CANADIAN HUMAN RIGHTS COMMISSION

Annual Report 1998

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- A summary of the highlights of the Annual Report is available from any of the Commission's offices.

- The Commission's annual Report to Parliament of its employment equity activities, required under the Employment Equity Act, is provided in the Employment Equity section of this report. A separate reprint is also available.

- A companion Legal Report, which reports significant human rights decisions rendered by tribunals and the courts in 1998, is also available.

CANADIAN HUMAN RIGHTS COMMISSION
COMMISSION CANADIENNE DES DROITS DE LA PERSONNE

Chief Commissioner *Présidente*

March 1999

The Honourable Gildas L. Molgat, C.D.
Speaker of the Senate
The Senate
Ottawa, Ontario
K1A 0A4

Dear Mr. Speaker:

Pursuant to section 61 of the Canadian Human Rights Act and section 32 of the Employment Equity Act, I have the honour to transmit the 1998 Annual Report of the Canadian Human Rights Commission to you for tabling in the Senate.

Yours sincerely,

Michelle Falardeau-Ramsay, Q.C.

CANADIAN HUMAN RIGHTS COMMISSION
COMMISSION CANADIENNE DES DROITS DE LA PERSONNE

Chief Commissioner *Présidente*

March 1999

The Honourable Gilbert Parent, M.P.
Speaker of the House of Commons
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Mr. Speaker:

Pursuant to section 61 of the Canadian Human Rights Act and section 32 of the Employment Equity Act, I have the honour to transmit the 1998 Annual Report of the Canadian Human Rights Commission to you for tabling in the House of Commons.

Yours sincerely,

Michelle Falardeau-Ramsay, Q.C.

ANNUAL REPORT 1998

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Members of the Commission

The Canadian Human Rights Commission was established in 1977. It is made up of two full-time members and up to six part-time members. The Chief Commissioner and Deputy Chief Commissioner are appointed for terms of up to seven years, and the other Commissioners for terms of up to three years. The following are brief biographies of the members who served on the Commission in 1998.

Michelle Falardeau-Ramsay

Michelle Falardeau-Ramsay, Q.C., was appointed Chief Commissioner in January 1997. After receiving a law degree from the University of Montreal and being called to the Quebec Bar, she pursued a career in labour relations law. She worked as a lawyer with the firm of Massicotte, Levac and Falardeau and later became a senior partner with the firm of Levac and Falardeau. In 1975, she joined the Public Service Staff Relations Board as Deputy Chairman and in 1982 became Chairman of the Immigration Appeal Board. She was appointed Deputy Chief Commissioner of the Canadian Human Rights Commission in September 1988, and served in that capacity until taking up her present post.

Georges Cliche

Georges Cliche of Val d'Or, Quebec was appointed to the Commission in October 1995. He was called to the Quebec Bar in 1971 and later worked for four years as Crown counsel in the Youth Court and the Court of Quebec. A member of the firm of Cliche, Lortie and Ladouceur, his areas of expertise include litigation, negotiation of contracts and family and criminal law. He has also done arbitration work and helped to negotiate collective agreements, as well as appearing before various administrative tribunals. Mr. Cliche's term ended in October 1998.

Phyllis Gordon

Phyllis Gordon of Toronto, Ontario was appointed a Commissioner in May 1998. She received her Bachelor of Arts from McGill University in 1967 and her teaching credentials in fine arts from the University of Quebec in Montreal. She graduated from Osgoode Hall Law School in 1977 and was called to the Bar of Ontario in 1979.

For several years Ms. Gordon practised labour law and family law in Hamilton and Kingston, Ontario. Over the course of her career, she has acquired extensive experience and expertise in various human rights areas, including pay equity and employment equity. After serving as the Director of Parkdale Community Legal Services in Toronto for five years, she became, in 1994, the Chair of the Pay Equity Hearings Tribunal of Ontario. She currently has an arbitration and mediation practice, primarily in the area of labour relations.

Ms. Gordon has also served on the boards of directors of several community organizations involved with disadvantaged people and violence against women.

Yude M. Henteleff

Yude Henteleff, C.M., of Winnipeg, Manitoba was appointed a Commissioner in November 1998. He had previously served as a Commissioner from 1980 to 1986. He is a senior partner with the law firm of Pitblado Buchwald Asper in Winnipeg. His areas of expertise include corporate and commercial law, mediation and human rights. He has acted as an adjudicator of human rights complaints.

Mr. Henteleff serves on the boards of directors of a number of community organizations. Over the past thirty years, he has been an advocate for children with special needs. He has written and lectured extensively about them, and has been invited to speak on human rights issues affecting minority groups throughout Canada and abroad. He is the Honorary Solicitor for the Learning Disabilities Association of Canada, a member of the National Council of the Canadian Human Rights Foundation, and a member of the Advisory Board of the Manitoba Association of Rights and Liberties. He is a Governor of the Hebrew University of Jerusalem.

In 1998, he was appointed a member of the Order of Canada. In 1994, the Minister of Citizenship and Immigration awarded him the Citation for Citizenship. In 1992, he received the Commemorative Medal for the 125th Anniversary of Confederation in recognition of his community efforts. In 1989, the Manitoba Association of Rights and Liberties awarded him the Certificate of Merit for his efforts on behalf of minority groups. In 1984, the Minister of National Health and Welfare awarded him the Certificate of Honour for his volunteer efforts.

Robinson Koilpillai

Robinson Koilpillai, C.M., has been a member of the Commission since 1995. An educator, school principal, and community volunteer, he has worked in the fields of education, human rights, multiculturalism, and international development.

Mr. Koilpillai has served as Chairman of the Alberta Cultural Heritage Council, President of the Alberta Council for Global Cooperation, Executive Member of the Canadian Council for International Cooperation, and President of the Canadian Multicultural Education Foundation.

In 1998, Mr. Koilpillai was inducted into Edmonton's Hall of Fame and won the Lewis Perinbam Award in International Development. A 1992 Governor General's Commemorative Medal winner, he joined the Order of Canada in 1996.

Mary Mac Lennan

Mary Mac Lennan of Halifax, Nova Scotia became a member of the Commission in November 1995. She was called to the Bar of Nova Scotia in 1979 and pursued a career as a sole practitioner until 1990. From 1981 to 1982, Ms. Mac Lennan was the Provincial Coordinator for the Nova Scotia League for Equal Opportunities. She played a similar role in National Access Awareness Week in 1988 and served as the Multicultural and Race Relations Coordinator for the City of Halifax from 1990 to 1992. A recipient of the Nova Scotia Human Rights Award in 1993, Ms. Mac Lennan served two terms as a member of the Nova Scotia Human Rights Commission, and was appointed Chair of that Commission in 1996. She has also served on the editorial board of *Just Cause*, a law journal for people with disabilities and legal professionals.

Sigmund Reiser

Sigmund Reiser, C.M., C.L.U., is the sole survivor of a family of twenty-one whose members perished in the Holocaust. Emigrating to Canada after the Second World War, he worked for thirty-five years for the London Life Insurance Company, retiring as its Regional Manager. He was also Director of the Life Underwriters Association of Canada.

After retiring, he served as a Council Member of the College of Physicians and Surgeons of Ontario, holding positions on its Discipline Tribunal and the Peer Assessment Committee. He is currently a member of the cabinet of the League for Human Rights of B'nai Brith Canada, a member of the executive of the Community Relations Committee of the Canadian Jewish Congress, and a member of several other human rights organizations. He also serves on the editorial board of the Jewish Tribune and is the National Membership Chairman of B'nai Brith Canada.

Appointed to the Canadian Human Rights Commission in 1994, Mr. Reiser is a member of the Order of Canada and a recipient of the Commemorative Medal for the 125th Anniversary of Confederation for service to Canadians. On receiving a call to serve as a citizenship judge, Mr. Reiser announced his resignation from the Commission in September 1998.

Kelly Russ

Kelly Harvey Russ, a member of the Haida First Nation, was appointed a Commissioner in April 1998.

Mr. Russ, of Vancouver, B.C., received the degree of Bachelor of Arts in Political Science and History in 1990, and the degree of Bachelor of Laws in 1993, both from the University of Victoria, where he was also president of the Native Law Student Society. In 1994, he became a member of the Law Society of British Columbia and the Canadian Bar Association.

Now a sole practitioner, Mr. Russ's legal work centres on Aboriginal rights and issues arising from the Indian Act, and other federal, provincial and territorial legislation affecting Aboriginal peoples. In addition, Mr. Russ represents Aboriginal people in the fields of child protection and family law.

Preface

As the year marking the fiftieth anniversary of the Universal Declaration of Human Rights comes to a close, human rights are very much at the crossroads. At home, progress resulted from important decisions handed down by courts and human rights tribunals. Amendments to the Canadian Human Rights Act that came into force during the year also constituted a small step forward. But much remains to be done if our stated goal of equal opportunity for everyone is to become a reality.

Last year I drew attention to the link between poverty and the effective enjoyment of human rights. My remarks generated some controversy, including suggestions that I was venturing into areas that were beyond the Commission's mandate. I remain convinced, however, that it is not possible to look at human rights without considering social and economic conditions. To mention but one example: child poverty has long-term consequences. Too often, it marks children for life by undermining the health and self-confidence they need to be successful in school and later in the workplace.

It should also be remembered that Canada is a party to a series of international human rights instruments, beginning with the Universal Declaration of 1948. Of particular significance was the step taken in 1976 to ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Both of these treaties, together with others dealing with the elimination of racial discrimination, the elimination of discrimination against women, and the rights of the child, embody commitments at the international level whose relevance to human rights in Canada is real but sometimes little understood.

The government has signalled that the long-awaited review of the Canadian Human Rights Act will commence in the near future. This is encouraging news. My hope is that the review will be comprehensive, and that, in assessing the adequacy of current legislation and examining the role of the Commission, it will be sensitive to the importance of incorporating into law Canada's international human rights obligations. The Commission will, of course, be happy to play a full role in any review that is undertaken.

Meanwhile, we will continue with the task at hand. In response to those who suggest that the Commission sometimes oversteps its bounds in

commenting on issues that appear to go beyond its immediate jurisdiction, I would echo the words of Gordon Fairweather, the first federal Human Rights Commissioner, who said twenty years ago:

"Parliament has entrusted the Commission it created, the Canadian Human Rights Commission, with a double mission: the restoring of rights to those who have been deprived of them by discrimination, and the improvement of social systems and public attitudes so as to reduce and eventually eliminate the incidence of discrimination. These two purposes can be distilled into a statement of the ultimate objectives of the Commission: social justice and social change."

Michelle Falardeau-Ramsay, Q.C.
Chief Commissioner

Introduction

On June 30, 1998, amendments to the Canadian Human Rights Act came into force. Particularly important was a provision requiring employers and service providers to accommodate — short of undue hardship — the needs of people with disabilities, religious minorities, and others. While the courts had already established this principle, the amendment, supported by all parties in Parliament, reinforces the requirement.

Provisions dealing with hate propaganda were also strengthened. Victims specifically identified in hate messages may now receive compensation, and those responsible for disseminating such propaganda face penalties of up to $10,000.

The scope of policy complaints — which do not require an individual victim of discrimination — has been expanded. In addition to employment matters, they may now be filed for discrimination related to services. The Commission is now also empowered to investigate complaints of retaliation. In the past, these could be dealt with only through the criminal law.

Another significant amendment saw the establishment of a permanent fifteen-member Canadian Human Rights Tribunal. The Commission expects that cases will now move forward more quickly after it has referred them to the Tribunal for a hearing. To underline the Commission's status as an independent agency, the law now provides for it to report directly to Parliament, rather than through the Minister of Justice.

While these amendments represent improvements, other changes are also needed. The Commission therefore welcomes the government's stated intention to conduct a more comprehensive review in the future.

A Landmark Decision

In July, the Canadian Human Rights Tribunal issued a landmark decision on pay equity in the federal public service. Coming some eight years after the case had been referred by the Commission to the Tribunal, and fourteen years after the Public Service Alliance of Canada had filed its original complaint on behalf of clerical workers, the decision established a formula for correcting the wage discrimination whose existence had been made clear in a study conducted by the government and its unions in

the late 1980s. Tens of thousands of current and former public servants, most of them women in low-paying jobs, stood to benefit from the long-awaited decision.

In the Commission's view, the Tribunal's decision offered a reasonable, balanced approach to redressing unfair wage gaps in the federal public service. The President of the Treasury Board and the Minister of Justice, however, announced that they would seek judicial review of the decision. The issues raised by these events and other pay equity cases are explored in greater depth in the chapter on pay equity and sex discrimination.

The Tribunal's decision offered a balanced approach to redressing unfair wage gaps in the federal public service

A Significant Achievement

A significant ruling on sexual orientation was also handed down in 1998. In its decision in the case of *Vriend* v. *Alberta,* the Supreme Court of Canada concluded that the omission of sexual orientation as a prohibited ground of discrimination under Alberta's Individual's Rights Protection Act was an unjustified violation of the Canadian Charter of Rights and Freedoms. This issue is discussed further in the chapter on sexual orientation.

Steps Forward in Employment Equity

In 1996, changes to the Employment Equity Act sought to ensure fair representation of women, Aboriginal people, members of visible minority groups, and people with disabilities in all occupational groups in federal departments and agencies and the federally regulated private sector.

This year's report discusses the first year of implementation of the employment equity compliance audit process. Through these audits, the Commission determines whether designated groups are equitably represented in an employer's workforce.

By the end of 1998, the Employment Equity Branch had surpassed its objective of initiating 82 compliance audits. It had also established cooperative relationships with most employers, and had successfully negotiated undertakings to bring cases of non-compliance into line with the Act's requirements. This issue is explored in greater depth in the section on employment equity.

Improving the System

Complaint investigations remain the legal mechanism in place to deal with allegations of discrimination. They were designed to be a quicker, less adversarial process for restoring rights than the court system. However, over the past twenty years, procedures have become more complex and formal. Like its counterparts elsewhere, the Commission has confronted an increasingly litigious environment, and the need to deal with more complex cases. The result has been a lengthening of the process. An examination of the Commission's work, undertaken by a team from the office of the Auditor General and published in the fall of 1998, reinforced the

Commission's determination to improve the way it handles complaints. This issue is discussed further in the chapter on human rights protection.

New Directions for Human Rights

Some issues go beyond the Commission's operational mandate but still affect human rights in Canada. The working definition of human rights in Canada is narrower than the norms established in the Universal Declaration of Human Rights, and in international conventions to which Canada is a party.

Canada periodically assesses, and is itself assessed, on how it lives up to these international instruments. The United Nations Economic and Social Council, while noting that Canada has been at the top of the Human Development Index for five years, raised serious concerns recently about poverty levels in our country and their human rights implications. At the same time, community organizations concerned with children pointed out that ten years after endorsing the United Nations Convention on the Rights of the Child, more Canadian children — not fewer — live in poverty.

The United Nations raised serious concerns recently about poverty levels in our country

The Commission's mandate is to be found in Canadian rather than international law. But human rights agencies in different countries confront many challenges in common. It is therefore not surprising that the Commission has established working relationships with institutions elsewhere in the world. This issue is discussed further in the chapter on the Commission's international role.

The Commission participated in two major international conferences on human rights in Canada in 1998. The conferences, in Edmonton and Montreal, commemorated the fiftieth anniversary of the Universal Declaration of Human Rights.

In Montreal, participants challenged human rights organizations worldwide to confront the conflicts that prevent the advancement of human rights. In Edmonton, Archbishop Desmond Tutu hailed the Universal Declaration as a "crucial document" that served as a beacon against the "vicious policy of apartheid." Mary Robinson, the United Nations High Commissioner for Human Rights, added that the Universal Declaration was once viewed with skepticism, but declared that "if we build on [its] foundation ... we'll be on the right path to fulfilling the vision of fifty years ago."

Pay Equity and Sex Discrimination

Pay equity led human rights news coverage in 1998. Much of it dealt with the July 29 decision of a human rights tribunal on the complaints of the Public Service Alliance of Canada, or PSAC, against the federal Treasury Board. The decision was the largest human rights ruling ever, affecting as many as 200,000 people and involving large sums of money.

The decision came after years of deliberation and more than 250 days of hearings. In the Commission's view, it provided a fair, well-reasoned answer to the central question before the tribunal: how should the results of a joint union-management study be applied in adjusting the wages of under-valued jobs performed mainly by women? The position ultimately adopted by the tribunal fell between those recommended by the complainant and respondent, leaving room for the parties to negotiate the finer details.

Given the fine balance struck by the tribunal, and the time taken to reach it, the Commission was disappointed when on August 27 the government announced that it would apply for judicial review of the decision.

The debates surrounding these events raised many important issues, including: why do women earn less, on average, than men? How can the value of different jobs be compared? Why does the bill for the tribunal's decision appear to be so high? And how should issues of possible wage discrimination be dealt with?

Work, Wages and Women

People's views on pay equity, or equal pay for work of equal value, generally reflect their understanding of how wages are set and why women are so often paid less than men. Some critics of pay equity hold that wages ought to be fixed exclusively by supply and demand, and believe that pay equity interferes with this process. The point of departure for this line of reasoning is not without merit: no one contests the fact that supply and demand play a role in setting wages.

The argument loses a good deal of its persuasiveness, however, when important empirical evidence is considered. Simply put, there is much to indicate that supply and demand are not now, and have never been, the *sole* arbiters of wages, even in markets where there may appear to be no other forces at play.

The striking consistency in wage differences between specific jobs over extended periods of time indicates that something more than supply and demand is at work. Nurses, for example, have never made as much on average as lawyers, despite the fact that in Canada there have often been shortages of nurses and surfeits of lawyers.

Pay equity, which addresses how these differences have developed, is first and foremost about fairness. It requires that everything included in the work traditionally performed by women be taken into account when their jobs are evaluated. Pay equity is needed because there has historically been a tendency to pay more attention to work traditionally performed by men, and to compensate that work accordingly. Women's work, to which less attention was paid, has been correspondingly under-compensated. In sum, pay equity ensures that when an employer assesses the relative worth of different jobs, fair credit is given to the full range of the actual work performed.

Pay equity is first and foremost about fairness

Pay equity is not really different from other public policies that shape the market. The market might operate more freely without a minimum wage, restrictions on child labour, occupational safety rules, or securities regulations. However, the excesses of the Industrial Revolution, the economic hardships caused by the Great Depression and subsequent recessions, and an increasing commitment to basic rights produced broad support for these policies, and legislators decided to take action for the common good. It was a similar concern with the economic disadvantages faced by women — and evidence linking these disadvantages to the way work was valued — that led Parliament to include pay equity provisions in the Canadian Human Rights Act two decades ago.

Of Apples and Oranges

Pay equity relies on job evaluation systems to identify and correct wage discrimination. Critics have wondered how such systems can function, trotting out familiar arguments about comparing apples and oranges. But in reality, job evaluation has been a tool of choice for many employers for more than five decades. For example, as technological advances open up new fields of employment, employers are using job evaluation systems to determine where the new jobs should fit in the pay scale.

The evaluation systems are grounded in the common-sense notion that wages for various jobs in an organization should reflect a reasonable and consistent set of considerations. Typically, the considerations used by employers cluster into four areas — skill, effort, responsibility, and working conditions. These are precisely the criteria that the Act establishes for pay equity comparisons.

The job evaluation systems chosen by employers to ensure equitable wages can vary, depending on each employer's values and preferences. If the system is fair, and can be applied consistently, the Commission will accept it.

Probably the greatest challenge is to ensure that a system measures women's jobs as

comprehensively as men's. Over the past decade, a keener understanding of steps that help to achieve this has developed, thanks to an increasing store of practical experience and relevant jurisprudence. The Commission has summarized this understanding in its *Guide to Pay Equity and Job Evaluation*. The Guide has been well received by human resources practitioners, and is available on the Commission's web site.

Key Cases, Key Issues

Because pay equity primarily corrects systemic (as opposed to individual or deliberate) wage discrimination, it is most efficiently achieved through cooperation between employers and bargaining agents. This is because they are familiar with an organization's wage structure and internal culture, and can apply these to the evaluation of jobs. For this reason, the Commission always encourages unions and management to consider cooperative pay equity studies, and does what it can to assist such studies where they are under way. But at the same time, a mechanism must be available to ensure that accepted pay equity standards are respected and to step into the breach if insoluble disagreements arise.

