present the Report on Plans and Priorities for the Competition Tribunal which sets out for Canadians the planned

activities, priorities and resources over the course of the next three years. These plans illustrate how the Competition Tribunal is contributing to building a strong and dynamic Canadian economy.

As an important initiative and to improve the Tribunal's service to clients, an electronic document management system will be developed and piloted in cooperation with its stakeholders. The new system will allow Tribunal clients the possibility of filing their applications and relevant case documentation directly into this system using the Internet. These electronic documents will then serve as legal evidence in Tribunal proceedings and provide the foundation for an electronic document repository.

*The Industry Portfolio is ...*

Atlantic Canada Opportunities Agency  
Business Development Bank of Canada\*  
Canadian Space Agency  
Competition Tribunal  
Copyright Board Canada  
Canada Economic Development for Quebec Regions  
Industry Canada  
National Research Council Canada  
Natural Sciences and Engineering Research Council of  
Canada  
Social Sciences and Humanities Research Council of Canada  
Standards Council of Canada\*  
Statistics Canada  
Western Economic Diversification Canada

*\*Not required to submit Reports on Plans and  
Priorities*

As we look ahead we must define excellence by global standards. Innovation, science, research and development, and connectedness will profoundly change the world we face in the next decade. To maintain and improve our quality of life, we must be more skilled, more productive, more entrepreneurial and more innovative than any other country in the world and we can be all of these things.

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The Honourable John Manley

## Management Representation Statement

### ***MANAGEMENT REPRESENTATION REPORT ON PLANS AND PRIORITIES 2000–2001***

I submit, for tabling in Parliament, the 2000–2001 Report on Plans and Priorities (RPP) for the Registry of the Competition Tribunal.

To the best of my knowledge, the information:

- Accurately portrays the mandate, plans, priorities, strategies and planned results of the organization.
- Is consistent with the disclosure principles contained in the *Guidelines for Preparing a Report on Plans and Priorities*.
- Is comprehensive and accurate.
- Is based on sound underlying departmental information and management systems.

I am satisfied as to the quality assurance processes and procedures used for the RPP's production.

The Planning and Reporting Accountability Structure on which this document is based has been approved by Treasury Board Ministers and is the basis for accountability for the results achieved with the resources and authorities provided.

Name: \_\_\_\_\_

Date: \_\_\_\_\_





## Section II Departmental Overview

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### Mandate, Roles and Responsibilities

The Competition Tribunal is a quasi-judicial adjudicative tribunal created in 1986 by the *Competition Tribunal Act*. Its mandate is to hear applications and issue orders related to the civil reviewable matters set out in Parts VII.1 and VIII of the *Competition Act*, whose purpose is to maintain and encourage competition in Canada, and to ensure that firms compete fairly and markets operate efficiently (see sidebar). The Tribunal has no other function and operates at arm's length from government and its departments.

#### Matters Reviewed by the Tribunal

As a specialized court combining expertise in economics and business with legal expertise, the Competition Tribunal hears cases under Parts VII.1 and VIII of the *Competition Act* that deal with the following:

- misleading advertising;
- deceptive marketing practices;
- mergers;
- abuse of dominant position;
- specialization agreements;
- delivered pricing;
- restrictive trade practices, which include:
  - refusal to deal,
  - consignment selling,
  - exclusive dealing,
  - tied selling, and
  - market restriction; and
- foreign judgments.

For some examples of these types of cases, visit the Tribunal's Web site at <http://www.ct-tc.gc.ca>.