This mechanism was created at the federal level when Parliament included equal pay for work of equal value in the Canadian Human Rights Act. By incorporating pay equity into the Commission's mandate, Parliament recognized that it was necessary to have an independent agency to provide advice and impartially examine wage discrimination claims. Similarly, in designating the Canadian Human Rights Tribunal (a separate body) as the forum for binding adjudication, Parliament indicated its preference for having specialized issues addressed, in the first instance, by panels of specialists rather than the courts.

One reason for having independent, specialized bodies is to help ensure that rulings based upon principle can be made, even when they may not be expedient or may provoke strong debate. The tribunal's July 29 decision in the PSAC complaint, to take the most obvious example from 1998, resulted in a great deal of discussion about the cost. Questions have since been raised about the accuracy of various estimates. There have been suggestions that they were too high, given the absence of publicly available data on the people affected, and the likelihood that a significant proportion of any payout would return to federal coffers in the form of income and other taxes.

Nevertheless, there is no doubt that the financial outlay required to comply with the decision is large. The reason for this price tag is not only the number of people affected, but also the aggregate impact of delay. The original pay equity complaint covering federal public service clerks was filed in 1984, and a union-management Joint Study was conducted between 1986 and 1989. The Commission has been warning since the conclusion of the Joint Study that failure to reach a reasonable settlement might prove costly at the end of the day. Had agreement been reached in 1990, years of cumulative costs, interest payments, and lawyers' fees could have been avoided. In fact, the Commission estimates that interest accounts for roughly one-third of the total bill associated with the tribunal's decision.

The evidence adduced in the Public Service Alliance case shows that employees in predominantly female public service occupations have been denied fair pay for a number of years, while time and money have been spent on litigation. Most of the individuals affected are present or former employees in the public service's lowest-paid occupations — people who will continue to earn less than $30,000 a year even after the implementation of the tribunal's order.

The Commission accepts that the government's desire to control costs is legitimate, provided that this can be achieved without violating human rights principles. In this connection, it should be noted that the tribunal ordered that the parties "agree upon the distribution of the aggregate sums of the payout" within one year of the decision. These negotiations would have to be premised on the willingness of all sides to comply with the decision, a development that has yet to occur.

The Commission accepts the government's desire to control costs, if this can be achieved without violating human rights principles

The Commission has long been concerned that the government's approach to its pay equity dispute with the Public Service Alliance may be setting something less than a sterling example for other employers covered by the Act. During 1998, the Commission noted a continuing propensity on the part of some parties to launch procedural challenges in pay equity cases — challenges that inevitably slow down Commission and Tribunal processes, and in so doing illustrate difficulties with the current federal pay equity provisions.

The most visible of these parties was Bell Canada, which persisted in its legal challenge to the Commission's referral to tribunal of complaints alleging that the country's biggest telephone company had contravened the pay equity provisions of the Act — complaints that rest in part on the results of a pay equity study conducted by Bell itself in conjunction with its unions. Citing an array of grounds, Bell has held up tribunal hearings for more than two years with applications for orders quashing the referral. Initially, the company was successful in persuading the Federal Court's Trial Division that the case should not proceed; however, in November 1998, the Federal Court of Appeal overturned the Trial Division's ruling, restoring the Commission's referral. The court's decision confirms that the Commission has broad discretion to decide whether there is sufficient evidence to investigate a complaint and send it to tribunal, that the Commission's processes are fair, and that the Canadian Human Rights Tribunal, not the courts, should be the primary interpreter of the wage discrimination provisions of the Act.

Several other respondents have adopted strategies similar to Bell's. The Government of the Northwest Territories asked the tribunal assigned to its case to declare itself insufficiently independent to proceed with hearings. In December 1998, the tribunal rejected this argument. The territorial government has also gone to court to challenge the way the Commission referred allegations against it to the

tribunal. This is the second time the territorial government has filed an application related to this complaint. The first challenge, which was rejected by the Federal Court of Appeal in 1997, questioned the Commission's jurisdiction, and therefore the legitimacy of its investigation. Meanwhile, another large respondent, Canada Post, has proceeded with litigation aimed at forestalling the investigation of complaints against it filed by the Canadian Postmasters and Assistants Association, despite the fact that its initial challenge was dismissed by the Federal Court's Trial Division in 1997.

Finally, in response to a complaint by the Canadian Union of Public Employees, Canada's two major airlines have argued that the wages of flight attendants cannot be compared with the wages of cockpit and ground crews because each set of employees allegedly works in a separate establishment. The Commission has disagreed, noting that this line of reasoning would effectively prevent many employees from obtaining a hearing under the pay equity provisions of the law. Eventually, this preliminary question was referred to a tribunal, which, in a December 1998 ruling, found in favour of the airlines. Concerned about the implications of this ruling, the Commission is participating in an application for judicial review.

Every party to a complaint has a legal right to raise concerns about processes and pursue litigation. However, the delay and expense caused by challenges that turn primarily on *procedural* rather than substantive questions can be difficult to explain, especially to someone directly affected by the outcome of a case.

The Tasks Before Us

Even as public attention focused on the federal public service and Bell Canada cases, the Commission continued to implement its mandate regarding pay equity claims and issues. Complaints were investigated, settlements were encouraged, and advice was given.

One of the Commission's more notable activities in 1998 was the provision of input to the Treasury Board team developing a new job evaluation system for the federal public service. Called the Universal Classification Standard, or UCS, this ambitious and far-reaching system has gender neutrality as one of its stated goals, and is designed to supersede some 72 old classification standards in the course of 1999. The Commission has supported the overall objectives of the UCS, and, since design commenced in 1996, has given feedback from a pay equity perspective on various components of the system. Although it is still too early to comment definitively on whether the system is sufficiently inclusive and balanced, there is little doubt that the UCS represents an improvement over the plethora of standards it is aimed at replacing. The Commission has nevertheless been concerned about the pace of the project — not because it questions the need to move forward quickly, but because it would not want important safeguards or reasonable levels of consultation to be eroded because of inflexible deadlines. The Commission continues to hope that the UCS will be finalized and implemented carefully, so that it contributes to the achievement and maintenance of pay equity in the federal public service.

The pay equity provisions of the Act have done a great deal to encourage attention to issues of fairness in compensation. Without them, Canada would be further behind in meeting its international commitments on wage equality for women.

These provisions, however, have not been updated since the Act was passed in 1977, and for more than a decade the Commission has been calling on the government to consider a pay equity model that would rest less on complaints and more on positive action by employers and unions. Like pay equity legislation in most provinces and the federal Employment Equity Act, revised pay equity provisions should treat patterns of wage discrimination through programs aimed at all employers, with compliance monitored through audits by an independent agency.

The government has signalled its interest in exploring ways of adjusting the pay equity provisions of the Act. As long as the underlying purpose of any proposed amendments is to improve, not dilute, these provisions, the Commission is ready to support an open discussion and to provide thoughtful reflections after two decades in the business.

Sex Discrimination

Persistent stereotypes about the role and abilities of women keep them out of certain sectors in which they could make valuable contributions to our society and the economy. Sexual harassment, apart from its sometimes devastating impact on its victims, remains a potent factor in hindering women from remaining in the workforce and advancing professionally.

Sexual Harassment

The complaints received by the Commission demonstrate that sexual harassment is a persistent and serious workplace issue, by no means limited to any one sector or employer. One complaint came from a woman employed by a bank who was harassed by a senior manager at an office outing, and later the same evening by telephone. After the incidents, the manager criticized the woman's work and threatened to fire her. When she filed a complaint, she was transferred to another location in a position that was not career oriented. She eventually resigned. The settlement that was reached in this case involved not only compensation to the woman, but also a commitment from the bank to increase its efforts to educate staff, through training sessions, about workplace sexual harassment.

In 1998, the Commission acted to address the issue of sexual harassment more effectively. Writing an anti-harassment policy can be a daunting task, particularly for small employers. Therefore, in cooperation with the Department of Human Resources Development and Status of Women Canada, the Commission prepared model anti-harassment policies for the

workplace. Two policies were developed: one for use by medium-sized and large employers, and one for small employers.

Employment

One-fifth of all complaints received by the Commission in 1998 involved allegations of discrimination on the basis of sex. A disproportionate number of these involved either women in non-traditional areas of employment, or women who suffered adverse consequences when their employers became aware that they were pregnant.

One complaint came from the sole woman on a list of workers provided by her union for a position on a fishing boat. All the workers ahead of her on the list and several after her were hired. When she asked why she had not been selected, she was told that the company could not permit women on board because the wives of the men would not like it. Another case involved a woman employed by a moving company who wished to be considered for a position in sales and was told that the company did not want a woman in that job. And in fact, only men were interviewed. The women in both of these cases received redress, including financial compensation.

Cases settled in 1998 also illustrate the problems faced by pregnant women in some workplaces. In one case, a woman employed by a transportation company informed her manager that she was pregnant. The manager then became critical of her work. Prior to that time, her performance reports and the manager's oral comments had been positive. Her employment was terminated a few weeks later. As a result of a conciliated settlement, the woman received compensation for lost wages and hurt feelings.

Discrimination is not restricted to entry-level positions. A book published in 1998 by Catalyst, a non-profit organization that has studied the advancement of women into senior corporate and professional positions in the United States and Canada, notes that "many companies have not yet placed the development of female capital high on their strategic priority lists." *Advancing Women in Business: The Catalyst Guide* describes best practices of corporate leaders. Practices that are common to successful action plans for the advancement of women include having committed senior managers in charge of change, establishing clear accountability, building internal support and awareness through education and communication, and creating benchmarks to gauge results.

One indicator of equality is a comparison between the percentage of women and men at various salary levels. The figures for employees working full time in the federal public service show that as of March 1998, half of the men (51 per cent), but three-quarters of the women (76 per cent) earned less than $45,000 per year. Put another way, one out of every two men earned more than $45,000 annually, as compared to one out of every four women.

The figures for more senior positions reveal a similar pattern. As of March 1998, 20 per cent of men working full time earned $60,000 or more, compared to only seven per cent of the women working full time. Employment equity data suggest that the situation is similar for women in the federally regulated private sector. The figures

indicate that there is a need for action such as that identified in the Catalyst report. Women's employment is further explored in the section on employment equity.

Integration of Women into the Canadian Forces

In February 1989, a human rights tribunal ordered the full integration of women into the Canadian Forces within ten years. Based in part on studies prepared by the Forces, the tribunal concluded that women's exclusion from combat-related occupations could not be justified on the grounds of operational effectiveness. Over the years, the Commission has endeavoured to ensure that the Forces took the necessary action for full integration to occur. It has had regular contact, in writing and face-to-face, with various Ministers of National Defence and the most senior ranks of the Canadian Forces. It has also assessed the Forces' progress, or lack thereof, in its annual reports.

Initially, there was only limited recognition by the Forces of the need to identify and eliminate systemic barriers. More recently, there have been positive initiatives such as the Army's targeted recruitment plan and the establishment of the Defence Diversity Council, whose mandate includes establishing the strategic framework for the integration of women into the Forces.

But there does not appear to have been a consistent and coordinated effort to ensure that women can both enter combat positions and be accepted in them. As a result, full integration was not in sight by the end of 1998, although February 20, 1999, was to mark the end of the ten years provided for in the tribunal's order. As of January 1, 1998, women accounted for 10.6 per cent of the regular members of the Canadian Forces. However, they still made up only 3.1 per cent of the effective strength of the monitored combat occupations. Only 790 of the 25,482 combat positions were filled by women. This is very little increase from 1989, when one per cent of the combat positions were filled by women. The numbers fluctuate by Command and between officers and non-commissioned members. The least progress, to date, has been made by the Army, which moved from women representing 0.8 per cent of the effective strength of combat occupations in 1989 to 1.6 per cent in 1998. The Navy made the most progress in increasing its proportion of women in combat occupations — from one per cent in 1989 to 5.5 per cent in 1998.

It is not clear whether women will ever be fully integrated unless the Canadian Forces take measures to identify and eliminate barriers to women entering and remaining in combat units, and report regularly on their progress.

Women in Prison

A report commissioned by the Correctional Service of Canada, *Human Rights and Corrections: A Strategic Model*, was released in 1998. Prepared by a working group chaired by a former Chief Commissioner of the CHRC, Maxwell Yalden, the report notes that the best argument for observing human rights rules is not merely that they are required by international convention or domestic laws, but that they actually work better than any known alternatives — for inmates, for staff and for society at large. By preserving

fundamental human rights principles within the institutional setting, the odds of eventually releasing a more responsible person are improved.

One of the key recommendations of the Yalden report involved the Office of the Correctional Investigator, which is responsible for investigating activities of the Correctional Service affecting the rights of inmates. This Office is in a unique position to assist in the resolution of individual and systemic problems, but is hampered by the lack of authority to ensure its recommendations are acted upon. The Commission supports the Yalden report's recommendation that, for the few cases in which the Correctional Investigator is unable to obtain a resolution compatible with the Correctional Service's human rights obligations, a process be established by which the matter can be submitted to adjudication through a tribunal or the courts.

The report also noted that while the Correctional Service has implemented many changes to ensure it continues to be responsive to the needs of female inmates, two outstanding issues remain. First, Aboriginal women are over-represented in federal correctional institutions. Moreover, two of every five Aboriginal women are classified as maximum-security inmates, which means that they are not eligible for residence in one of the new regional prison facilities for women. The second issue is the continued incarceration of maximum-security women inmates in prisons for men. The report noted that the "relatively isolated and abnormal conditions of their confinement cannot but have detrimental effects on the women concerned." The report concluded that finding alternative accommodation for these women should be a priority for the Correctional Service in order to meet its human rights obligations.

Independent monitors appointed to report annually for three years on the implementation of cross-gender staffing, which is the use of male correctional officers to guard women, released a report in 1998. The monitors highlighted the lack of a sexual harassment policy for inmates. They noted their concern because women make up the majority of the victims of sexual harassment and sexual assault, and men comprise the bulk of perpetrators. As the monitors stated, "it is important that there be a strong message to all staff that sexual harassment of inmates will not be tolerated, and the clearest way to do this is a separate policy statement." The Commission urges the Correctional Service to put an anti-harassment policy for inmates in place, and to implement it. Incarcerated women, as well as men, have a right to be detained in an environment that is safe from physical, sexual or other forms of abuse or harassment.

Complaints

In 1998, the Commission completed work on 319 complaints of discrimination on the basis of sex. Fifty-seven cases were resolved or settled. Forty-eight were referred to alternate redress mechanisms, such as a grievance procedure or an employer's internal complaints procedure. Six cases were referred to the Canadian Human Rights Tribunal for a hearing.

Sex Discrimination Complaint Outcomes for 1998	
Early resolution	6
Settled during investigation or at conciliation	51
Referred to alternate redress mechanisms	48
Referred to a tribunal	6
Not dealt with[1]	2
Dismissed for lack of evidence	27
No further proceedings[2]	21
Discontinued[3]	158
Total	319

[1] *Cases that the Commission decided not to pursue because they were filed more than one year after the alleged act of discrimination, or were, technically, without purpose.*

[2] *Cases in which the complainants withdrew or abandoned their complaints, the matters were outside the Commission's jurisdiction, or the complaints did not warrant referral to a tribunal.*

[3] *Cases that were closed prior to investigation because the complainants did not wish to pursue them or because a link could not be established between the alleged act and a prohibited ground of discrimination.*

Race, Religion and Ethnic Origin

While acts of violence fuelled by racial and ethnic hatred were rarely out of the news in 1998, most of them occurred outside Canada. Indeed, in a world in which incidents of this nature appear to be on the rise, Canadians can rightfully take pride in having created a society that views diversity as a positive characteristic of our national identity.

Unfortunately, racially motivated violence still takes place in our country, as the killing of a Sikh caretaker at a temple in British Columbia reminded us. We cannot afford to be complacent.

Most Canadians base their estimation of people on who they are, not where they come from or what religion they belong to. Yet the release of census data showing that most immigrants are from visible minority groups provoked considerable discussion in the media — not all of it positive.

Immigrants and Refugees

With the exception of Aboriginal people, we are a country composed of immigrants and their descendants. Every year, thousands of newcomers, including many refugees, come to Canada to begin new lives. They have prospered, but so too has Canada. We are richer because of the talents and skills they have brought with them, and it would be hard to imagine our country without their contributions. If we are to continue reaping this rich reward, our immigration and refugee policies must reflect the fundamental values of openness and accommodation.

It is in this context that the Commission reviewed *Building on a Strong Foundation for the 21st Century: New Directions for Immigration and Refugee Policy and Legislation*, a report released by the Minister of Citizenship and Immigration in January 1999.

The report gives welcome priority to family reunification. Several proposals are particularly positive, such as those to reduce the length of the sponsorship period for spouses and dependent children, and to promote the principle that adopted and biological children should have the same rights. Changing the definition of “spouse” to allow entry of same-sex and common-law partners would bring the regulations in line with current policy, court decisions, and human rights legislation.

The report mentions that the "excessive medical demands" provision will be researched further. This provision disqualifies anyone who might impose "excessive demands" on Canada's health system from entering this country. Applying this restriction to spouses and dependent children seems both mean-spirited and wrong. The Commission hopes the review will modify its impact on these groups.

The government's commitment to helping refugees reunite with their families more quickly is good news. The Commission hopes this means that refugees recognized by the Immigration and Refugee Board will no longer have to wait until they obtain landed status before they can bring immediate family members from overseas. It agrees with the United Nations High Commission for Refugees that efforts to reunite families should begin immediately after refugee status is recognized.

The government's commitment to helping refugees reunite with their families more quickly is good news

The Commission welcomes the proposal to reduce to three years the waiting period for undocumented refugees who have been recognized by the Immigration and Refugee Board. They must now wait five years before applying for landed status. Mechanisms for speedy family reunification should apply to them as well. Currently, these refugees, mainly from Somalia and Afghanistan, cannot even visit family members left behind because they cannot obtain travel documents. In December, the United Nations Committee on Economic, Social and Cultural Rights expressed its concern about the thousands of convention refugees who find themselves separated from family members for this reason. The government, in signing the United Nations Convention on Refugees, committed itself to "issue identity papers to any refugee ... who does not possess a valid travel document." Canadians expect their government to live up to its word.

In previous annual reports, the Commission expressed concern about the application of the Right of Landing Fee to refugees. Beginning life in Canada with a large debt load can make integration difficult for any newcomer. This is particularly true for refugees, who have often fled from traumatic human rights situations. Exempting refugees from payment of this fee, and from other expenses that serve to impede their speedy integration, would be in keeping with Canada's humanitarian tradition.

Canada has demonstrated its commitment to promoting refugee rights by going well beyond the letter of the law. We were, in fact, the first country to accept as refugees women who were fleeing persecution based on gender. It would be in keeping with this commitment to ensure that any amendments to legislation reflect this spirit of humane innovation *vis à vis* the protection of refugee rights.

Citizenship

In December, the Minister of Citizenship and Immigration tabled a new Citizenship of Canada Act, Bill C-63. The Bill proposes that permanent residents must live in Canada for three years during a five-year period before being granted citizenship. This seems a reasonable approach to assessing newcomers' commitments to Canada. The Commission is, however, concerned that no distinction has been made for refugees. Currently, many refugees wait five years after being recognized as convention refugees by the Immigration and Refugee Board before they can apply for permanent resident status. Subsequently, they may have to wait an additional three or more years before applying for citizenship. An additional concern is that the new Act would require candidates for citizenship to demonstrate their knowledge of Canada in English or French without the use of an interpreter. Given cutbacks to government-funded second-language programs, this may adversely affect the most vulnerable — elderly family-class immigrants and refugees.

Visible Minorities in the Public Service

It is now close to two years since the Commission released the study carried out by Dr. John Samuel, *Visible Minorities and the Public Service.* In February 1998, a forum on racial discrimination in the federal public service and in federal agencies in Canada looked at issues of systemic racism. A number of speakers expressed deep concern about the lack of progress in hiring members of visible minority groups. The latest data from the Treasury Board do little to reassure them. Rather, they suggest that the public service's record regarding the employment of visible minorities is worse than its record for the other designated groups. For 1997-98, the representation of visible minorities was 5.1 per cent, about half of what could be expected based on the number of people qualified and available for work. There were ample opportunities to remedy this situation, since more than 15,000 people were hired, but the number of visible minority candidates recruited was less than half of those qualified and available. Given the continuing difficulties that federal government departments seem to be experiencing in hiring and promoting visible minorities, it is hard to conclude that they have taken to heart the recommendations made by Dr. Samuel.

The representation of visible minorities was about half of what could be expected

Last year, the Commission reported on a human rights tribunal's decision regarding the case of the *National Capital Alliance on Race Relations* v. *Health Canada*. The department has already implemented most elements of the tribunal's order, demonstrating that, once committed to action, a federal agency can quickly achieve improved results.

The Federal Court has ordered a tribunal to reconsider the case of Dr. Shiv Chopra, an Indian-born scientist who joined Health Canada in 1969. Dr. Chopra alleges that he

was denied opportunities for promotion several times. In 1996, a tribunal found that management's conduct toward employees was insensitive and that the department did not have a clear approach toward career development. However, in the tribunal's opinion, this did not amount to discriminatory treatment under the Canadian Human Rights Act. On appeal, the Federal Court found the tribunal erred by refusing to admit statistical evidence on under-representation of visible minorities at Health Canada "to infer that discrimination probably occurred." The Court's direction that, even in an individual case, a tribunal should be prepared to look at broader patterns of discrimination within a workforce is important, and may make it easier to identify and eliminate discrimination in the workplace.

Hate Messages

According to the Simon Wiesenthal Centre, the number of hate sites on the Internet has increased from 50 to more than 800 in the past three years. How should Canadians deal with people who use the Internet in an attempt to stir up disdain and contempt for others because of their race, religion, ethnic origin or sexual orientation? The Commission is testing the extent to which existing legislation allows it to address this issue.

The fight against racism will be won, not in the courts, but in the hearts and actions of Canadians

Since 1997, a human rights tribunal has been looking into allegations that material posted on the Internet by Ernst Zundel could expose Jews to hatred or contempt on the basis of their race, religion and ethnic origin. In May, the Federal Court dismissed two motions filed by Mr. Zundel to stop the tribunal's hearings, which are continuing.

In February 1998, the Commission asked a human rights tribunal to look into a case dealing with alleged hate messages against Muslims. The Islamic Information and Da'wah Centre International of Toronto filed a complaint against Mark Harding and his organization, Christian Standard. It alleged that the respondent transmitted telephone messages that expose Muslims to hatred and contempt, contrary to section 13 of the Canadian Human Rights Act.

The Commission's Efforts

The fight against racism will be won, not in the courts, but in the hearts and actions of Canadians. Over the year, the Commission has worked with community organizations across the country to promote human rights values through education. For example, the Commission's Ontario Regional Office and the Ethno-Racial People with Disabilities Coalition of Ontario are working to produce a brochure on human rights. The Commission also participated in a range of activities related to the celebration of Black History Month across Canada. Participation was high in Ontario, where the regional office joined with the City of Toronto and the Bank of Montreal to present an art exhibit called "Promotion of the Dignity of a People through Art." In the

Atlantic Region, Commission staff worked actively with the Black History Month Association of Nova Scotia. The British Columbia and Yukon Office, working with the Immigrant and Visible Minority Women of B.C., presented workshops throughout the province on discrimination and harassment in the workplace.

Religion

At its September meeting, the Commission decided to ask a human rights tribunal to look into the complaint of *Balbir Singh Nijjar* v. *Canada 3000 Airlines.* Mr. Nijjar is a practising Sikh, who wears a kirpan — a small ceremonial dagger — in accordance with the tenets of his religion. In April 1996, the respondent refused to allow him to board an airplane unless he surrendered his kirpan, despite the fact that two other major airlines allow passengers to wear kirpans with blades under four inches in length, and that this practice does not contravene the guidelines of Transport Canada or the Air Transport Association of Canada.

Unless allowing a kirpan on board poses a real risk to the safety of other passengers or crew, the Commission is of the view that it should not be prohibited. Many objects commonly found on board aircraft can be used as weapons; the fact that kirpans can also be used in this way does not, in the Commission's opinion, justify a total ban. Worthy of note is that in the case of *Pandoori* v. *Peel Board of Education*, an Ontario Board of Inquiry found that no significant risk would be created by permitting Sikhs to wear their kirpans in schools.

Complaints

In 1998, the Commission completed work on 378 complaints of discrimination on the basis of race, religion and ethnic origin. Twenty-eight cases were resolved or settled.

Seventy-seven were referred to alternate redress mechanisms, such as a grievance procedure or an employer's internal complaints procedure. Five cases were referred to the Canadian Human Rights Tribunal for a hearing.

Race, Religion and Ethnic Origin Complaint Outcomes for 1998

	Race/ Colour	National/ Ethnic Origin	Religion	Total
Early resolution	4	5	2	11
Settled during investigation or at conciliation	13	4	0	17
Referred to alternate redress mechanisms	37	28	12	77
Referred to a tribunal	0	1	4	5
Not dealt with[1]	1	4	0	5
Dismissed for lack of evidence	34	22	4	60
No further proceedings[2]	14	5	6	25
Discontinued[3]	87	75	16	178
Total	190	144	44	378

[1] *Cases that the Commission decided not to pursue because they were filed more than one year after the alleged act of discrimination, or were, technically, without purpose.*

[2] *Cases in which the complainants withdrew or abandoned their complaints, the matters were outside the Commission's jurisdiction, or the complaints did not warrant referral to a tribunal.*

[3] *Cases that were closed prior to investigation because the complainants did not wish to pursue them or because a link could not be established between the alleged act and a prohibited ground of discrimination.*

Disability

In one of former Chief Justice Brian Dickson's last public statements before his untimely death, he commented on significant rulings made by the Supreme Court. While these rulings expanded the legal understanding of "accommodation," and made it clear that organizations had a duty to ensure that people with disabilities could truly enjoy equality, he noted that the legal standard was not necessarily being implemented where it was most needed. It seemed rather that organizations, through their inaction, were obliging people with disabilities to continually refight the same court battles. This, the Chief Justice felt, was wrong, suggesting that "when the Supreme Court of Canada has spoken, it should not have to repeat itself."

Amendments to the Canadian Human Rights Act in the summer of 1998 may mean that the Supreme Court's message will be heard. The amendments sent a clear message to employers and organizations: people with disabilities are full members of society. If accommodation is necessary for them to participate equally, it must be provided. While this newly legislated duty to accommodate affects other groups as well, such as religious minorities, it is most important for people with disabilities, whose accommodation is central to their full economic and social integration into mainstream society.

Accommodation is not a new concept. Existing case law makes it clear that accommodation, up to undue hardship, is a right and not a privilege. Nevertheless, the recently enacted amendments are important because they codify the requirements for accommodation and specify that undue hardship is to be measured against "health, safety and cost."

The courts will have to elaborate on this, no doubt, but it is by now well established that undue hardship means more than minimum financial strain. The Supreme Court has already ruled that the obligations of employers cannot be set aside simply because they have financial consequences. As the late Mr. Justice Sopinka observed, the very term "undue" implies that some hardship is acceptable.

Many of the complaints the Commission receives from people with disabilities relate directly to a failure to accommodate their needs. This addition to the Canadian Human Rights Act should make a difference for them.

To Legislate or Not: Will a Canadian Approach Lead to Results?

Disability rights advocates in Canada have long argued for legislation similar to the Americans with Disabilities Act of 1990. Such legislation, they suggest, would move beyond a complaints-driven system and address, in a more comprehensive way, the obstacles confronted by people with disabilities.

The Americans with Disabilities Act is a sweeping law that prohibits discrimination against people with disabilities in all aspects of public life. It requires the elimination of physical and communications barriers in employment, public services, businesses, transportation, and telecommunications. Although the Act is complaint driven, considerable success has been achieved in voluntary compliance. In the Act's first five years, for example, the Equal Employment Opportunities Commission resolved more than 80,000 complaints; only about 1,200 cases went to litigation.

Contributing to the Act's success is the requirement that several American departments at the federal level — including Justice, Transport and the Equal Employment Opportunities Commission — provide technical assistance to employers, service providers and people with disabilities. To meet this requirement, these agencies have been operating toll-free telephone lines, providing training, promoting public awareness, and developing and disseminating information. The goal is to avoid enforcement and litigation by contributing to a positive atmosphere that is conducive to social and economic integration.

In Canada, the report of the 1996 Federal Task Force on Disability Issues, *Equal Citizenship for Canadians with Disabilities: The Will to Act*, recommended that the government introduce a Canadians with Disabilities Act with enforcement and monitoring mechanisms. To date, the federal government has not taken this approach. Instead, with provincial and territorial governments, it has adopted many of the principles from the Task Force as the basis for a coordinated strategy. Quebec, although not a participant, already has an equivalent policy framework for people with disabilities and is moving ahead on several fronts.

On October 27, 1998, the government issued *In Unison*, described as a blueprint to promote the full participation of people with disabilities in all aspects of Canadian society. *In Unison* represents a significant consensus among the federal, provincial and territorial governments. Its focus on improving the efficiency, effectiveness and coordination of existing programs is sensible: people with disabilities are not well served by needless duplication and patchwork services. Also encouraging are early initiatives that would further develop an accountability framework through consultations with consumer groups. That is the good news.

A number of disability groups, however, have expressed their concern that *In Unison* represents a further devolution by the federal government of its responsibilities regarding the

rights of Canadians with disabilities. They are most concerned that the strategy fails to make any commitment to new funding for those who comprise one of the most disadvantaged groups in this country.

People with disabilities have also emphasized that a strategy with no legislative base remains vulnerable to changes in political will. They are concerned that the focus will shift from a rights-based approach to programs with diffuse lines of accountability and no national standards. Given past performance, the Commission agrees with the 1996 Task Force in its support for the enactment of appropriate legislation.

A strategy with no legislative base remains vulnerable to changes in political will

Respect for Humanity

People with disabilities have expressed concern that emerging biomedical technologies may pose a threat to their human rights. Prenatal diagnosis, for example, focuses on detecting disabilities rather than preventing or treating them. As noted by a panel on "Bioethics and Biotechnology: Building a Human Rights Framework," at Edmonton's conference on Universal Rights and Human Values, these technologies should serve people with disabilities, not devalue them. The Commission concurs with the panel's call for the active involvement of people with disabilities in the development of policies that guide the use of these technologies.

Accountability and the Need for Accurate Information

For years, people with disabilities have suffered unacceptably high levels of unemployment and poverty. Only 48 per cent of disabled Canadians between the ages of 15 and 64 have either full- or part-time jobs, compared to 73 per cent of Canadians without disabilities. Moreover, 54 per cent of people with disabilities have annual individual incomes of $15,000 or less. It is possible to say with confidence that this was true in 1991 because of the important research undertaken by Statistics Canada in its Health Activity Limitation Survey (HALS) of that year.

Unfortunately, no HALS survey was conducted in 1996, and no decision has yet been made to reinstate the survey in 2001. Unless a decision to do so is made soon, it is difficult to see how governments will develop, implement and monitor the progress of the *In Unison* initiatives. Up-to-date information is critical in ensuring that members of the public, employers, and policy makers understand the many obstacles facing people with disabilities.

Accessibility

Canadians with disabilities continue to confront physical barriers to equality every day. Inaccessibility is still the rule, not the exception. In the absence of nationwide legislation or standards, people promoting equality of access to transportation,

communications, banking or buildings must work within a frustrating patchwork of overlapping or inadequate regulations.

At this time, for example, there are no national standards for access to buildings. Building codes are a provincial responsibility, and not all provinces have adopted the Model National Code. As a result, accessibility standards vary from province to province, and people with disabilities can never be certain that they will not have to negotiate an obstacle course as they go about their business. The work of the Canadian Standards Association's Technical Committee on Barrier-Free Standards is important in this regard. Federal and provincial jurisdictions must make progress in ensuring better harmonization and achieving consistent standards across Canada.

Accessible transportation is also crucial. The Canadian Transportation Agency, working with transportation companies and consumers, is developing voluntary codes of practice for rail and air to ensure fully accessible services for people with disabilities. Transport Canada is doing likewise for intercity bus companies.

The phasing-in of the code for aircraft began in 1997, and in 1998 the Agency produced a guide, *Taking Charge of the Air Travel Experience*, for people with disabilities. The guide describes the situation of those who need attendant care, and mentions that some airlines offer a fifty-per-cent discount for the attendant's fare on domestic flights. But the underlying issue remains. It is unreasonable and discriminatory that a disabled traveller who needs an attendant must pay for two fares, even if one is reduced. The Commission reiterates its position — an attendant should fly free of charge — and encourages the industry and the Agency to make the service available.

The codes of practice for rail transport and intercity buses came into effect in 1998. The bus code includes a detailed complaint mechanism for passengers. Although compliance with the codes is voluntary, a sub-committee of the Minister of Transport's Advisory Committee on Accessible Transportation will monitor their implementation and report to the Minister's Accessibility Advisory Committee, which includes representatives from disability groups.

The Commission's 1997 Annual Report mentioned the formation of a committee to develop a national accessibility standard for automatic banking machines. The Canadian Standards Association, with the active support of the Canadian Bankers' Association, a wide range of other financial institutions, disability advocacy groups, and automatic banking machine manufacturers, will complete this standard in 1999. The standard should offer the widest range to date of accessibility features, including a frontal approach for wheelchair users and voice activation for people with visual impairments. The Commission supports the initiative and hopes that an appropriate standard will soon be approved.

In the autumn of 1998, the Canadian Radio-television and Telecommunications Commission, or CRTC, began a review that will consider, among other things, how

Canadian television can be made more accessible to people with disabilities. The Canadian Human Rights Commission, in a written brief to the CRTC, has argued that full captioning for deaf and hard of hearing people should be achieved quickly, since the amendments to the Canadian Human Rights Act that came into force in 1998 expressly require federally regulated employers to accommodate the needs of clients with disabilities, short of undue hardship. The Commission anticipates that the CRTC will accept this argument.

Employees with disabilities represent half the proportion of people with disabilities available for employment

Holding Employers Accountable

In no sector have employers fully met their commitments on increasing employment opportunities for people with disabilities. Indeed, employees with disabilities in federally regulated workplaces represent about *half* the proportion of people with disabilities available for employment. The chapter on employment equity provides further details on this issue.

This problem is partly explained by the fact that many employers, including the federal government, seem to prefer to fight a rearguard action against hiring or promoting people with disabilities.

For example, the Treasury Board of Canada has requested judicial review of the tribunal decision in *Green* v. *Public Service Commission, Treasury Board and Human Resources Development Canada,* rather than put into place the accommodation mechanisms ordered by the tribunal. Nancy Green, who has a learning disability, was denied a promotion because she failed a second-language aptitude test even though she finished first in a job competition. She alleged that the Treasury Board did not make an adequate effort to accommodate her. The testimony before the tribunal showed that she was capable of learning a second language. Not only did psychological and linguistic expert testimony confirm this, Ms. Green actually developed language skills through part-time language training on her own time. The tribunal ruled in favour of Ms. Green, and ordered that she be compensated financially and appointed to a position at the level she had been denied. In addition, the tribunal ordered the Treasury Board to work with the Commission to develop a training program on accommodating people with learning disabilities for employees of the Treasury Board, the Public Service Commission and Human Resources Development Canada. The employer's application for judicial review will mean further delay in implementing the training program.

When an employer agrees to a complaint settlement, the Commission is responsible for ensuring that it lives up to its promises. In December 1988, the Disabled People for Employment Equity Human Rights Group complained that the Bank of Montreal and Royal Bank of Canada were hiring far fewer people with disabilities than they were able to,

given the numbers qualified and available for work. In a settlement agreement, both banks committed themselves to undertake — over a five-year period — specific initiatives to improve the representation of people with disabilities in the workforce. Both banks also agreed to hiring goals. Not only were these goals rarely achieved, but the hiring rate for people with disabilities actually declined over time. These extremely disappointing results led to follow-up action by the Commission, which is recounted in more detail in the chapter on the Commission's human rights protection role.

Special Issues in Disability

AIDS: Some Progress

The federal government, recognizing the need for stable funding, has removed the time limit on its AIDS strategy. This positive development will allow for longer-term approaches. The strategy is also important in that human rights issues have been specifically targeted for action. For example, the strategy will focus on those most at risk of infection: injection drug users, women, Aboriginal people, prison inmates and young gay men. Partly because of this focus and partly because of its involvement in AIDS issues from the outset, the Commission has made suggestions on proposed priorities, activities and mechanisms to implement the human rights component of the strategy. This included a recommendation that the focus should be on the most vulnerable and marginalized people.

AIDS: the Reality

One of the most positive developments in human rights over the past decade is the confirmation in law that discrimination is illegal in employment and in services when it arises from a person's HIV or AIDS status. The upshot is that the Commission now receives very few complaints on this issue. But this does not mean that inequities do not exist. Studies and reports undertaken during the year by the Canadian AIDS Society and the Canadian HIV/AIDS Legal Network Joint Project on Legal Ethical Issues have highlighted several concerns. For example, some women have not been offered HIV testing or counselling by physicians, because of the perception that only men engage in high-risk activity. Consequently, symptoms of HIV disease in women may not be recognized early, resulting in delayed diagnosis and treatment.

The British Columbia Centre for Excellence on HIV/AIDS found that most drug users were not receiving anti-retroviral therapy because some physicians thought drug users would not follow the complex treatment regimes. Again, women fared worse than their male counterparts; they were only half as likely to receive treatment.

The Canadian HIV/AIDS Legal Network dealt with this issue in a paper presented to the twelfth World AIDS Conference in June:

> It is unjust and intellectually false to judge people as likely to be noncompliant with triple anti-retroviral therapy simply because they are drug users. Barriers to

> adherence to treatment cannot be reduced to the personal characteristics of people with HIV/AIDS, but are profoundly affected by systems of care. *When the health-care system is adapted to meet the needs of socially marginalized and indigent persons, there is a vast improvement in adherence to treatment.* [Emphasis added].

AIDS in Prisons

Two major reports, the 1994 Expert Committee on AIDS in Prisons (ECAP) Report and the 1996 Final Report on HIV/AIDS in Prisons, presented a comprehensive analysis of prison practices that result in a rate of HIV infection ten times that of the general population. The reports made extensive recommendations for harm reduction measures. The Correctional Service of Canada has stated that it has implemented a number of them to protect inmates from HIV infection.

However, the Canadian HIV/AIDS Legal Network continues to be concerned with the Correctional Service's refusal to implement certain important recommendations, as well as with the slow progress of those they have implemented.

Troubling to the Commission are delays associated with the implementation of a long-awaited pilot project that allows prisoners to be anonymously tested for HIV and AIDS. The Correctional Service first announced its support for a pilot project in a federal prison in March 1994, and repeated the announcement in December 1997. A year later, the pilot project finally began.

On other important measures, such as a needle exchange program, the Correctional Service has not budged. It is possible that the Correctional Service fears that if it introduced such changes it could be seen as condoning drug use. The fact is that the number of prisoners living with HIV and AIDS increases steadily, and risk behaviours, particularly the sharing of injection equipment, continue. Efforts must be made to change this situation.

Drug Testing

The legal landscape became better defined in 1998, as decisions came down in two major human rights drug testing cases, one provincial and the other federal. The good news, from a human rights and privacy perspective, is that the decision of the Federal Court of Appeal in *Canadian Civil Liberties Association* v. *Toronto-Dominion Bank* was not appealed. This was, however, not the case for the decision of the Ontario Court, General Division in *Entrop* v. *Imperial Oil*. The next level of hearing may bring clarity to this issue.

Case Law on Testing

In both cases mentioned above, the courts found drug testing to be discriminatory. Neither Imperial Oil nor the Toronto-Dominion Bank was able to establish a legitimate need for testing employees who held the positions in question.