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

#### Organization Composition

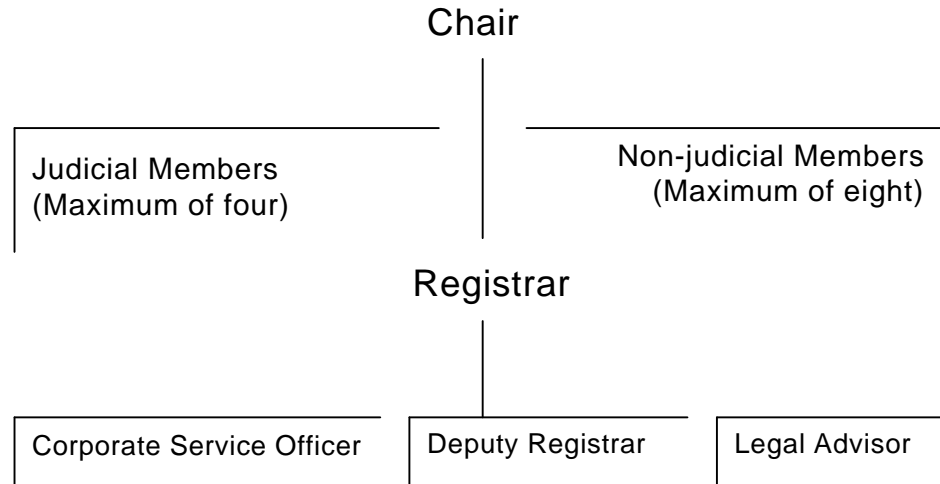
The Tribunal is composed of not more than four judicial members and not more than eight non-judicial members. Non-judicial members have backgrounds in

economics, business, accounting, marketing and other relevant fields.

The Governor in Council appoints judicial members, on the recommendation of the Minister of Justice, from among the judges of the Federal Court, Trial Division, and designates one of the judicial members as Chair of the Tribunal. The Governor in Council appoints non-judicial members on the recommendation of the Minister of Industry. Appointments are for a fixed term not exceeding seven years; members may be re-appointed.

Figure 1 shows the Tribunal's organizational structure.

**Figure 1: Organizational Structure**



The Tribunal currently has three judicial members, one full-time non-judicial member who is an economist and three part-time non-judicial members. During 2000–2001, the Tribunal will swear in at least one new judicial member and two new part-time non-judicial members.

The Chair directs the work of the Tribunal and, in particular, allocates case work to the members. The Tribunal must hear applications in panels of three or five members. A judicial member must preside and there must be at least one non-judicial member on a panel. Although the Tribunal holds most of its hearings at its headquarters in Ottawa, a hearing may be held elsewhere in Canada if required by the circumstances of a particular application. Tribunal decisions may be appealed to the Federal Court of Appeal.

The Registry provides registry, research and administrative support services to the Tribunal. The Registry has been designated a department for the purposes of the *Financial Administration Act*, with the Minister of Industry as its minister and the Registrar as the deputy head. The Registry has 14 full-time employees including the Registrar, the Deputy Registrar, the Legal Advisor and the Corporate Officer. Registry staff provide all necessary administrative support required by the Tribunal for the hearing and disposition of all applications. They respond to all requests for information by the legal community, researchers and the public on the status of cases, the Tribunal's rules of practice and procedure, and its case law.

## Operating Context

Since its creation, the Tribunal has heard cases relating to mergers, abuse of dominant position and various trade practices that involved key players in a number of industries. Some of the products and services dealt with include airline computer reservations systems, oil refining and gasoline retailing, power transformers, community newspapers, aspartame, waste disposal, car parts, photocopier parts, marketing research services and shared electronic network services. Most cases brought before the Tribunal are contested before a panel of one judicial member as chair and two lay members, and the allegations made are vigorously disputed by the parties involved. Others proceed on a consent basis before one judicial member only, where the parties have already agreed on the terms of an order to solve

a problem identified by the Commissioner of Competition, and brought those terms to the Tribunal for approval.

### Relationship with the Commissioner of Competition

The *Competition Act* gives the role of “watchdog” over the marketplace to the Commissioner of Competition who heads the Competition Bureau. The Commissioner directs the Competition Bureau to investigate possible offences under the Act. If the Commissioner decides that a criminal offence, like price fixing, has been committed, the case may be referred to the Attorney General for criminal prosecution. If the question is whether a merger results in a substantial lessening of competition or whether a firm is abusing its dominant position or whether one of a number of other anti-competitive business practices has taken place, the Commissioner brings the matter to the Tribunal for a decision. Except for specialization agreements, only the Commissioner may start proceedings before the Tribunal.

The Tribunal does not receive advance notice of applications — it must be ready to respond quickly and in a timely manner. The hearing for some matters can be set earlier because of their circumstances. For example, the hearing of applications for interim orders are always held within a week of filing. One case under misleading advertising was filed September 15, 1999 and was heard September 23, 1999.