In the Toronto-Dominion Bank case, a majority of the Federal Court of Appeal concluded that the Bank's policy requiring that all new and returning employees have their urine tested for illicit drugs within 48 hours of receiving a job offer was discriminatory, and that the Bank had not established that the policy was necessary. The evidence did not support the proposition that a drug problem existed within the banking community; there was no causal relationship between illegal drug use and banking crime; and if mandatory testing were truly necessary it should be required of all employees, and administered on a regular basis. Further, the court found that the conventional method of assessing job performance — observation — achieved the same objectives.

The decision of the Ontario Court General Division in *Entrop* v. *Imperial Oil* is useful for its discussion of drug testing in safety-sensitive positions. The court upheld the decision of an Ontario Board of Inquiry that Imperial Oil's drug testing policy was discriminatory. It also concurred with the Board's finding that freedom from impairment by drugs was a *bona fide* occupational requirement, since impairment would be dangerous to the operation of a high-risk business such as an oil refinery. That being said, the Board did not believe that drug testing was the appropriate means to ensure an impairment-free workplace. In so concluding, the Board took into account the testimony of Imperial Oil's own experts that a positive drug test could show only previous drug use and did not prove impairment. According to the court, the Board also considered "the recommendations of several Parliamentary committees that specifically rejected all but for-cause testing."

The court found no reason to interfere with the Board's conclusion concerning the discriminatory effects of testing and the employer's failure to show a direct connection between the testing and job performance. While the *Entrop* decision has been appealed, the rulings in both cases lend support to the principles that have guided the Commission's view to date on drug testing.

The Commission's view is based on the fact that actual or prior drug dependency is a disability under the Canadian Human Rights Act. Case law recognizes that *perceived* drug dependency can also form the basis of a complaint on the ground of disability. Drug testing can therefore be seen as *prima facie* discrimination. The more difficult question is, can it be justified? In most cases the answer seems to be no, because drug testing does not measure incapacity. In other words, there is no link between a positive test and job performance. At the same time, there are other less invasive and more effective methods to determine incapacity, such as observation by supervisors and co-workers.

Employees should not be under the influence of alcohol or drugs at work. Furthermore, where safety is an issue, observed evidence of impairment may justify a testing requirement. It is less clear what pre-employment or random testing programs contribute to a safe working environment, and, therefore, whether they can be legitimate. In the Commission's view, in order to justify such a program, an employer

would have to show that safety was a real consideration, that testing would contribute to maintaining safety on the job, that there were no other less discriminatory methods to achieve the same end, and that accommodation for drug-dependent employees was provided.

A Special Case

American law and regulations require that all commercial truck drivers operating in the United States be subject to drug testing. This can create practical difficulties for those segments of the Canadian transportation industry that have transborder operations, since it is unclear whether Canadian law would allow such testing regimes. The Commission has adopted the position that testing programs, to the extent that they are instituted to comply with American requirements, will remain permissible until Canadian law on testing is clearer. This partial exemption does not remove the requirement of the employer to accommodate an employee who tests positive, nor will it apply to company drivers who operate only in Canada.

Complaints

In 1998, the Commission completed work on 552 complaints of discrimination filed on the basis of disability. Sixty-five cases were resolved or settled. One hundred and eighteen were referred to alternate redress mechanisms, such as a grievance procedure or an employer's internal complaints procedure. Five cases were referred to the Canadian Human Rights Tribunal for a hearing.

Disability Complaint Outcomes for 1998	
Early resolution	13
Settled during investigation or at conciliation	52
Referred to alternate redress mechanisms	118
Referred to a tribunal	5
Not dealt with[1]	6
Dismissed for lack of evidence	49
No further proceedings[2]	42
Discontinued[3]	267
Total	552

[1] *Cases that the Commission decided not to pursue because they were filed more than one year after the alleged act of discrimination, or were, technically, without purpose.*

[2] *Cases in which the complainants withdrew or abandoned their complaints, the matters were outside the Commission's jurisdiction, or the complaints did not warrant referral to a tribunal.*

[3] *Cases that were closed prior to investigation because the complainants did not wish to pursue them or because a link could not be established between the alleged act and a prohibited ground of discrimination.*

Aboriginal Peoples

In 1998, a United Nations study named Canada as the best place in the world to live. This was the sixth consecutive year in which Canada topped the United Nations Human Development Index, a comprehensive measure of human well-being.

But a government study of status Indians, using the same United Nations index, found that living conditions for many Aboriginal people in Canada are more like those in the developing world than in the best place in the world to live. "Canada's squalid secret" is how one national newspaper described the study's findings.

The Human Development Index measures real gross domestic product per capita, educational attainment, and life expectancy, in order to calculate a global measure of quality of life. According to the Canadian study, carried out by the Department of Indian Affairs and Northern Development, the quality of life of registered Indians living on reserves would place them about 60th of the 170 countries studied by the United Nations. The situation is somewhat better for status Indians living off reserves.

The Department's study did not calculate scores for Métis, Inuit and non-status Indians, but there is no reason to believe that their quality of life is significantly higher than that of status Indians.

On a more encouraging note, the study did show that the gap between Aboriginal people and other Canadians has narrowed in recent years, at least for matters of health and education. These improvements are no doubt partly attributable to the determined efforts of Aboriginal communities, with the support of the federal government, to take control of these services. But the gap is still unacceptably large, and without significant effort will not soon diminish.

A Deafening Silence

"Deplorable" is how the Chief Economist of the Royal Bank of Canada, John McCallum, described the current economic status of Canada's first peoples in a June 1998 address to the Assembly of First Nations.
Mr. McCallum criticized what he called the "almost deafening" silence of the Canadian business community in responding to the Report of the Royal Commission on Aboriginal Peoples. He called the situation "a matter of

great national urgency," and urged business and government to work together to achieve the goals of the Royal Commission. The Canadian Human Rights Commission concurs.

A Short Fuse

The explosive growth of the Aboriginal population makes it essential that the issues identified by the Royal Commission not be ignored. According to the 1996 Census, the number of Aboriginal people in the prime working and family-rearing age group (aged 35 to 54) will increase 41 per cent by 2006. This remarkable rate of increase can only exacerbate the already desperate situation that Aboriginal people face regarding jobs, housing, education, and social services. For Aboriginal communities, the implications for cultural and social integrity are stark.

In a formal Statement of Reconciliation, the government expressed regret for the past treatment of Aboriginal people

Gathering Strength?

More than two years have passed since the Royal Commission tabled its ground-breaking report. At the beginning of 1998, the government finally responded through an action plan entitled *Gathering Strength*. Last year, when the Canadian Human Rights Commission first commented on it, the ink on the plan was hardly dry. It seemed there were grounds for cautious optimism that Canada was finally on the right road, and that the action plan constituted a positive — if somewhat modest — first step towards the comprehensive, long-term approach advocated by the Royal Commission.

A major weakness of the action plan is that it almost completely ignores the situation of the majority of Aboriginal people: those who do not live on reserves. For many years, Métis and non-status Indians have been the victims of "buck passing" between the federal and provincial governments, neither of which has been willing to address their special and pressing issues. In June, the federal government took steps to improve relations with the off-reserve community by signing a political accord with the Congress of Aboriginal Peoples. The accord commits the government to consult with the Congress on issues such as governance, housing, health and justice.

The federal government did more than simply announce an action plan, however. For the first time, in a formal Statement of Reconciliation accompanying the announcement, the government expressed regret for the past treatment of Aboriginal people, noting especially the sexual and physical abuse that occurred in the government-sponsored residential school system. To support the words with action, $350 million was committed to a "healing" strategy.

The strategy will be designed, managed and implemented by Aboriginal communities. The Aboriginal Healing Foundation, a non-profit corporation run by Aboriginal people, has been

established to oversee the implementation of the strategy and the distribution of funds to communities. Georges Erasmus, the former Co-Chair of the Royal Commission, was appointed as the Foundation's first Chair.

Compensation must still be resolved for the individual victims of the sexual and physical abuse for which the government has apologized. More than one thousand former students of residential schools are suing the federal government, and many others may have grounds for a claim. In several cases, the courts have already determined that the churches that ran the schools and the governments that funded them are liable for the pain and suffering inflicted upon the children. Victims have been awarded substantial monetary compensation.

The Nisga'a Final Treaty Agreement will become the first land claims settlement south of the 60th parallel since 1975

While a process is needed to ensure that claims are legitimate, it should not be necessary for every claimant to take the federal government to court. To do so would unnecessarily prolong the much-needed process of healing and reconciliation. The Commission was therefore pleased to hear that the federal government and the Assembly of First Nations were discussing alternatives to litigation. Adjudicating claims on a non-adversarial basis has been successful in cases of abuse in provincial child-detention institutions, and could bring about final resolution of individual cases of abuse.

Patience Rewarded

A key element of *Gathering Strength* was a commitment to accelerate the resolution of Aboriginal land claims. An important milestone was achieved when representatives of the Nisga'a Tribal Council, the federal government, and the government of British Columbia initialled the Nisga'a Final Treaty Agreement in August. The Agreement has now been ratified by the Nisga'a, and, once ratified by the two governments, will become the first treaty in British Columbia since 1899 and the first land claims settlement south of the 60th parallel since 1975.

Under the Agreement, the 5,500 members of the Nisga'a nation receive title to 1,930 square kilometres of land in the Nass Valley in northwestern British Columbia. Operating outside the restrictions hitherto imposed by the Indian Act, the Nisga'a will establish their own system of self-government. Their law-making powers will range from language, culture and marriages to transportation, sewers and environmental management. The Agreement also gives the Nisga'a a direct role in the management and exploitation of the rich fish, forest, wildlife and mineral resources located on their lands and within their traditional territories. They will also receive some $190 million in compensation.

Concerns have been raised that the new Nisga'a system of government will be "racist" and "undemocratic" because only Nisga'a may

vote for representatives to the central and village governments. In the Commission's view, these accusations are based on a misunderstanding. The Nisga'a people governed their own affairs within their territory long before European contact and have never renounced that right. This inherent right to self-government forms the basis of their claim, not their race.

It is important to note that the small number of non-Nisga'a living on treaty land will continue to enjoy the same rights they had before the Agreement was signed. Although they will not vote in elections for Nisga'a institutions, the final Agreement includes provisions to ensure that the property and rights of non-Nisga'a people are protected and preserved, and that they have a say in decisions that directly affect them. The Charter of Rights and Freedoms and federal and provincial laws of general application will continue to apply within Nisga'a territory, assuring the protection of the rights of all citizens.

The Unfinished Business of Bill C-31

In meetings with Aboriginal women, the Chief Commissioner has encountered concerns that some of their descendants may lose Indian status. The reasons for this are to be found in legislation enacted in 1985. Commonly known as Bill C-31, the legislation eliminated the provisions of the Indian Act that required women who married non-Indians to give up their Indian status. More than 100,000 people have subsequently been reinstated to the official rolls and many have been welcomed back into their communities. However, while Bill C-31 removed the most blatant forms of sexual discrimination from the Indian Act, it has also created a new form of unfairness.

In effect, women reinstated under Bill C-31 do not have the same ability to pass on Indian status to their descendants as their male relatives who were never deprived of status, even though they also had married non-Indian spouses. Accordingly, many of the descendants of women affected by Bill C-31 are or will be deprived of Indian status for no other reason than the discrimination suffered by their forebears. More than a decade after the passage of the legislation that ostensibly removed discrimination from the Indian Act, the situation persists.

It must be remembered that the pre-1985 provisions of the Act were in conflict with both the Charter and Canada's international human rights commitments. The latter provisions prompted the United Nations Committee on Human Rights to censure Canada formally. If the country is to avoid similar censure in the future, it must address these outstanding issues.

Progress Made and Issues Unresolved

Progress is being made on another issue, which was the subject of a Commission special report. In 1993, Professor Donald McRae called for urgent action to address long-standing grievances of the Innu people of Davis Inlet, Labrador. Of particular concern was their forced relocation to Davis Inlet in the 1960s, a move that Professor McRae found was motivated mainly by administrative convenience. The new settlement, isolated on

an island, prevented the Innu from pursuing their traditional way of life, encouraged dependence on government handouts, and led to serious social dysfunction. Professor McRae recommended that the federal government seriously consider relocating the community to a nearby site on the mainland where its members could build a more productive future.

The federal government has now committed $85 million to the construction of a new community at Little Sango Pond. Work on the village is well under way, and the move is scheduled for 2001. Although the relocation cannot solve all the social problems facing the Innu, they are now optimistic that a better future is possible.

Although the move cannot solve all the social problems facing the Innu, they are now optimistic that a better future is possible

Another issue concerning Aboriginal people in Newfoundland remains unresolved. Last year the Commission expressed optimism that grievances raised by the Mikmaq people of Newfoundland were nearing resolution. These grievances were the subject of a 1997 report prepared for the Commission by Professor Noel Lyon. The report concluded that the federal government had breached its constitutional obligations to the Mikmaq people since Newfoundland's entry into Confederation, by refusing to provide them with the programs and services available to Aboriginal peoples elsewhere in Canada. Since the Lyon report was forwarded to the Minister of Indian Affairs and Northern Development, meetings have been held between representatives of the Federation of Newfoundland Indians and the Department of Indian Affairs and Northern Development. But substantive progress has been slow in coming. During 1998, the Chief Commissioner met representatives of the Newfoundland Mikmaq in St. John's and wrote to the Minister to urge resolution of this longstanding grievance.

Commission Efforts

The Commission continued its outreach efforts with Aboriginal groups on human rights issues. An educational initiative in Alberta included *The Rights Path,* a booklet informing Aboriginal people of how to gain access to human rights services. The booklet was developed in partnership with the Alberta Human Rights and Citizenship Commission and the Aboriginal Human Rights Committee.

The Commission worked with the Legal Services Society of British Columbia, the B.C. Human Rights Commission, the Vernon Native Friendship Centre, and Kla-How-Ya Communications to produce a video called *Human Rights, My Rights.* Based on a booklet of the same name, the video informs Aboriginal people of the avenues open to them if they experience discrimination.

Commissioners met throughout the year with Aboriginal groups and organizations that, like the Commission, have an interest in protecting Aboriginal rights. In April, Commissioner Georges Cliche spoke on human rights to

Aboriginal young people at the Val d'Or Friendship Centre. The Prairie Regional Office participated with the Manitoba Human Rights Commission, the Manitoba Association of Rights and Liberties, and the Aboriginal Ganootamaage Justice Services of Winnipeg in an Aboriginal Community Rights Advocate Training Program, which provided classroom and on-the-job training for Aboriginal trainees. In April, the Commission's Regional Director for the Prairies spoke to the Swampy Cree Tribal Council on the responsibilities of Aboriginal employers. These partnerships and exchanges of information remain important components of the Commission's educational efforts.

Sexual Orientation

Substantial progress was made in 1998 to ensure that gay men and lesbians receive full rights under the law. In *Vriend* v. *Alberta*, the Supreme Court of Canada held that Alberta's Individual's Rights Protection Act violated the equality provision of the Canadian Charter of Rights and Freedoms because it did not include sexual orientation as a prohibited ground of discrimination. The court ordered the words "sexual orientation" to be read into the statute.

The April decision caused considerable controversy. The Supreme Court was criticized for dictating social policy and usurping the role of Parliament, and there were calls to invoke the "notwithstanding" clause of the Charter in order to override the court's ruling. But the majority of Canadians took a more positive view. Following the decision, an Angus Reid poll found that 75 per cent of Canadians support legislation to ban discrimination against homosexuals.

Vriend, however, is not the culmination of the movement towards full rights for gay people. "The *Vriend* decision," said the Commission's General Counsel, William F. Pentney, "tells us that governments cannot make disadvantaged groups strangers to our law." Speaking to the annual meeting of the Canadian Association of Statutory Human Rights Agencies, Mr. Pentney added: "Now that most of the hoopla with the reaction to this decision has died down, we can ask a simple question: what's next? In this sense *Vriend* represents the end of the beginning, and now people of good will in Alberta and elsewhere can get on with this task of moving towards tolerance, and beyond that to acceptance and dignity."

That kind of movement is already taking place, at least in part, in the legal arena. The Ontario Court of Appeal, in *Rosenberg* v. *Canada*, held that the definition of "spouse" in the Income Tax Act, as it applies to the registration of pension plans, was unconstitutional because it excluded same-sex survivor benefits from employer pension plans. The court ordered that the words "and same sex" be read into the section in its April decision. The government's decision not to appeal helped remove a major impediment for employers to provide same-sex survivor benefits.

In August, the Federal Court Trial Division upheld a human rights tribunal's order in *Moore and Akerstrom* v. *Treasury Board* that the employer's separate benefit regime for same-sex common-law spouses did not meet the

requirements of the Canadian Human Rights Act. The Treasury Board has yet to make provisions in the federal public service pension plan to give survivors of same-sex relationships similar treatment to that afforded survivors of heterosexual common-law relationships.

Similarly, while courts recognize that it is discriminatory to exclude same-sex spouses from legislative definitions of spouse, the government has yet to amend the other statutes at issue. As a consequence, the Commission is required to investigate, conciliate and litigate complaints concerning these laws. It is, for example, dealing with cases in which the same-sex partners of people relocated for job purposes were denied unemployment benefits. Given that the issue is well settled in law, the federal government's piecemeal approach to remedying this form of discrimination is regrettable.

The courts recognize that it is discriminatory to exclude same-sex spouses from legislative definitions of "spouse"

The matter is further complicated because some federal pension programs are not subject to the requirements of the Canadian Human Rights Act. For example, the Act exempts any pension plan established by an act of Parliament before March 1, 1978. This means, among other things, that people in same-sex common-law relationships — who are ineligible for Canada Pension Plan survivor benefits — cannot use the Canadian Human Rights Act to correct the situation. Unless the government acts of its own volition or awaits the results of a Charter challenge, an anomaly will be created between the responsibilities of private-sector employers and the federal government's public pension scheme. In light of the existing case law, it is difficult to understand how this continued discrimination can be justified.

Immigration

An independent review of the Immigration Act, *Not Just Numbers,* found that "the effective discrimination against homosexuals and lesbians in the current legislation should be relegated to history." It proposed instead that the Act's definition of spouse include "a partner in an intimate relationship including cohabitation of at least one year in duration." While current policy guidelines allow Canadians to sponsor their same-sex partners on humanitarian and compassionate grounds, the Commission agrees that an amendment to the law is needed.

Cross Canada Check-up

Shortly after the *Rosenberg* decision, the Nova Scotia government extended the pension plans of civil servants and teachers to cover same-sex survivor benefits. The British Columbia government introduced amendments to expand the definition of spouse to include same-sex partners in legislation governing pensions for public service employees and municipal workers. British Columbia also became the first jurisdiction in North America to give same-sex couples the same privileges and obligations as heterosexuals for child support,

custody and access. The Quebec government announced that it planned to change the Quebec Civil Code and 23 different laws to recognize both heterosexual and same-sex common-law couples. Employees in same-sex relationships would receive the same status as those in heterosexual common-law relationships. Prince Edward Island amended its Human Rights Act in June to include sexual orientation.

The legal situation for gay and lesbian people in Canada is changing, as inevitably it must. And while some will continue to resist these changes, most Canadians understand that sexual orientation is as irrelevant as race to someone's capacity to do a job or receive a service.

Complaints

In 1998, the Commission completed work on 80 complaints of discrimination on the basis of sexual orientation. Twenty-two cases were resolved or settled. Ten were referred to alternate redress mechanisms, such as a grievance procedure or an employer's internal complaints procedure. Six cases were referred to the Canadian Human Rights Tribunal for a hearing.

Sexual Orientation Complaint Outcomes for 1998	
Early resolution	7
Settled during investigation or at conciliation	15
Referred to alternate redress mechanisms	10
Referred to a tribunal	6
Not dealt with[1]	0
Dismissed for lack of evidence	0
No further proceedings[2]	11
Discontinued[3]	31
Total	80

[1] *Cases that the Commission decided not to pursue because they were filed more than one year after the alleged act of discrimination, or were, technically, without purpose.*

[2] *Cases in which the complainants withdrew or abandoned their complaints, the matters were outside the Commission's jurisdiction, or the complaints did not warrant referral to a tribunal.*

[3] *Cases that were closed prior to investigation because the complainants did not wish to pursue them or because a link could not be established between the alleged act and a prohibited ground of discrimination.*

Age

The world's population is aging rapidly, a phenomenon that has social, economic and political implications. With this in mind, the United Nations General Assembly has declared 1999 the International Year of Older Persons. The Year's objective is to increase awareness of the importance of older people and their role in society. The United Nations has also adopted a set of Principles for Older Persons that address the issues of independence, dignity, participation, care, and self-fulfilment.

Two of these principles deal with human rights. The first, independence, affirms the right of older people to determine when and at what pace they withdraw from the labour force. The second, dignity, calls for older people to be treated fairly, regardless of age, gender, racial or ethnic background, disability or other status, and to be valued independently of their economic contribution.

In this country, the theme adopted for the International Year of Older Persons is "Canada, a society for all ages." Its goal is to dispel myths about aging while highlighting the important and beneficial role that older people play in our society.

Canada's population of older people is among the fastest growing in the world. People aged 65 or older currently make up twelve per cent of the population. By 2041, they will account for an estimated 23 per cent. This demographic shift will have an impact on families and communities, and will alter the social, economic and cultural fabric of the country. It will also challenge Canadians to abandon stereotypes about the competence, commitment and ability of older workers.

Mandatory Retirement

In 1998, the Organization for Economic Co-operation and Development released *Maintaining Prosperity in an Aging Society*, a report examining the implications of aging populations for OECD countries. It commented on the significant challenges posed by aging trends; studies have shown that they usually result in fewer people in the paid labour force. The report noted that when employees are treated as if they all had exactly the same needs, important factors that may influence their willingness and ability to remain in the labour force are disregarded.

Similarly, *Flexible Retirement as an Alternative to 65 and Out*, a paper prepared for the

C.D. Howe Institute, suggests that it is time to rethink the traditional pattern of "celebrate your 65th birthday and you are out." It points out that the current emphasis is on early retirement, which is sensible only if it is voluntary and meets the preferences and needs of both employers and employees. The paper argues that the age of retirement is a matter for workers and their employers to determine. This would involve "flexibility for both early and postponed retirement to meet the increasingly heterogeneous needs of both employers and employees."

In line with this thinking, the Commission would like to see section 15(c) of the Canadian Human Rights Act removed. This section permits age discrimination in terminating a person's employment when he or she has reached "the normal age of retirement for employees working in positions similar to that individual."

Removing this provision is not a new idea. In 1988, the Parliamentary Standing Committee on Human Rights issued a report, *Human Rights and Aging in Canada*, in which mandatory retirement was described as a form of "institutionalized age discrimination." The Commission has long shared this view, for a variety of reasons. Workers who have experienced long periods of unemployment may not have sufficient money put aside, or pensionable time, to afford retirement. Similarly, older workers in positions with low wages and no pension plan may need to remain in the labour force. Mandatory retirement can also cause hardship to women who enter the labour force later in life or leave it for an extended period to care for their children.

The Commission believes that competence should be the sole criterion for determining whether employees remain in their jobs. The sex, race, colour or sexual orientation of workers should not be a factor in determining whether they remain employed. Neither should their age.

The Commission believes that competence should be the sole criterion for determining whether employees remain in their jobs

Employment Challenges

People at both ends of the age spectrum face employment challenges. For young people, finding a job in which they can use their academic training is difficult, and for some impossible. The problem of youth unemployment is neither new nor restricted to Canada, but this does not make it any more tolerable. The youth unemployment rate has been consistently much higher than the adult rate.

While both young and old face their own employment challenges, most age discrimination complaints received by the Commission come from older people. One case in 1998 involved a woman in her late fifties who responded to a staffing advertisement. She passed the selection test but was told the company was proceeding with other candidates. She alleged that she was told by one of the supervisors that the company did

not like to hire candidates older than fifty because they were more likely to be injured and collect Workers' Compensation benefits. An examination of the test results revealed that two people who had been offered positions were younger and had scored lower than the woman. The woman received financial compensation and an apology.

In 1998, a human rights tribunal ruled in another age discrimination case, *Singh* v. *Statistics Canada.* Surendar Singh, an employee of Statistics Canada, alleged that because he was in his forties, he was not included in the internal inventory for economists, even though he was qualified. The tribunal found that age was a factor in Statistics Canada's decision, and that it had "discriminated directly against Mr. Singh." The department was directed to staff Mr. Singh, at the first reasonable opportunity, into a position as a junior economist, the type of position he would have received had his name been included in the inventory. The agency was also ordered to pay Mr. Singh the difference between his actual salary and the salary he would have received had he been promoted. The case has been appealed.

Complaints

In 1998, the Commission completed work on 191 complaints of discrimination on the basis of age. Nine cases were resolved or settled. Eighteen were referred to alternate redress mechanisms, such as a grievance procedure or an employer's internal complaints procedure. No cases were referred to the Canadian Human Rights Tribunal for a hearing this year.

Age Discrimination Complaint Outcomes for 1998	
Early resolution	1
Settled during investigation or at conciliation	8
Referred to alternate redress mechanisms	18
Referred to a tribunal	0
Not dealt with[1]	10
Dismissed for lack of evidence	24
No further proceedings[2]	22
Discontinued[3]	108
Total	191

[1] *Cases that the Commission decided not to pursue because they were filed more than one year after the alleged act of discrimination, or were, technically, without purpose.*

[2] *Cases in which the complainants withdrew or abandoned their complaints, the matters were outside the Commission's jurisdiction, or the complaints did not warrant referral to a tribunal.*

[3] *Cases that were closed prior to investigation because the complainants did not wish to pursue them or because a link could not be established between the alleged act and a prohibited ground of discrimination.*

Employment Equity

A vigorous start and an energetic first year of active enforcement — that is what the Commission's new mandate under the 1996 Employment Equity Act required, and that is what the Commission believes it has delivered.

By the end of 1998, the Commission's Employment Equity Branch had surpassed its first-year objective of beginning 82 compliance audits. It had also established firm but cooperative relationships with most employers, and successfully negotiated undertakings to bring cases of non-compliance into line with the Act's requirements.

The Commission's experience with the new law has provided evidence that the legislative changes were necessary. Despite the fact that requirements under the original Employment Equity Act of 1986 were almost identical to those of the 1996 Act, an overwhelming majority of employers audited still had considerable work to do to achieve full compliance with the obligations established by Parliament. Furthermore, initial audits of federal departments and agencies, in which employment equity has been mandatory since 1983, suggest that the public service has not taken the leadership role that Canadians might have expected.

Profiling Employers

The Employment Equity Act, which came into force on October 24, 1996, established a compliance regime requiring federal employers to ensure that members of four designated groups — women, Aboriginal people, visible minorities and people with disabilities — constitute a fair share of their workforce.

At the end of December 1998, the Act covered 412 organizations employing 850,708 workers in the following sectors:

- 333 federally regulated private-sector organizations and Crown corporations with 100 or more employees; the sectors include banking, communications, transportation, and "other," (the "other" sector covers such diverse industries as grain companies, uranium mines, nuclear power operations, credit corporations and museums);
- 65 federal public service departments and agencies, regardless of size, for which the Treasury Board is the employer; and
- fourteen public-sector separate employers with 100 or more employees.

The Commission hopes to audit all employers within the first five years of its mandate. By December 31, 1998 — the end of the first audit year — it had begun a total of 110 audits, covering 82 employers from the private sector, 26 federal departments and agencies, and two separate federal organizations.

Table 1 gives an overview of all organizations and the number of employees covered by the Act, and those currently under audit.

Table 2 gives an overview of private-sector employers and employees by province and sub-sector, while Table 3 provides the same information for employers under audit at the end of this first year. Table 4 provides an overview of public service departments and agencies that are subject to the Act and those that are under audit, by employer size.

Table 1 shows the actual number of private-sector organizations covered by the Act. Tables 2 and 3 reflect both headquarters and regional or local offices where employees are located, so that the number of employers exceeds the actual number of organizations.

Table 1
Total Number of Employers and Employees by Sector
Subject to the Employment Equity Act and under Audit
As of December 31, 1998

Sector	Sub-Sector	Subject to the Act		Under Audit	
		Employers	*Employees*	*Employers*	*Employees*
Private Sector	*Banking*	19	170,434	5	8,852
	Communications	96	191,432	26	46,503
	Transportation	165	150,005	38	32,005
	*Other**	53	59,285	13	13,909
Federal Public Service		65	179,831	26	67,502
Separate Federal Agencies		14	99,721	2	609
Total		412	850,708	110	169,380

* *The "other" sub-sector includes such diverse industries as grain companies, uranium mines, nuclear power operations, credit corporations and museums.*

Table 2
Private-Sector Organizations and Employees Subject to the Employment Equity Act
By Province and Sector
As of December 31, 1998

	Sector									
	Banking		*Communications*		*Transportation*		*Other**		*Total*	
	Employers	*Employees*	*Employers*	*Employees*	*Employers*	*Employees*	*Employers*	*Employees*	*Employers*	*Employees*
Newfoundland	4	1,482	4	2,724	7	1,548	0	0	15	5,754
Prince Edward Island	3	333	2	484	4	298	0	0	9	1,115
Nova Scotia	5	5,117	7	5,371	13	3,427	3	1,968	28	15,883
New Brunswick	6	2,806	7	6,123	12	3,827	0	0	25	12,756
Quebec	13	30,578	34	42,255	41	26,706	10	2,238	98	101,777
Ontario	12	85,669	51	79,064	76	47,533	30	34,253	169	246,519
Manitoba	5	4,953	9	7,402	20	11,881	14	5,076	48	29,312
Saskatchewan	5	3,980	7	3,013	11	3,895	9	5,054	32	15,942
Alberta	7	13,627	18	17,072	36	19,403	12	5,239	73	55,341
British Columbia	9	20,182	21	22,900	33	22,679	12	2,323	75	68,084
Northwest Territories	1	74	2	340	6	727	0	0	9	1,141
Yukon	1	56	1	310	0	0	0	0	2	366
Residual**		1,577		4,374		8,081		3,134		17,166
Canada***	19	170,434	96	191,432	165	150,005	53	59,285	333	571,156

Note:

* *The "other" sub-sector includes such diverse industries as grain companies, uranium mines, nuclear power operations, credit corporations and museums.*

** *Employees for whom no detailed reports were filed since employers only have to report in those regions where they have at least 100 employees.*

*** *The number of employers reported by province and territory includes regional offices, which are not included in the "Canada" line.*

Table 3

Private-Sector Organizations and Employees under Audit by Province and Sector

As of December 31, 1998

	Sector									
	Banking		*Communications*		*Transportation*		*Other**		*Total*	
	Employers	*Employees*	*Employers*	*Employees*	*Employers*	*Employees*	*Employers*	*Employees*	*Employers*	*Employees*
Newfoundland	0	0	0	0	1	104	0	0	1	104
Prince Edward Island	0	0	0	0	0	0	0	0	0	0
Nova Scotia	0	0	2	286	3	574	3	1,968	8	2,828
New Brunswick	0	0	4	3,628	3	1,224	0	0	7	4,852
Quebec	4	2,736	11	7,088	10	3,130	3	637	28	13,591
Ontario	4	2,569	13	12,567	18	9,230	7	3,771	42	28,137
Manitoba	0	0	2	536	4	1,160	2	1,657	8	3,353
Saskatchewan	0	0	1	220	1	142	3	3,226	5	3,588
Alberta	1	370	7	9,330	8	4,234	3	916	19	14,850
British Columbia	2	2,824	6	11,917	7	8,397	4	932	19	24,070
Northwest Territories	0	0	0	0	1	247	0	0	1	247
Yukon	0	0	0	0	0	0	0	0	0	0
Residual**		353		931		3,563		802		5,649
Canada***	5	8,852	26	46,503	38	32,005	13	13,909	82	101,269

Note:

* *The "other" sub-sector includes such diverse industries as grain companies, uranium mines, nuclear power operations, credit corporations and museums.*

** *Employees for whom no detailed reports were filed since employers only have to report in those regions where they have at least 100 employees.*

*** *The number of employers reported by province and territory includes regional offices, which are not included in the "Canada" line.*

Table 4
Public-Sector Organizations under Audit by Employer Size

	Public Service *As of March 1998*				Separate Agencies *As of October 1998*			
	Subject to the Act		Under Audit		Subject to the Act		Under Audit	
	Employers	*Employees*	*Employers*	*Employees*	*Employers*	*Employees*	*Employers*	*Employees*
10,000 plus	5	102,856	2	33,175	2	84,710	0	0
2,000-9,999	15	64,318	7	26,774	4	11,756	0	0
1,000-1,999	2	2,443	1	1,233	0	0	0	0
500-999	8	5,272	6	4,120	2	1,500	0	0
100-499	18	4,345	10	2,200	6	1,755	2	609
less than 100	17	597	0	0	0	0	0	0
Total	65	179,831	26	67,502	14	99,721	2	609

Employers Are Cooperative

The overwhelming majority of employers audited, both public and private, have shown good will towards employment equity and a positive attitude towards the compliance process. Their staffs have worked diligently to meet the various requirements and deadlines. Most employers expressed that after some initial anxiety at being selected for an audit, they found the Commission's approach to be professional and reasonable.

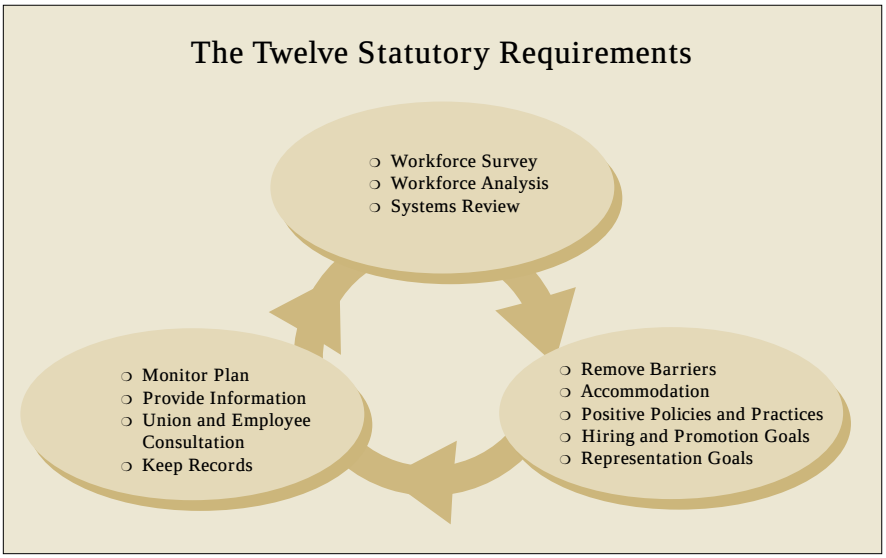
Although the new law is explicit in stating that consensus is the preferred approach, it also permits the Commission to issue directions and to request the establishment of an independent employment equity tribunal to decide contentious cases.

During the past year, the Commission had to issue only one direction to an employer that failed to cooperate, and the problem was resolved without the need for a tribunal. In seven other cases, the compliance officer was initially unsuccessful in negotiating undertakings, but the problems were subsequently resolved without the need for issuance of a direction.

The cooperation of employers so far is a welcome result. However, the real test will come with the follow-up audits and the degree to which employers fully meet their substantive obligations.

Year One: Challenges and Results

The Commission plans to audit each employer's compliance based on the Act's twelve statutory requirements, as illustrated below. All these steps are part of the establishment of a good employment equity program.



It is important to remember that the new Act retains the core employment equity obligations that have been in existence for some time, including:

- collecting data on the employment status of the four designated groups, reporting to Human Resources Development Canada annually, and analysing these data to identify areas of under-representation;
- reviewing all employment systems to identify any barriers that may contribute to under-representation; and
- implementing an action plan, including the removal of employment barriers, the implementation of positive measures, and the setting of hiring and promotion goals, all designed to ensure that reasonable progress is achieved towards full representation. It is on the achievement of such reasonable progress that organizations will be audited during a second audit cycle.

In addition, employers are required to consult with employee representatives and bargaining agents on the preparation, implementation and revision of an organization's employment equity plan; to monitor its progress; and to ensure that employees are informed on an ongoing basis of the steps taken by the organization to administer various aspects of its program.

The Act clarifies an employer's obligations to implement employment equity, and also makes clear what employers are *not* required to do. There is no obligation to create new positions, establish quotas, hire or promote unqualified employees, or implement initiatives that would cause undue hardship.

The Audit Process at a Glance

Within ninety days of an employer receiving notification, a compliance officer formally commences the audit by requesting documentation on the organization's employment equity program. Based on this

documentation, the officer prepares an initial assessment of the employer's progress in meeting statutory requirements. This is usually confirmed through an on-site visit. The visit commonly includes briefing sessions with senior officials responsible for employment equity in the organization, and interviews with management, unions, employee representatives and employees from designated groups.

If the employer is found not to be in compliance, an interim report is drafted indicating where undertakings are required. The report is sent to the employer, who is responsible for developing the required undertakings. Depending on the extent of work required, the employer is given up to one year to implement these undertakings. Once these have been negotiated, the final interim report is jointly signed by the chief executive officer and the compliance officer, and the audit is concluded. However, at the end of the specified period, a follow-up audit is conducted. If the employer is in full compliance at either the initial or follow-up stage, a final report is issued and the file is closed.

Status of Audits at Year End

Table 5 indicates that, as the year ended, a total of 77 audit reports had been issued. Only two employers were found to be in compliance, while 75 employers required a follow-up audit. Of these 75 audits, undertakings were successfully negotiated with 47 employers, and the report signed off by the chief executive officer or deputy head. The remaining 28 audits were in the process of negotiation and should be completed by the end of April 1999.

Reports for the remaining audits should be issued by the end of April 1999, at which time the negotiation of undertakings will have begun. In addition to 110 audits started in 1998, the first follow-up audits had already commenced by the end of the year.

Monitoring Progress Against Standards

The Commission has established service standards for compliance officers, and deadlines for employers to meet their obligations. The standards take many variables into account, and are based on knowledge gleaned during the first year. They are outlined in Table 6.

When the Commission was developing its audit program, it was hoped that an audit could be completed within four to six months. This initial forecast has proven optimistic, primarily because most employers were ill-prepared to meet the requirements of the new law, or indeed had very limited understanding of it. In practice, it took between nine and eleven months to complete most audits during the first audit year.

On one hand, the major part of the audit for which the compliance officer is responsible — from receipt of the survey questionnaire to submission of the draft interim report — has taken an average of four to six months. On the other hand, half of the employers took considerably longer than the 30 to 60 calendar days originally forecast to return satisfactory undertakings.

Table 5
Status of Audits: Major Steps Completed
As of December 31, 1998

Audit Steps	Private Sector	Public Service	Separate Agencies	Total
Audits Begun	82	26	2	110
On-Site Visits Completed	69	13	2	84
Reports Issued	64	11	2	77
Follow-Up Audits Required	63	10	2	75
Audits Concluded	39	9	1	49
Signed Undertakings	*38*	*8*	*1*	***47***
In Compliance	*1*	*1*	*nil*	***2***

In order to complete first-phase audits in a more timely manner, the Commission will continue to encourage employers to meet the original deadline of 30 to 60 days to return acceptable undertakings. A period for negotiation has been built into the standard that may be used if necessary, as well as a specified period for finalizing the report and obtaining signatures. In order to ensure a more efficient process, if a follow-up audit is required, the date is set at the time the report is first issued. This means that the period subsequently needed for the negotiation of undertakings does not affect this key date.

The Commission will continue to monitor its operational standards against the more complex set of activities that it must manage during the second year of its mandate, with the onset of both follow-up and new first-phase compliance audits.

The Majority Require a Follow-up Audit

During the first year of the Commission's mandate, compliance officers spent a considerable amount of time conducting comprehensive first-phase audits, regardless of an employer's degree of compliance. As indicated in Table 5, at year's end, 75 of the 77 employers were found to require a follow-up audit, under which their performance in fulfilling undertakings and achieving compliance with the Act would be assessed.

During the program's second year, the number of follow-up audits required will restrict the number of new first-phase audits the Commission will be able to begin. This will in turn necessitate some adjustments to the procedures used.