Although the Tribunal is ready to proceed as soon as a matter is filed, case time lines are mostly driven by the litigants rather than by the Tribunal. As a rule, applications involve multiple litigants all represented by counsel; the rules for contested applications expect that a hearing should begin within six months of filing. The schedule for the hearing can be set earlier than provided for in the rules with

the cooperation of litigants, or depending on the complexity of the case. Cases such as the *Superior Propane* merger case can have significant financial stakes, since such decisions also affect other firms and industry in general. For such cases, the chair of the panel will make sure parties abide by procedural time lines, and encourage parties to file earlier when possible. These efforts to fast-track scheduling aim to get cases heard more quickly than the six-month average. The chair of the panel also takes charge of the process to identify early and deal with concerns, such as when parties cannot agree on the confidentiality of documents to be filed. This active case management is a priority of the Tribunal.

Despite these efforts, a wide range of variables can delay a case: for example, its scope and complexity, the number of parties and intervenors interested in the matter, and a lengthy discovery process (the initial period when parties obtain facts and information about the case from each other to help them prepare their case). The Tribunal must ensure that reasonable time is provided for the litigants to prepare and therefore fairness must sometimes take precedence over expediency. Once a hearing date has been

established, however, the Tribunal does not allow postponement except in the most unusual circumstances.

The Tribunal has developed and keeps under review the set of rules that regulates its practice and procedure to provide a framework for informal — to make the process more open and accessible — and prompt proceedings, consistent with the requirements of a fair and impartial hearing. The rules aim for simplicity and clarity, leaving the Tribunal flexibility to direct proceedings to ensure effective case management and avoid undue delay.

Proceedings may be in either or both official languages. Cases of national interest — for example, the *Interac* and *Air Canada* cases had potentially significant cost and service impact to Canadians in the areas of banking and travel services — require all notices, directives, decisions, orders and reasons to be issued simultaneously in both official languages. Tribunal decisions can be lengthy, detailed and technical; accuracy and timely preparation are imperative. Given the scope and complexity of the cases and precedential significance of the decisions, the Registry edits all documents in-house in both official languages.

### Tribunal's Objective

The Tribunal provides a court of record to hear and determine all applications under Parts VII.1 and VIII of the *Competition Act*. Matters are heard and adjudicated *promptly*, as soon as the litigants are ready to proceed, and *equitably*, observing the principles of impartiality and fairness.

#### Tribunal's Objective

The Tribunal's objective is to provide a court of record to hear and determine all applications under Parts VII.1 and VIII of the *Competition Act* as informally and expeditiously as circumstances and considerations of fairness permit.

For the Tribunal, the Registry:

- provides administrative support;
- conducts pre-hearings and hearings expeditiously;
- disseminates decisions; and
- uses technologies to improve Tribunal efficiency and effectiveness.

### External Factors Influencing Tribunal Activities

The number of applications brought before the Tribunal depends on the enforcement policy adopted by the Commissioner of Competition. Since the creation of the Tribunal, the Commissioner has been the only applicant to bring cases before the Tribunal. That means the Tribunal has not had to hear matters on specialization agreements to date. Because the Tribunal has no function other than those associated with the hearing of applications and the issuance of orders, it can only react to external demands. It does not have any investigative powers or supervision over the inquiries conducted by the Commissioner of Investigation and Research.

When Bill C-20 came into force on March 11, 1999, the jurisdiction of the Competition Tribunal was broadened with the addition of deceptive marketing practices through the enactment of reviewable matters provisions (except sections 55 and 55.1) under Part VII.1 of the *Competition Act*. These amendments established a new civil regime that, for most cases, replaced the current criminal provisions

of the Act. The criminal provisions remain in effect to deal with the most serious deceptive marketing cases. The Commissioner can now choose which adjudication regime, civil or criminal, is appropriate based on the facts of a case.