Although the Commission will modify the process for first-phase audits, the impact of any changes will be monitored to ensure that

Table 6
Standards Applying to the Conduct of Audits*
Time Indicated in Calendar Days

Activity	Compliance Officer	Employer
Complete and return survey questionnaire		30 days
Review survey questionnaire, complete initial assessment and conduct on-site visit	90 days	
Finalize analysis, write and submit draft interim report, or if in compliance, submit final report	49 days, 70 for both languages	
Approve report** and submit undertakings		30-60 days
Negotiate undertakings	30 days	
Finalize report and return to organization	7 days	
Obtain CEO or DM's signature and conclude audit		15-30 days
From Initiation to Completion	9 to 11 months***	

* *Compliance officers will start an audit within 90 days of an employer being officially notified.*
** *If employer is in compliance, the audit would be closed at this stage.*
*** *Depending on the size and complexity of the organization.*

results are not jeopardized, either in terms of employers achieving compliance, or the Commission's adherence to its overall audit cycle. The Commission will also assess whether there is a potential for focusing audits to improve their impact. This might include increasing the percentage of large employers audited in the early years, or targeting employers within industrial sectors whose levels of representation are significantly lower than those of similar organizations.

Projected Audit Workload for 1999

The Employment Equity Branch has 21 employees and an annual budget of $1.3 million. Compliance officers are expected to deal with eight to ten full audits per year, depending on the size and complexity of various organizations in their individual portfolios, while supervisors are expected to handle roughly half that number in addition to their management duties. The Branch is also supported by a Statistical Analysis Unit and a Program Development Unit.

Table 7 shows the audit workload for the first two audit years, 1998 and 1999. In 1999, the Employment Equity Branch will have 161 audits in progress. Of these, 61 will be carried over from 1998, and 100 audits are to be started, of which 75 will be follow-up audits.

The 161 audits in progress represent a large number of audits per compliance officer. However, of the 61 audits carried over from 1998, 28 were at the negotiation stage by year's end, representing limited additional work for the auditors. As noted earlier, the 75 follow-up audits that were necessary have served to limit the number of new audits that can be started in 1999. The 25 new audits projected will bring the total number of audits begun over the first two-year period to 135. If all 412 employers subject to the Act are to be audited within five years, the total number of audits should stand at roughly 165 by the end of the second year. It is hoped that this potential shortfall can be redressed as a result of certain initiatives:

- First, a streamlined approach will be introduced for first-phase audits of employers who are not in compliance. This should decrease the time required to conduct the initial phase of the audits.

- Secondly, it is hoped that as audits progress, employers will take steps to bring themselves into compliance before an audit is begun, leading, over time, to a substantial decline in the number of time-consuming follow-up audits.

- Thirdly, it is expected that the cycle of first-phase and follow-up audits will vary reciprocally from year to year. The high number of new audits begun in 1998 has led to a high number of follow-up audits to be conducted in 1999. Beginning fewer new audits in the second year means that the follow-up audit workload will be significantly reduced in the third year. This would permit staff to commence a larger number of new audits in the third year.

Table 7
Audit Workload for 1998 and 1999

	Total Audits Started 1998 and 1999	Audits Concluded 1998	Audits in Progress 1999
Audits started in 1998	110		
Employers committed to undertakings		47	
Employers found to be in compliance		2	
Audits carried over			61
Follow-up audits to be started			75
New audits to be started	25		25
Totals	135	49	161

Initial Assessment of Compliance

Only Two Employers in Compliance

As previously noted, only two employers were found to be in compliance with the law's twelve requirements by year's end. One employer, Status of Women Canada, was from the public sector, and the other, A.J. Bus Lines, was from the private sector. The latter, a Northern Ontario company of 124 employees, is to be congratulated for bringing itself — under the active direction of its president — into full compliance during the course of the audit. This is a good example of how commitment at the senior level gets things done. Status of Women Canada, a federal government agency with 210 employees, deserves recognition for being the sole employer audited to have achieved full representation of the four designated groups at all levels of the organization.

The Private Sector Has Much Work to Do

The considerable number of audits completed during the first year is providing the Commission with significant information on what work employers are doing, what is working well, and what steps could be taken to improve the initial level of compliance.

In revising and strengthening the Employment Equity Act, Parliament was responding to the limited and often uneven results attained under its original legislation. This pattern has not yet changed. Many employers did little more than submit their annual employment equity reports to Human Resources Development Canada, and develop harassment and equity policies that were too often buried in a desk drawer. As Table 8 demonstrates, *most* employers were not in compliance with *most* of the twelve statutory requirements.

As Table 8 shows, while twelve employers were found to be in compliance with the requirement to survey their workforce, only two employers had completed a satisfactory workforce analysis, and only one had completed an acceptable review of employment systems to identify barriers to the full employment of designated group members.

The First Steps Are the Key

Although it is still too early to indicate any type of trend, some audits completed in the last quarter of 1998 identified a number of employers that had increased their efforts to meet the first three steps in building an effective employment equity program: the workforce survey, the workforce analysis, and the employment systems review. These first steps remain the most challenging, and they are the most time-consuming to implement. But once in place, they ensure that barriers are identified and that efforts towards achieving representation are productive.

Once a workforce survey to determine designated group representation has been completed, the external representation or "labour force availability" data produced by Statistics Canada are key to determining whether the groups are adequately represented in an employer's workforce. By comparing *actual* with *expected* representation, an employer

Table 8
Compliance with the Twelve Statutory Requirements
Based on 64 Audits in the Private Sector

	In Full Compliance	Not in Compliance
1. Workforce Survey and Data System	12	52
2. Workforce Analysis	2	62
3. Employment Systems Review	1	63
4. Elimination of Barriers	1	63
5. Accommodation	5	59
6. Positive Policies and Practices	1	63
7. Hiring and Promotion Goals	1	63
8. Representation Goals	1	63
9. Monitoring and Revision of Plan	2	62
10. Provision of Information	11	53
11. Union and Employee Consultation	10	54
12. Maintaining Records	32	32

can identify gaps. Knowledge of these gaps, of any shortfalls in hirings and promotions, and of any over-representation of terminations, permits an effective employment systems review that will identify barriers.

To date, these key steps required by the Act appear to be little understood by employers. In fact, it was found that some employers had created employment equity plans with goals and timetables without having first carried out a workforce analysis or investigating the reasons for under-representation. Despite their considerable efforts, these employers are overlooking key steps toward constructing a plan that will lead to tangible results. An explanation of the key steps follows.

Workforce survey: As a first step, the Act requires employers to conduct a workforce survey to collect data on the representation of the designated groups. For an analysis of the data to be meaningful, there must be a sufficiently high return rate of the completed surveys, and there must be a system in place capable of identifying new employees and providing up-to-date information. In some cases, employers had not surveyed their employees during the last decade, while many employers whose surveys were found acceptable needed to revise their questionnaires to reflect changes in the Act.

Workforce analysis: Secondly, the Act requires that employers analyse their workforce data to determine the degree of under-representation of members of designated groups in each

occupational group. Analyses, when completed, have often been deficient. Recurring problems include using out-of-date workforce surveys and incorrect external representation data; limiting analysis to the overall organizational level without examining the various occupational groups; arriving at estimates that do not reflect the geographic area in which organizations can reasonably be expected to hire employees; or failing to review trends in hirings, promotions and terminations.

During audits, compliance officers take care to confirm that the methodology used by the employer is appropriate. This is crucial if employers are to achieve reasonable progress. Employers establish hiring goals based on a combination of factors. Gaps in representation, economic considerations, growth trends and anticipated changes in the workforce are all considered. However, comparing an employer's workforce with external representation is fundamental to setting the employer's short-term hiring goals.

Problems encountered during audits, together with the Commission's responses, are outlined below.

- One organization used as its target the overall national availability of women (45.9 per cent), although a sizable portion of this employer's workforce was pilots. The Commission's data showed that availability for women pilots was closer to 17 per cent. Had that employer continued using the overall target, there was no reasonable likelihood of ever reaching the goal. In cases like this, the Commission informs the employer of the appropriate data to use, so that goals are attainable and the employer is able to make reasonable progress towards achieving them.

- The reverse is also true. One organization, which recruits exclusively in Toronto, provided national estimates for its clerical workforce, expecting a relatively modest availability of visible minorities. The availability for visible minority clerical workers in Canada as a whole at that time was 9.4 per cent. In Toronto, however, the rate soared to 26.4 per cent. Again, it was incumbent upon the Commission to point out the shortcomings in the employer's workforce analysis and to request the necessary revision.

- When determining which data to use, any combination of factors can come into play, and many variations can occur. For example, one employer (whose workforce analysis was perfectly acceptable) used broad local estimates to establish the number of service workers the company should have. To determine the availability of professionals, however, more detailed national estimates were used. This type of combination represents a realistic approach to the issue.

- Where a workforce analysis has been conducted, the Commission expects employers to review statistics on hirings, terminations and promotions in order to identify the source of any under-representation. The analysis may show that while there were many hiring opportunities

during the preceding year, they were not used to attract members of designated groups. Conversely, the analysis may show that there were no opportunities at all. For example, one employer who showed a modest decline in overall representation of women in the technical group found that their recruitment considerably exceeded their availability. However, women had also left in disproportionately high numbers. This revealed a situation in which the systems review should be focused on retaining employees, rather than on recruitment or selection.

Employment systems review: Thirdly, the Act requires employers to assess all relevant employment systems and practices to identify why there is under-representation in a particular occupational group. An employment systems review is possibly the most complicated of the twelve statutory requirements. It is also the most powerful force for achieving corporate culture change. A good systems review requires in-depth knowledge of the organization's human resources operations, as well as a commitment of sufficient time and resources. It is neither a one-day exercise nor a paper review of written policies.

The main purpose of the employment systems review is to identify all barriers to full representation. By ensuring that only non-discriminatory systems, policies and practices are in use, a systems review provides the basis for an employment equity plan that will remove these barriers. Reviews should examine each occupational group in which an employer has identified under-representation. In the end, the acid test for a successful systems review is whether the organization can point to barriers or circumstances that reasonably explain the gap in equitable representation.

What are the most common problems encountered?

- Too many employers fail to understand and commit the time and resources necessary to conduct a productive systems review.

- Too many employers adopt a shopping list approach. They ask "do we do this?" rather than "what do we do and what are the impacts?" The latter question leads to a much broader examination of policies and practices.

- Too many employers ignore the importance of attitudes, corporate culture, stereotyping, cronyism, and other discriminatory barriers that may exist in the workforce but are difficult to deal with.

- Too many employers fail to consult their unions and employees to determine how policies that may appear fair on the surface are really put into practice, and to seek feedback on the process.

Few employers that have been audited have applied the kind of systematic approach required to identify all the key barriers and to provide the basis for a solid employment equity plan. Until this is done, and done well, employers cannot be found in compliance with this most critical of requirements.

The Public Service: More Is Needed

As it manages its responsibilities, the Commission maintains liaison on broad policy issues with the Treasury Board, as the employer of the federal public sector, and keeps the Board informed of individual findings. However, individual departments bear primary responsibility for fulfilling their obligations under the Act, and the Commission will not mediate between the Board and departments where undertakings are sought, difficulties occur, or directions must be issued. In conducting audits, the Commission must have confidence that departments and agencies understand the problems in their organization, undertake a meaningful workforce analysis and employment systems review, eliminate barriers where necessary, and set realistic goals to achieve a representative workforce.

What are the most common problems?

Especially disturbing has been an apparent lack of practical commitment at the senior levels in many departments. Coupled with this lack of support, or perhaps because of it, departments have not consistently dedicated the necessary resources to employment equity. There continues to be a large turnover of staff possessing the expertise needed to make employment equity a reality.

Too many public service departments fail to acknowledge their own responsibilities, pointing instead to barriers that result from Treasury Board or Public Service Commission guidelines. While central agency guidelines may explain why certain barriers are in place, they cannot justify their existence. In these cases, it is incumbent on the department to rectify the situation in concert with the central agency involved.

As Table 9 demonstrates, much work remains to be done if the federal public service is to achieve compliance with the requirements of the Employment Equity Act.

Some Signs of Real Commitment

The Treasury Board has taken an active role in educating public service departments about their employment equity responsibilities. Together with the Public Service Commission, it has recently made advances in several important areas. First, both the Board and the Public Service Commission are exploring the possibility of introducing a new, more effective employment equity data system. Secondly, the Board recently freed up individual departments to assume greater responsibility for setting their own goals. Thirdly, the Board now requires departments to report to it on progress made in fulfilling the requirements of the undertakings signed as a result of audits. Finally, the Public Service Commission recently introduced a computerized forecasting tool that provides departments with clear benchmarks for the achievement of a representative workforce within a reasonable time frame.

When the Commission decided to select additional employers for audits during the first year, it obtained the Treasury Board's agreement that these should focus on the public service. The objective was to raise the

Table 9
Compliance with the Twelve Statutory Requirements
Based on 13 Audits in the Public Sector as Indicated in Table 5

	In Full Compliance	Not in Compliance
1. Workforce Survey and Data System	3	10
2. Workforce Analysis	3	10
3. Employment Systems Review	3	10
4. Elimination of Barriers	3	10
5. Accommodation	5	8
6. Positive Policies and Practices	2	11
7. Hiring and Promotion Goals	2	11
8. Representation Goals	4	9
9. Monitoring of Plan	7	6
10. Provision of Information	6	7
11. Union and Employee Consultation	4	9
12. Maintaining Records	12	1

level of consciousness in the federal public service and highlight the importance of taking swift action. The number of government departments under audit more than doubled from the original 11 to 28.

There are early signs that these concerted efforts are starting to reap rewards. It was especially heartening to hear, as 1998 drew to a close, that the Privy Council Office had made employment equity a key priority for deputy ministers during 1999. Additionally, at a joint presentation to the Committee of Senior Officials in December, the President of the Public Service Commission and the Secretary of the Treasury Board called on deputy heads to demonstrate leadership, and indicated that accountability for employment equity success would be an important part of their performance assessment.

It is hoped that this trend will continue and set the pace for more rapid progress in the federal public service.

Waiting for an Order in Council

Less encouraging was the continued failure to bring the Canadian Forces and the Royal Canadian Mounted Police under the Act's jurisdiction. The Commission was informed on several occasions that discussions were under way. By the end of the year, however, the government appeared no closer to issuing the necessary Orders in Council. The Commission hopes that the government will act on this matter in the near future.

That said, the Commission has been monitoring progress in the RCMP based on an agreement arising from a joint voluntary employment equity review completed in 1995. Supported by a firm commitment from senior management to ensure improved equity, the RCMP has initiated significant measures and made good progress, including achieving most of the hiring and promotion goals established for regular members.

In particular, during the last three years for which the Commission has received data (1995 to 1997), women have received more than 30 per cent of appointments and Aboriginal people have averaged more than nine per cent. While recruitment goals for members of visible minority groups have not always been met, the level of appointments has been higher than labour force availability.

Latest Reports Continue to Show Uneven Progress

Eleven Years Later ...

This is the eleventh year that private-sector employers have filed annual employment equity reports with Human Resources Development Canada, including detailed data on the representation, hiring, promotion and termination of designated group employees. The latest data covering the private sector are those for December 31, 1997. Some 330 employers in banking, communications, transportation and "other" sectors filed data on their combined workforce of about 570,000 employees. The "other" sector includes such diverse employers as grain companies, uranium mines, nuclear power operations, credit corporations and museums.

In addition, the Treasury Board reported on employment equity in 65 federal departments and agencies, with a combined workforce of about 180,000 employees. The latest data covering the public service are those for March 31, 1998.

The total workforce employed by private employers increased only marginally from the previous year. However, as some 65,000 positions were filled — about 10,000 more than the previous year — ample opportunities existed to hire members of the four designated groups. It appears, however, that many employers made only limited use of these opportunities to improve representation. As in previous years, some designated groups fared better than others, and progress varied by industrial sector.

Although the public service decreased by about 3.5 per cent from the previous year, some 15,000 job openings were filled, of which almost 3,000 were for permanent positions. As was the case in the private sector, some of the opportunities were used to hire members of designated groups, but often at rates well below their availability in the Canadian workforce.

In evaluating the latest data, five points should be kept in mind.

- First, the 1996 Census data on the workforce availability of women, visible minorities and Aboriginal people are now ready. The following sections will therefore compare workforce data for 1996 and 1997 in both the private and public sectors, making use of the availability data from the 1996 Census for these three designated groups. The accompanying graphs also compare the progress of the four designated groups for the eleven-year period from 1987 to 1997.

- Secondly, the availability estimates for people with disabilities are from the 1991 Health and Activity Limitation Survey (HALS). Unfortunately, new availability estimates for people with disabilities were not compiled in 1996. Statistics Canada, in cooperation with departments and agencies with employment equity responsibilities, attempted to obtain approval to conduct a third HALS survey in 1996, in order to update earlier data. When the proposed survey was cancelled, Statistics Canada, working with the same stakeholders in employment equity, tried nevertheless to estimate the number of people with disabilities at the time of the 1996 Census. However, after reviewing the results, it was decided simply to continue using the data produced by the 1991 HALS survey. The Commission believes that the failure to conduct a 1996 HALS survey was a mistake, and a similar omission when the Census for 2001 is undertaken would do a serious disservice to people with disabilities in this country.

- Thirdly, changes have been made to the reporting of occupations in the private sector. For the first ten years, employers reported their workforces by twelve occupational groups. Now they report by fourteen groups. Since most of these groups have been substantially reorganized, it is difficult to compare occupations over time. This report will therefore focus on broader trends.

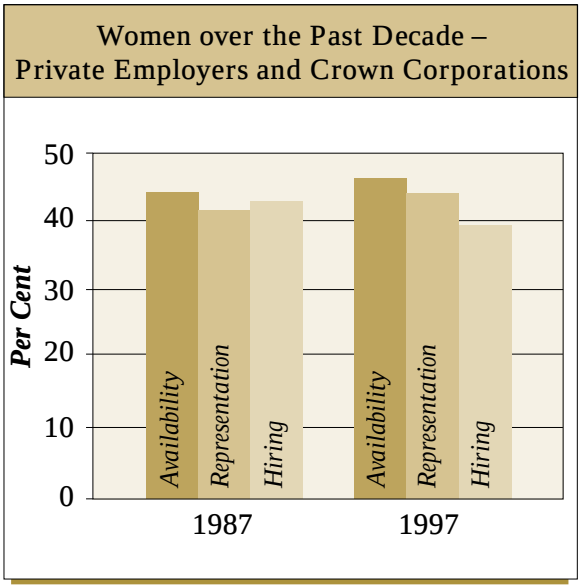
- Fourthly, as this Annual Report was going to press, the Treasury Board had just published its availability estimates for the four designated groups, based on the 1996 Census. The Commission is currently reviewing these data, as some differ significantly from the benchmarks used in the private sector, also developed from Census data. For the purposes of this Report, therefore, the Commission will use the same availability data as those for the private sector.

- Finally, the *shares* of hirings or terminations in the following summaries refer to the percentage of people hired or terminated who were members of a designated group. Normally, if there were no employment barriers, a designated group would receive the same share of hirings as its availability in the Canadian workforce. For terminations, however, the group's share should correspond to its existing representation within the organization.

Women

In the private sector: The representation of women increased from approximately 41 per cent in 1987 to 44.6 per cent in 1997. This is close to their 46.4 per cent availability. However, representation declined from the last reporting year, when it stood at 44.8 per cent. In addition, women's share of hirings decreased marginally from 39.8 per cent in 1996 to 39.2 per cent in 1997.

Representation ranged from a low of 23.3 per cent in transportation to a high of 73.6 per cent in banking. In the latter sector, women's share of hirings has decreased significantly, from 76.4 per cent in 1987 to 61.3 per cent in 1996 and 57.4 per cent in 1997. While women have made steady inroads into management and the professional group in the banks, their share of clerical work has decreased dramatically. Since this remains the largest occupational group in the banks, the decrease in the employment of women during the eleven-year period has been substantial.

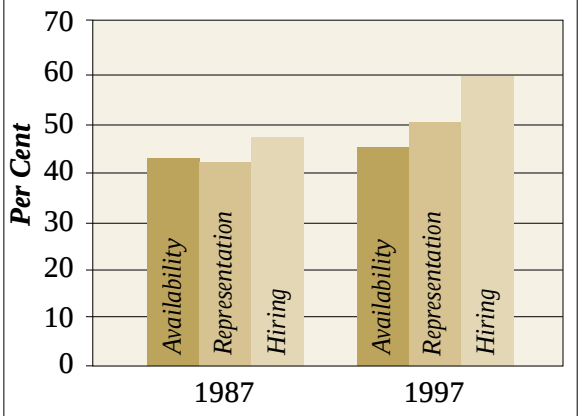


Of note is the increased representation of women in the transportation sector, rising from 17 per cent in 1987, to 21.8 per cent in 1996, and 23.3 per cent in 1997. The main reason for this increase is women's greater share of hirings, from 21.8 per cent in 1987 to 25.8 per cent in 1996 and 27.7 per cent in 1997. As reported last year, women also made inroads in all sectors of non-traditional occupations. But progress has been slow, and in most cases their share of hirings was below expectations.

In the public sector: As of March 31, 1998, women's representation in the federal public service stood at 50.5 per cent, compared to about 42 per cent in 1987; this number has grown one percentage point since 1996. Representation was in line with women's 46.4 per cent availability. As was the case in the previous year, women's share of hirings was high, at 59.9 per cent. However, whereas about 27 per cent of all men hired obtained permanent positions, this was the case for only 13 per cent of all women. In other words, a significantly larger proportion of women than men were hired into less-secure temporary positions in the public service.

As of March 31, 1998, the representation of women in the Executive group stood at 25.1 per cent, up slightly from the year before. Although this increase is encouraging, there remains a large pool of qualified women in the feeder groups, so that more rapid progress is expected in the future. In addition, women's

Women over the Past Decade – Federal Public Service



representation increased only marginally in every occupational category, with the exception of the Administrative Support category, where it remained at 84 per cent.

In line with figures reported by the Commission in 1997 for organizations with 200 or more employees, women's representation was highest in the civilian component of the Royal Canadian Mounted Police, at 82 per cent, and the lowest in the Department of Fisheries and Oceans, at 25.7 per cent.

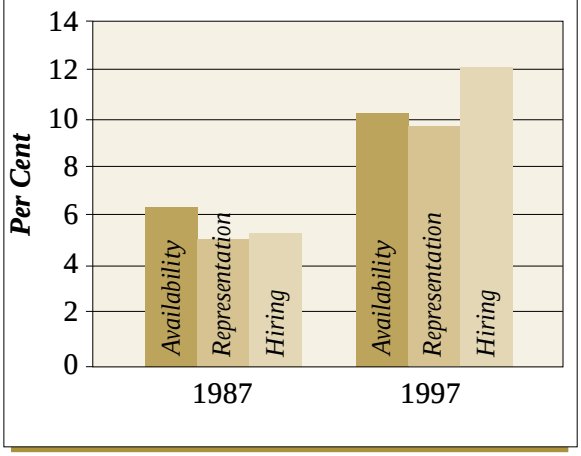
Members of Visible Minority Groups

In the private sector: Representation of members of visible minority groups has increased substantially during the eleven years that the Act has been in force. At the end of 1997, it reached 9.7 per cent, up from 9.2 per cent the year before, and almost double that of 1987. However, it remains short of the 10.3 per cent availability rate set in the 1996 Census.

Overall, visible minorities' share of hirings in the private sector has more than doubled since 1987 to 12.1 per cent in 1997, up from 10.4 per cent the previous year and slightly higher than their share of the Canadian labour force.

As pointed out in earlier reports, there is considerable variation in this group's representation by sector. In banking, they constitute 15 per cent of the workforce, up from 14.1 per cent the year before and 9.4 per cent in 1987. In communications, representation increased marginally from the year before, to 8.9 per cent. This is below availability but more than double the representation in 1987. In both sectors the main reason for the good performance is that the share of hirings has exceeded the overall availability of this group. Progress was also made in the "other" sector, where the representation reached 8.1 per cent, a major increase from 2.6 per cent in 1987, and further progress since the last reporting year, when it was 7.7 per cent. Again, a large share of hirings was largely responsible. Although progress has

Visible Minorities over the Past Decade – Private Employers and Crown Corporations



been slower in the transportation sector, and much work remains to be done, visible minorities' share of employment has increased from 4.8 per cent in the last reporting year to 5.3 per cent in 1998. Their share of hirings, although improved, remained below availability in this sector.

These positive developments should not be interpreted as a sign that employment equity goals for visible minorities have been fully achieved. Visible minorities often remain employed in a limited number of occupational groups. In addition, Commission audits have shown that the private-sector workforce is by no means free of barriers. The data do nonetheless indicate that solid progress has been made for this group in the private sector.

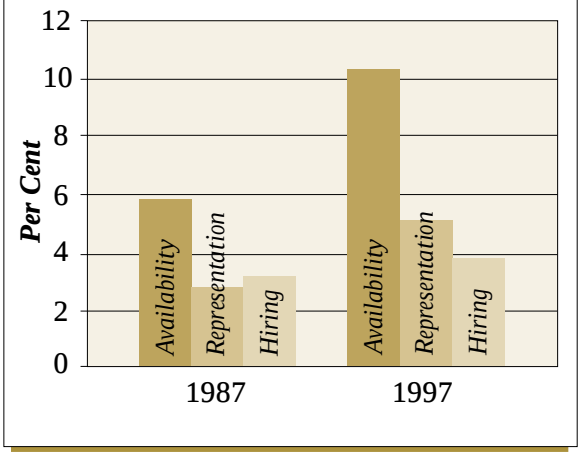
In the public sector: The overall employment status of members of visible minority groups in the public service is poor compared to that in the private sector. Although the data suggest that the representation of visible minorities in the public sector increased, from 4.7 per cent in 1997 to 5.1 per cent by March 31, 1998 — up from less than 3 per cent in 1987 — the increase is almost entirely due to more frequent self-identification of those already in the public service. For example, as of March 31, 1998, there were 8,049 members of visible minority groups in indeterminate positions, 395 more than the previous year. However, during the 1997-98 fiscal year, only 184 visible minorities were hired into these positions while 685 lost employment, for a net loss of 501 positions rather than a gain of 395.

Furthermore, departments did not, in general, take the opportunity to hire members of this group when it was possible to do so. The latest Census benchmark suggests that if there were no employment barriers in place, around 10.3 per cent of all new recruits into the public service should be visible minorities. However, in fiscal year 1997-98, only 3.9 per cent belonged to this group. Not only was their share of indeterminate hiring, at 6.5 per cent, well below the Census benchmark, they were also largely overlooked when more than 12,000 temporary positions of three months or more were staffed, as their share of these new positions was only 3.4 per cent.

The shares of hirings for visible minorities were low in each occupational category. It is also worthy of note that no member of a visible minority group was included among the 28 people who joined the public service as members of the Executive group last year.

Only two of the 42 federal organizations with 200 or more employees met or were close to the

Visible Minorities over the Past Decade – Federal Public Service



Census benchmark, namely the Department of Citizenship and Immigration and the Immigration and Refugee Board. Twenty-five organizations had less than half the 10.3 per cent Census availability.

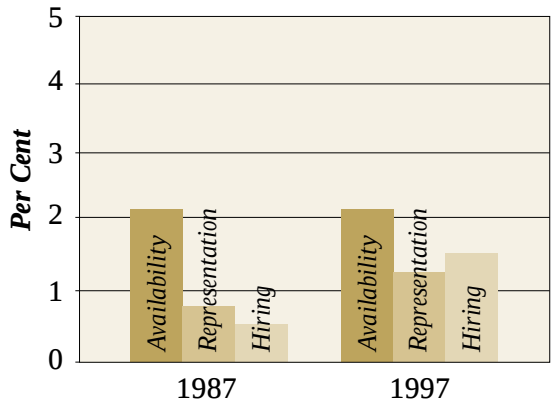
The Commission has commented in the past on the poor position of visible minorities in the public service. It is disappointing that there appears to be such limited progress, after the notable human rights tribunal decision upholding a complaint brought by the National Capital Alliance on Race Relations against Health Canada, and after a number of studies have documented the problems facing this group.

Aboriginal People

In the private sector: As the Commission has pointed out in successive annual reports, Aboriginal people have yet to benefit significantly from their inclusion in the Employment Equity Act. Their representation increased from 0.7 per cent in 1987 to 1.3 per cent in 1997, almost unchanged from the year before and well below the 2.1 per cent Census availability. Of concern is that Aboriginal people's share of hirings slipped to 1.5 per cent, a further decline from the previous year's 1.7 per cent. As in previous years, they also experienced disproportionately high termination rates in all sectors.

As of December 1997, the representation of Aboriginal people was as follows: banking, 1.3 per cent; communications, 1.1 per cent; transportation, 1.2 per cent; and the "other" sector, 2.1 per cent. Only in the "other" sector were Aboriginal people employed in line with availability, at least at the national level, which resulted from a fair share of hirings during the last five years.

Aboriginal People over the Past Decade – Private Employers and Crown Corporations

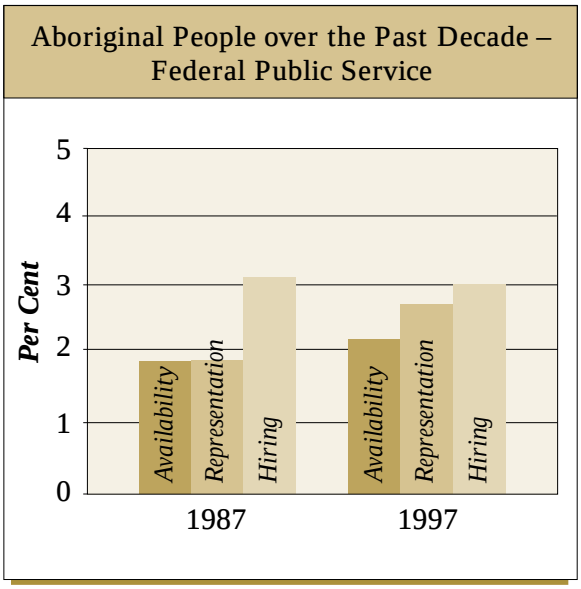


In banking, the share of hirings of Aboriginal people — which improved midway this decade — dropped to 0.9 per cent, a low not seen since the late 1980s. In communications, the share of hirings dropped to 0.8 per cent from 1.2 per cent in the previous year.

The data suggest that many employers are not giving Aboriginal people a fair opportunity. Audits will require these employers to explain why this group's representation has remained unacceptably low, and why hiring opportunities were not taken. In addition, employers will have to clarify which employment barriers are responsible for the under-representation of this group, and will be asked to present an acceptable plan to dismantle these barriers within a reasonable time frame.

In the public sector: Aboriginal people have fared better in the public service than in the private sector. Their representation increased from 1.8 per cent in 1987 to 2.7 per cent as of March 31, 1998, up from 2.4 per cent the previous year. This was in line with the 2.1 per cent benchmark from the 1996 Census. However, this overall figure masks dramatic variations within the government sphere. As pointed out in previous annual reports, many Aboriginal people work in the Department of Indian Affairs and Northern Development, where approximately 26 per cent of all employees are Aboriginal people. This one department accounts for 17 per cent of all Aboriginal employees in the federal public service. Within the federal public service, 55 per cent of organizations employing 200 or more employees do not meet the Census benchmark.

Looking at the federal public service as a whole, it appears that Aboriginal people received a fair share of hirings in all occupational categories and in both permanent and temporary employment. However, these rather encouraging numbers continue to reflect a disproportionately high number of staffing actions in the Department of Indian Affairs and Northern Development.



The Commission will pay close attention to the audits of departments and agencies to ensure these organizations have removed barriers to the employment of Aboriginal people. In cases where appropriate steps have not been taken, the organization will be asked to undertake further work to ensure adequate plans are in place. This could include reviewing whether qualified Aboriginal people have access to employment in all occupational categories, or whether they are being mainly streamed into Aboriginal programs.

People with Disabilities

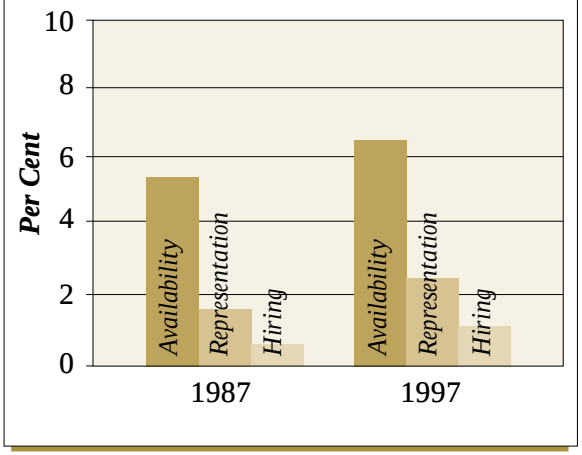
In the private sector: The already difficult situation confronted by people with disabilities has, in statistical terms, deteriorated. In 1996, their representation in the workplace was a low 2.7 per cent — compared to 6.5 per cent availability — which, by the end of 1997, had declined to 2.3 per cent. Part of this reduction may be attributable to the fact that some organizations previously used broader definitions of disability than allowed under the Act. Nonetheless, the share of hirings of people with disabilities, which never reached availability during the eleven-year period, declined from 1.1 per cent in 1996 to 1.0 per cent in 1997.

People with disabilities remained under-represented in every industrial sector. Their

representation varied from a low of 1.8 per cent in transportation, 2.4 per cent each in communications and banking, and 2.8 per cent in the "other" sector.

In each sector, the main reason for this lack of progress was the same — people with disabilities just did not receive a fair share of hirings.

People with Disabilities over the Past Decade – Private Employers and Crown Corporations

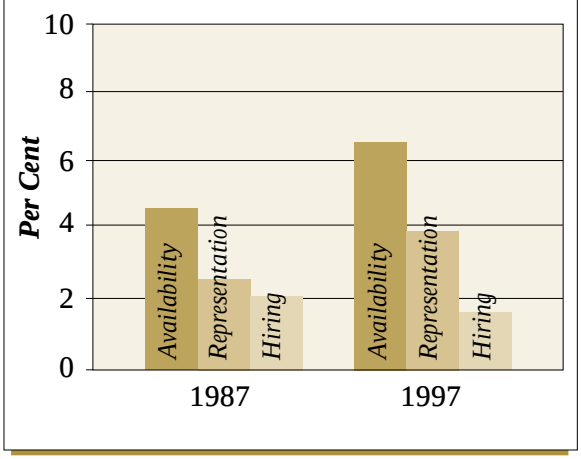


After eleven years of employment equity, it must be said that virtually no progress has been made with regard to the employment of people with disabilities. There are probably a number of reasons for this. Evidence gathered during the audits suggests that many workplaces are not completely accessible, that employers have not removed barriers to employment, and that they have failed to implement necessary accommodations.

In the public sector: The Commission has long argued that people with disabilities in the public sector should be measured by the same standard used in the private sector. According to this measure, approximately 6.5 per cent of public servants should be people with disabilities, rather than the 4.8 per cent standard used by the Treasury Board. However, whichever standard is used, people with disabilities are on the losing end.

As of March 31, 1998, people with disabilities constituted 3.9 per cent of the public service, an increase from 3.3 per cent in the previous year and 2.6 per cent in 1987. As was the case with members of visible minority groups, their increase in representation is attributable to increased self-identification of those already employed by the federal government, rather than to increased hiring. Overall, only 1.7 per cent of all new hirings belonged to this group: slightly more than 200 people with disabilities were part of the more than 12,000 employees hired for terms of at least three months. In addition, fewer than 50 people with disabilities, or 1.7 per cent, were hired into the more than

People with Disabilities over the Past Decade – Federal Public Service



2,800 permanent positions that were staffed from outside the public service.

In addition, organizations within the public service may have a hard time explaining why they could find only twelve qualified employees with disabilities among the more than 1,300 people hired into the Scientific and Professional category. Similarly, it is hard to believe that there were only eight qualified people with disabilities among the more than 1,000 new hirings into the Technical category.

Given this poor record, it should come as no surprise that people with disabilities remained severely under-represented in all occupational categories in the public service. Of the 42 organizations with 200 or more employees, twelve met or nearly met the 6.5 per cent benchmark. In sixteen departments, the representation of people with disabilities was less than half the expected level. This includes such large organizations as Statistics Canada, Environment Canada and Natural Resources Canada.

Key Measures of Success

Follow-up Audits: Will Employers Be in Compliance?

During 1998, the first year of the Commission's audit mandate, the process was extensively tested and began to achieve positive results. However, the real test will come in 1999, during the follow-up audits, when employers will be required to demonstrate that they have fulfilled the substantive undertakings to which they have committed themselves.

As expressed earlier, some refinements to the Commission's approach towards first-phase audits will be needed to accommodate the large number of follow-up audits required in the year to come. Under this modified approach, employers who have done little to implement a program will be moved through the first phase more quickly.

If a large number of employers fail to fulfil their undertakings, and remain in non-compliance at the time of the follow-up audit, the Commission will know that its efforts during the first phase did not bring about positive results. Such a result may necessitate an emphasis on the Commission's enforcement strategy, as cases of non-compliance will be brought to the Commissioners' attention for the possible issuance of directions or referral to tribunal. It is the intention of the Commission to move quickly and firmly where employers, either public or private, have clearly failed to take their obligation to implement their signed undertakings seriously.

The Commission is Not the Only Player

The Commission will hold itself accountable for ensuring employers' compliance with the requirements of the Employment Equity Act. However, it will continue to depend on the critical support of its partners, who are responsible for ensuring that employers fully understand their legal requirements, and — it is to be hoped — begin to work towards compliance before the start of an audit. Human

Resources Development Canada is responsible for working with employers in the private sector by promoting the purpose of the Act, developing information programs to foster public understanding, and most importantly, providing advice regarding the implementation of employment equity. The Treasury Board Secretariat carries similar responsibilities for the federal public service.

Along with the Public Service Commission, this Commission participated with Human Resources Development Canada and the Treasury Board in a number of information sessions with employers across the country in 1998. Nevertheless, as noted earlier, the results from the first round of audits indicate that employers are ill-prepared and have very limited understanding of their obligations. This general lack of compliance requires that the Commission dedicate substantial resources to follow-up audits. If this situation is allowed to continue, it may seriously jeopardize the Commission's objective of auditing every employer within five years. It is hoped that both Human Resources Development Canada and the Treasury Board can intensify their work with employers in order to ensure that a growing number of them understand their responsibilities and have embarked upon the necessary analysis and planning prior to the commencement of an audit.

Accountability Standards to Measure Real Success

The Commission has put in place operational standards by which it will measure its performance. It must also assess results, not simply by the number of audits completed within reasonable time frames, but also in terms of substantive progress achieved in advancing equity in the workplace. How is this to be accomplished?

The Commission has established two primary measures of success for its employment equity mandate:

- the achievement of clear progress in increasing the number of employers that have barrier-free employment systems, and

- quantifiable improvements in the representation of the four designated groups in all occupational groups and categories.

Initially, the Commission will need to measure employers who have been found in compliance with the twelve statutory requirements against improvements made in the representation of designated group members in their workforce. During 1999, the second year of the audit mandate, it is hoped that a substantial number of employers will fulfil their undertakings and achieve compliance. It is only in the third year that the Commission will be in a position to measure their progress. It is also the Commission's intention to evaluate its own performance — and that of the legislation — against these critical standards, and to report annually on progress made.

Why? Because in the end, the Commission will have to account not only to Parliament, but also to members of designated groups and to

employers. Its objective is to be in a position to demonstrate that:

- it has adopted a realistic strategy to implement and administer a complex program, eschewing bureaucratic complexities in favour of clear, logical approaches;
- it has applied the requirements of the Act in a fair but firm manner;
- it has done what is right for employers; and
- it can point to a significant improvement in the representation of designated groups in the federally regulated workforce.

That is the Commission's ultimate responsibility and ultimate goal.

The Work of the Commission

Human Rights Protection

One of the Commission's main responsibilities has been to protect Canadians' rights through the impartial examination of alleged acts of discrimination. Today, close to a third of the Commission's staff is devoted to receiving, mediating, investigating and conciliating human rights complaints.