## Departmental Planned Spending

(\$ millions)	Forecast Spending 1999–2000 <sup>1</sup>	Planned Spending 2000–2001	Planned Spending 2001–2002	Planned Spending 2002–2003
<b>Budgetary Main Estimates</b>	1.270	<b>1.500</b>	1.500	1.500
Less: Respendable revenue	-	-	-	-
<b>Total Main Estimates</b>	1.270	<b>1.500</b>	1.500	1.500
Adjustments to Planned Spending	0.234 <sup>2</sup>	-	-	-
Plus: Cost of services received without charge	0.425	<b>0.427</b>	0.427	0.427
<b>Total Planned Spending</b>	1.902	<b>1.927</b>	1.927	1.927
<b>Full-Time Equivalents</b>	14	14	14	14

<sup>1</sup> Reflects the best forecast of total planned spending to the end of the fiscal year.

<sup>2</sup> This amount includes the 5% carry forward of \$56,600 from the budget of 1998-99, \$13,969 for collective bargaining compensation and a transfer of \$160,000 from Industry Canada. It does not take into account money set aside for Employee Benefit Plan.



## Section III Plans, Results and Resources

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### Business Line Description

Through the *Competition Tribunal Rules* that regulate its practices and procedure, the Tribunal establishes a framework for informal, expeditious proceedings while leaving the Tribunal flexibility to respond to the wide range of variables that affect expediency and considerations of fairness in a particular case.

### Resource Plans

**Human Resources:** With the Tribunal's expanded mandate, the Registry has increased its resources to 14 employees. This complement constitutes the minimum required to provide efficient support in a specialized law and economics milieu to Tribunal members, litigants, counsel, media and the public. The Registry will undertake two initiatives to address Registry issues identified in the government-wide employee survey results: a training curriculum in support of career development and a recognition program to acknowledge good work.

#### The Electronic Filing Pilot Project

To exploit evolving information technology, the Registry, in cooperation with its stakeholders, will develop and pilot a new Tribunal document management system in 2000-2001. Tribunal clients will be able to file their applications and all relevant case documentation in electronic format directly into the new Tribunal document management system using a software application developed for use on the Internet. These electronic documents will then serve as legal evidence in Tribunal proceedings and provide the foundation for an electronic document repository.

**Financial Resources:** As a single program agency supporting a quasi-judicial tribunal, the Registry disposes of very limited resources. The Registry cannot legally eliminate any activities, so it tries to get the most value from its spending by using best practices, saving costs through, for example, video and telephone conferences, and sharing common services with other departments and agencies.

## Key Results Commitments, Planned Results, Related Activities and Resources

### Tribunal Business Line

Key Results Commitments	Planned Results	Related Activities	Resources
To provide a court of record to hear and determine, as informally and expeditiously as circumstances and considerations of fairness permit, applications under Parts VII.1 and VIII of the <i>Competition Act</i> .	Enhanced Tribunal effectiveness and transparency while preserving fairness.	The permanent Tribunal/Bar Liaison Committee will continue to review and amend the rules of practice and procedure to further streamline the established process.	\$183,000
	Improved client service.		
	Simplified procedures.		
	A system to accommodate electronic filing: <ul style="list-style-type: none"> <li>• to produce significant time and cost savings for all litigants;</li> <li>• to accelerate document interchange among parties; and</li> <li>• to make information more readily available to all Canadians.</li> </ul>	The Tribunal will work with the Registry on the electronic filing pilot project to exploit evolving information technology. The Tribunal will assign a judicial member to sit on the working group and provide input and feedback on legal issues and make recommendations for future development of electronic hearings.	
	Accelerated hearing process.	Active case management to reduce case delays, to shorten filing time lines when possible and to help counsel resolve issues in a timely and fair manner.	



## Registry Service Line

Key Results Commitments	Planned Results	Related Activities	Resources
<p>A Registry service that provides administrative support to Tribunal members and litigants and also provides timely access to case records and decisions.</p>	<p>Efficient case processing and hearing services to the Tribunal and litigants and management of the Tribunal's case records through:</p> <ul style="list-style-type: none"> <li>timely access to case documentation and providing appropriate information on the Tribunal that will assist litigants and the public to better understand case proceedings; and</li> <li>the use of technologies that will result in efficiencies and cost reduction, and facilitate the advancement of cases.</li> </ul>	<p>Enter into Phase II of the Registry's Case Management System with emphasis on developing the management performance report module and establishing links from the Case Management System to the Tribunal's Web site.</p> <p>Continue using and exploring technologies to advance case management.</p>	<p>\$1,182,000</p> <p><i>Note:</i> This amount includes human resources of \$693,000.</p>
	<p>Modern document and filing systems that use Internet technology:</p> <ul style="list-style-type: none"> <li>to increase service efficiency for the Tribunal, litigants and the public in process management, hearing support, access to case documents and the provision of information; and</li> <li>to give the public and litigants access to information on the Tribunal's rules of practice and procedure, case records and decisions.</li> </ul>	<p>Develop and pilot a new electronic filing project that will allow electronic filing of documents and direct electronic access by Tribunal clients via the Internet to case information and documentation in support of hearings.</p> <p>Establish a working group of Tribunal stakeholders to direct the pilot project.</p> <p>Evaluate the pilot project for future implementation.</p> <p>Make the Tribunal's Web site more user friendly and offer Web site users a feedback questionnaire that will help the Registry receive and access user input concerning access, relevance and timeliness of case and decision information.</p>	

## COMPETITION TRIBUNAL

Key Results Commitments	Planned Results	Related Activities	Resources
	<p>A continuous learning environment that contributes to a skilled and knowledgeable workforce and increased levels of output.</p>	<p>Apply the newly developed Registry training curriculum of core and developmental competencies to all levels of the Registry.</p> <p>Develop, in consultation with the Chairman, an orientation and training curriculum for newly appointed Tribunal members.</p>	
	<p>Economies of sharing support services with other federal agencies and departments:</p> <ul style="list-style-type: none"> <li>• to realize savings;</li> <li>• to share best practices;</li> <li>• to give the Registry access to expertise in human and financial resources; and</li> <li>• to help the Registry maximize its ability to handle its workload.</li> </ul>	<p>When appropriate for hearings outside Ottawa, arrange cost-effective short-term secondments with Federal Court regional registries to provide court services.</p> <p>Negotiate the use of hearing room facilities with regional offices of other federal agencies to avoid the high cost of commercial facilities for hearings outside Ottawa.</p> <p>Continue actively promoting use by other departments and agencies of the Tribunal's hearing room facilities when the Tribunal is not using them.</p> <p>Extend for another two years the Memorandum of Understanding with the Office of the Commissioner for Federal Judicial Affairs for corporate services. This will allow the Registry to obtain support services related to expertise in financial administration, pay and benefit functions.</p>	

## Section IV Horizontal Initiatives

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### Regulatory Initiative

One regulatory initiative will affect the Tribunal's rules of practice and procedure.

The Tribunal through the Tribunal/Bar Liaison Committee has undertaken an ongoing extensive review of its rules of practice and procedure to eliminate unnecessary rules, facilitate procedures arising from technological changes, increase efficiency and preserve fairness. It is expected that this initiative will enhance access to the Tribunal as well as provide greater transparency and expedite matters.



## Section V Financial Information

### Spending Authorities

The coming into force of Bill C-20 on March 11, 1999 conferred additional statutory responsibilities to the Competition Tribunal resulting in an increased workload. The Tribunal obtained a transfer of \$200,000 from Industry Canada to its budget.

**Table 5.1: Net Cost of Program for the Estimates Year**

(\$ millions)	Total
Net Planned Spending	<b>1.500</b>
<i>Plus: Services Received without Charge</i>	
Accommodation provided by Public Works and Government Services Canada	<b>0.388</b>
Contributions covering employees' share of employees' insurance premiums and expenditures paid by Treasury Board Secretariat	<b>0.039</b>
Workman's compensation coverage provided by Human Resources Development Canada	-
Salary and associated expenditures of legal services provided by Justice Canada	-
<b>2000–2001 Net Program Cost (Total Planned Spending)</b>	<b>1.927</b>



## Section VI Other Information

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### Enabling Legislation

*Competition Tribunal Act*, R.S.C. 1985 (2d Supp.), c. 19  
Part VII.1, *Competition Act*, R.S.C. 1985, c. C-34  
Part VIII, *Competition Act*, R.S.C. 1985, c. C-34

### For Further Information

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