When Parliament established the Commission and the Canadian Human Rights Tribunal, it envisioned a process that would be accessible to members of the public, and simpler and faster than the court system. The Commission has always endeavoured to realize these goals.

But, in common with similar institutions across Canada, the Commission has generally been frustrated in its endeavours to deal with complaints promptly. Financial restraint, program cutbacks, the increasingly complex and contentious environment in which the Commission operates, and the procedural constraints that stem from tribunal and court rulings — all of these make speedy and satisfactory resolution of complaints a daunting task. When the Auditor General, in a report issued in September 1998, noted that complaints before the Commission were not always dealt with as expeditiously as they might be, this came as small surprise.

In the report, the Auditor General recommended a number of ways in which the Commission might improve the way cases are handled. The Commission has made program changes and redeployed staff to deal with these recommendations.

How the Complaints Process Works

It may be helpful to review briefly how the complaints process works and explain some of the constraints under which it operates.

The first step occurs when a person or group contacts the Commission to raise a human rights concern. Staff first determine whether the matter falls within the Commission's jurisdiction, whether there are reasonable grounds for asserting that discrimination has occurred, and whether the person or group has exhausted all alternate procedures to provide a remedy. The Commission must balance the need to be accessible and helpful to the concerned person or group, the requirement to be fair to the respondent, and the obligation to make prudent use of its limited resources.

Human Rights Process

Canadian Human Rights Commission

When the Commission Receives an Inquiry

- Employees provide information to people contacting the Commission
- Employees may direct people to another agency if the problem is not within the Commission's jurisdiction

After the Commission Accepts a Complaint

- When appropriate, officers refer the complainant to another human rights redress mechanism (such as the employer's internal complaints process or a union grievance procedure), if one exists
- Where possible, officers attempt to mediate between the complainant and the respondent
- Officers formally investigate the complainant's allegations to prepare for a decision by the Commissioners

When the Commissioners Make a Decision

- The Commissioners may approve a settlement between the complainant and respondent
- They may appoint a conciliator
- They may refer a complaint to the Canadian Human Rights Tribunal
- They may dismiss a complaint for lack of evidence, or decide to take no further action because no link could be established between the alleged act and a prohibited ground of discrimination

Canadian Human Rights Tribunal

- A member of the Tribunal may mediate between the complaint and respondent
- A tribunal panel may conduct hearings on the complaint
- It may then make a decision on the complaint and issue orders

Federal Court of Canada

- The Federal Court may carry out a judicial review (similar to an appeal) of a decision by the Commissioners
- The Court may also carry out a judicial review of a decision or order of the Canadian Human Rights Tribunal

The Commission normally receives between 45,000 and 55,000 inquiries each year from the public. Many of the problems raised are outside its jurisdiction, or are not, strictly speaking, human rights issues. Only about 1,800 ultimately become complaints. In all other cases, the Commission directs people to an appropriate agency, such as a provincial human rights commission, the police, or a social service agency.

When the Commission deals with allegations of discrimination, it attempts to reach an early resolution acceptable to both parties, either before or after a complaint is formally lodged.

When the Commission proceeds with an investigation, its role is to gather and analyse evidence from both parties. The task of evidence gathering is sometimes complicated by the reluctance of fellow employees to become involved in an investigation or the inability of a party to provide information in a timely fashion. It is also important to emphasize that most of the cases investigated by the Commission involve federal government departments or large employers. These organizations commonly have complex management structures that can serve to slow the release of relevant information. In some instances, cases must be put in abeyance as a result of legal action initiated by one of the parties, or pending the release of a tribunal or court ruling that addresses the same issues as those presented by the complaint.

It is necessary to ensure that both sides have an opportunity to make their positions known to the Commissioners. Accordingly, once evidence has been collected and assessed, the investigator prepares a report, which is disclosed to the complainant and respondent for their comments. If, at this stage, either party introduces new facts or legal arguments, their submissions must be cross-disclosed, and additional investigation may be required. The disclosure and cross-disclosure processes alone can add several weeks to an investigation.

The investigation phase ends with the Commission's consideration of the investigator's report, along with any written submissions from the parties. The Commission may approve a settlement reached by the parties, take no further proceedings with respect to a complaint, suspend an investigation pending the outcome of similar cases or litigation, dismiss a complaint if there is no evidence to support the allegation, refer a

Number of Inquiries* During the Last Ten Years

1998	55,398
1997	47,200
1996	46,796
1995	36,574
1994	40,112
1993	46,292
1992	52,170
1991	52,284
1990	52,792
1989	46,623

* *An inquiry is any initial contact with the Commission by a person, group, or organization seeking information or wishing to bring a situation or concern to the Commission's attention.*

case to conciliation, or request the appointment of a human rights tribunal to examine the allegations.

Cases are referred to conciliation when an investigation has uncovered evidence to support the complainant's allegations. The conciliator is mandated to help the parties reach a settlement and report the results of these efforts to the Commissioners. Where conciliation produces a settlement, the Commissioners will be asked to approve it. When conciliation is unsuccessful, the complaint may be dismissed or referred to a tribunal for a full hearing. It is important to note here that the Canadian Human Rights Tribunal is a separate adjudicative body that — unlike the Commission — has the power to issue binding orders.

This system, despite its imperfections, provides an avenue of redress for many Canadians.

Facing the Challenge

The Commission endeavours to finish the investigation phase of each complaint within nine months from the date of filing, but in recent years has fallen considerably short of this target.

Some of the delay can be attributed to workload and investigator turnover. But much of the time taken to complete cases has to do with circumstances beyond the Commission's control. A sample study of a third of the cases presented to the Commission in 1998 shows that 24 per cent had been stood down for periods of two to three years pending the outcome of court proceedings; sexual orientation complaints were a case in point. Eleven per cent of the sample had been held in abeyance for a period of three months to five years while the complainant pursued alternative redress mechanisms, or while the parties attempted to settle the matter. Six per cent had been the subject of judicial reviews of the Commission's decisions, which added one to five years to the process. In some cases, the respondent had objected to the investigation of a complaint because it had been filed outside the one-year time limit. In others, one or both parties had provided new information in their submissions, requiring cross-disclosure of the documentation, and adding several more weeks to the process.

To deal with complaints more quickly, the Commission has, in recent months, undertaken a number of initiatives.

First, it has established a special processing team to deal with the older cases. The team includes experienced personnel reassigned from other areas within the Commission.

Secondly, the Commission has begun to offer mediation to parties as an alternative to investigation. A core group of staff has been trained in mediation, and a pilot project has been launched to test this approach over the next year.

Thirdly, the Commission will be undertaking an in-depth examination of its procedures for dealing with complaints. It will also focus on

the recruitment and development of staff involved in human rights protection.

It is hoped that these steps will permit the resolution of all of the older cases within two years, and will ensure that 75 per cent of new cases are investigated and submitted to Commissioners for a decision within nine months. Unfortunately, there will always be certain cases that because of their complexity will require a somewhat more extended period of work by Commission staff.

In the longer term, the Commission continues to believe that the government should review the existing framework for human rights protection, and ask whether there are better ways by which effective equality can be guaranteed.

Patterns of Discrimination: Complaints Received in 1998

As in previous years, the three grounds of discrimination most often cited by complainants in 1998 were disability (32 per cent), sex (20 per cent), and — taken together — race, colour and national or ethnic origin (19 per cent).

Other complaints received cited age (16 per cent), family and marital status (seven per cent), sexual orientation (four per cent) and religion (two per cent).

The number of complaints from different parts of the country has varied somewhat from year to year. Not surprisingly, the highest numbers continue to originate in the country's three largest provinces, Ontario, Quebec and British Columbia.

Developments of Note

While parties to a complaint settlement usually meet their commitments, on rare occasions the Commission is obliged to pursue legal sanctions. In 1998, it was forced to take an unprecedented step to encourage compliance with two settlements — both involving major banks. The settlements arose from complaints filed by the Disabled Persons Employment Equity Human Rights Group, which alleged that the banks were failing to provide equitable employment opportunities to people with disabilities. Under settlements reached in 1994 and 1995 respectively, the Bank of Montreal and the Royal Bank committed themselves to undertake measures aimed at boosting the representation of people with disabilities in their workforces. By June 1998, however, it was clear that results were falling far below target, and that the banks could be doing much more to attract and retain employees with disabilities. In light of these facts, the only remedy open to the Commission was to ask the Royal Canadian Mounted Police to investigate whether prosecution for breach of settlement terms would be warranted. While this step was not taken lightly, the Commission believes it had little choice but to act.

On a more positive note, 1998 also saw the resolution of complaints filed in the early 1990s by the Assembly of Manitoba Chiefs against Parks Canada, Canadian Airlines International, and CP Rail. These three complaints were part of 52 filed by the

Number of Complaints Received by Province or Territory, 1995 to 1998

	1998		1997		1996		1995	
	No.	%	No.	%	No.	%	No.	%
Newfoundland	46	3	20	1	50	3	135	8
Prince Edward Island	92	5	19	1	31	2	13	1
Nova Scotia	95	5	121	8	125	7	90	5
New Brunswick	62	3	50	3	56	3	54	3
Quebec	261	15	202	13	256	14	235	13
Ontario	579	33	525	34	647	36	685	38
Manitoba	162	9	140	9	84	5	149	8
Saskatchewan	78	4	97	7	69	4	60	3
Alberta and Northwest Territories	86	5	88	6	128	7	84	5
British Columbia and Yukon	315	18	265	18	353	19	278	16
Total	1,776	100	1,527	100	1,799	100	1,783	100

Number of Complaints Received by Ground of Discrimination, 1995 to 1998

	1998		1997		1996		1995	
	No.	%	No.	%	No.	%	No.	%
Disability	565	32	445	29	602	33	579	32
Sex	360	20	250	16	405	23	420	24
Age	276	16	375	25	140	8	130	7
Race/Colour	183	10	143	9	220	12	198	11
National/Ethnic Origin	161	9	133	9	161	9	157	9
Family/Marital Status	125	7	118	8	147	8	119	7
Sexual Orientation	67	4	37	2	92	5	76	4
Religion	36	2	24	2	31	2	103	6
Pardon	3	—	2	—	1	—	1	—
Total	1,776	100	1,527	100	1,799	100	1,783	100

Assembly under section 10 of the Canadian Human Rights Act on the basis of data furnished under the original Employment Equity Act of 1986. All alleged that the employers in question failed to provide equitable employment opportunities to Aboriginal people.

Each of the three settlements contained recruitment goals and a variety of measures aimed at improving cultural sensitivity, attracting Aboriginal candidates, and retaining Aboriginal employees. In addition, there were provisions for the Commission to monitor progress. The Commission welcomed the settlements, and will encourage the parties to make every effort to implement them in both letter and spirit.

The fact that almost all of the complaints filed by the Assembly of Manitoba Chiefs have now been resolved is promising. The new willingness to work together to advance equality and economic prospects for Aboriginal people reminds us of why Parliament established a human rights protection mechanism in the first place. Without access to the relevant provisions of the Canadian Human Rights Act, the Assembly and many other complainants would have had a far more difficult time having their concerns addressed.

Outcomes: Complaints Closed in 1998

In 1998, the Commission completed work on 1,676 complaint files.

Some 300 complaints were referred to alternate redress mechanisms. Often this simply meant having the complainant complete a grievance or internal complaint process already under way. Complainants in these cases can return to the Commission if they are not satisfied with the results.

Nearly 200 complaints were settled. Forty-one were settled prior to investigation and a further 148 were settled in the course of investigation or after the appointment of a conciliator.

The Commissioners decided to take no further action in 321 cases. Of this number, 192 complaints were dismissed because the evidence gathered during investigation did not support the complainants' allegations. Another 129 cases were not pursued for various reasons, including requests by complainants to withdraw, or abandonment, or because the Commission lacked jurisdiction.

During the year, the Commission referred 22 complaints for a hearing before the Canadian Human Rights Tribunal. These were cases in which the Commission felt there was sufficient evidence to warrant further examination, and usually followed unsuccessful efforts at conciliation between the parties. The Tribunal has the power to make a finding of discrimination and to order remedies such as reinstatement in a job, changes to policies, and financial damages.

Finally, 824 cases were discontinued, or closed prior to investigation, either because the complainants did not wish to pursue them or because it was impossible to establish a *prima facie* case, i.e., a link between the alleged act and a prohibited ground of discrimination.

Complaint Outcomes: 1995 to 1998

	1998		1997		1996		1995	
	No.	%	No.	%	No.	%	No.	%
Early resolution	41	2	48	2	57	3	96	5
Settled during investigation or at conciliation	148	9	169	8	268	13	142	7
Referred to alternate redress mechanisms	297	18	301	15	327	15	410	21
Referred to a tribunal	22	1	24	1	9	0	54	3
Not dealt with[1]	23	1	28	1	18	1	18	1
Dismissed for lack of evidence	192	12	221	12	245	12	277	14
No further proceedings[2]	129	8	147	7	198	9	430	21
Discontinued[3]	824	49	1,087	54	989	47	571	28
Total	1,676	100	2,025	100	2,111	100	1,998	100

1 *Cases that the Commission decided not to pursue because they were filed more than one year after the alleged act of discrimination, or were, technically, without purpose.*
2 *Cases in which the complainants withdrew or abandoned their complaints, the matters were outside the Commission's jurisdiction, or the complaints did not warrant referral to a tribunal.*
3 *Cases that were closed prior to investigation because the complainants did not wish to pursue them or because a link could not be established between the alleged act and a prohibited ground of discrimination.*

Human Rights Promotion

In the debate that gave rise to the Canadian Human Rights Act more than twenty years ago, Parliamentarians made it clear they wanted the Commission to do more than confine itself to the intake and resolution of human rights complaints.

The Act they created requires the Commission to "develop and conduct information programs to foster public understanding of this Act, and of the role and activities of the Commission." And it calls on the Commission to increase public recognition and support for the human rights principles that underpin the Act.

Twentieth and Fiftieth Anniversary Celebrations

As part of the work of informing Canadians where their human rights came from, what they are, and the next steps in their development, the Commission undertook a series of projects to commemorate its twentieth anniversary and the fiftieth anniversary of the Universal Declaration of Human Rights. A brief summary follows.

In an important initiative, the Chief Commissioner gave a series of public lectures at universities across Canada on human rights in the twenty-first century. The Commission greatly appreciated the cooperation and help of the universities, which included the University of Calgary, the University of British Columbia, the University of Windsor, McGill University, the University of Sherbrooke, Memorial University, the University of Regina and the University of Victoria. The series of appearances provided an opportunity for the Chief Commissioner to obtain input from the audiences on the future of human rights in Canada, during question and answer sessions that followed the lectures.

Commissioner Phyllis Gordon also spoke on the future of human rights in Canada. She was the keynote speaker of a human rights symposium at Queen's University, "Putting Values into Place: Celebrating Our Progress, Facing Our Future."

In November, the Commission took part in a major conference entitled "Universal Rights and Human Values — a Blueprint for Peace, Justice and Freedom," held in Edmonton. Leading figures in human rights from around the world attended, including former Irish president Mary Robinson, who was celebrating her first year in office as the United Nations High Commissioner for Human Rights, and

Archbishop Desmond Tutu of South Africa. The Chief Commissioner participated in a panel entitled "Dignity and Rights of Women: A Mirage in the Distance." Commissioner Robinson Koilpillai served on the conference's executive committee. The Commission's Regional Director for Alberta and the Northwest Territories chaired the Conference's logistics committee, and, together with other regional staff, played an important role in the planning of the conference.

In December, the Commission participated in another significant initiative — Montreal's World Conference on the Universal Declaration of Human Rights. The Chief Commissioner chaired a panel on globalization. Former Chief Commissioner Maxwell Yalden led a panel on Canada and the Universal Declaration of Human Rights, and Supreme Court Justice Claire L'Heureux-Dubé chaired a panel examining what has occurred since expectations for international cooperation were raised five years ago at the Vienna Declaration and Program of Action on Human Rights. The Commission's Regional Director for Quebec participated in the organization of the conference.

Other Conferences

Regional offices of the Commission participated in a wide variety of conferences, workshops, seminars and other activities across the country, spanning a wide range of human rights issues. A brief summary follows.

In October, the Commission helped plan, and participated in, "Roots for Our Future," an employment equity conference of the British Columbia Employment Equity Practitioners' Association and Equity West.

In March, the Regional Director for the Prairies helped plan and participated in the Provincial Aboriginal People's Human Rights Conference, "Erasing Racism."

Also in March, the Regional Director for the Atlantic helped plan and participated in a youth conference to mark the International Day for the Elimination of Racial Discrimination in Truro, Nova Scotia.

In November, the Chief Commissioner delivered the keynote speech on women's rights and economic rights at the "Salon de la femme," a conference of the Réseau des femmes du Sud de l'Ontario, a network of French-speaking women based in Southern Ontario. In addition to supporting the work of conference organizers, staff from the Ontario Regional Office helped attendees set up an information booth on the Commission's work.

Public Information

The Commission's public information staff in Ottawa and the regional offices respond to between 45,000 and 55,000 inquiries annually. They make sure that each caller is directed to the office that can best help, either in the Commission itself, a provincial commission, or another appropriate agency.

In 1998, toll-free telephone lines were introduced across the country in an effort to facilitate access and streamline operations.

Canadians can now call the national office, or any regional office, toll-free. They can also contact the Commission by electronic mail.

Cooperation between the Commission and other human rights organizations begins with referrals of complaints or inquiries, and continues as agencies work together on information campaigns. One example was *Bas les pattes* (Get your paws off), a video produced by Vidéo Femmes and funded jointly by the Canadian and Quebec human rights commissions, Status of Women Canada, Quebec's Ministère du Travail and Conseil du statut de la femme, the Groupe d'aide et d'information sur le harcèlement sexuel au travail, the Intersyndicale des femmes, and the Comité des femmes du Syndicat des professionelles et professionnels du Gouvernement du Québec. The video focused on sexual harassment and will be a powerful educational resource for French-speaking women across Canada.

In Ontario, the Commission's regional office, in partnership with the provincial commission, worked on a sexual harassment campaign for the workplace. The results appear positive. Many callers specifically mentioned a poster, jointly produced as part of the initiative, as encouraging them to seek help to deal with harassment.

In British Columbia, the Commission worked with its provincial counterpart to produce and distribute *Human Rights, My Rights,* a video designed to provide information to Aboriginal people on federal and provincial human rights laws. In Alberta, the Commission worked with its provincial counterpart and the Aboriginal Human Rights Committee to produce a booklet, *The Rights Path*, informing Aboriginal people of their rights. United Nations Human Rights High Commissioner Mary Robinson was presented with a copy of the booklet during her visit to the Hobbema reserve. The Commission will continue to use the video and the booklet as part of its outreach program.

Sometimes the Commission's cooperative efforts with one province bear fruit elsewhere. The "Stop the Hatred" poster, produced by the Commission's Prairie Regional Office and the Manitoba Human Rights Commission, gave birth to a similar version in 1998 in Saskatchewan. As in Manitoba, the Saskatchewan Department of Education ensured that the poster was distributed to the province's schools.

Publications and Alternative Distribution

The Commission has made increasing use of its Internet site to provide Canadians with information and to respond to inquiries.

The site has served as a source of information on such topics as harassment and the accommodation of people with disabilities. There is also information on employment equity, the twentieth anniversary of the Commission, and the fiftieth anniversary of the Universal Declaration of Human Rights. The information can be translated through software designed for blind and visually impaired people. And materials are presented in such a way that visitors to the site can easily print out information they wish to retain.

Promotional Efforts

Over the course of the year, the Commission worked with both mainstream and community media to inform Canadians of human rights developments. Staff responded to more than 800 media inquiries. Commissioners or staff also conducted interviews with print and broadcast media, met with editorial boards, and published articles on issues ranging from pay equity to disability rights to the significance of the fiftieth anniversary of the Universal Declaration and the twentieth anniversary of the Commission. And in keeping with the Commission's commitment to public accountability and transparency, its new magazine, *Equality,* reports regularly on its activities to promote human rights.

The Commission's promotional efforts involve a cross-section of its staff and reach all parts of the country. The Commissioners served as ambassadors in all regions and actively participated in community events. Commissioner Mary Mac Lennan, also the chair of the Nova Scotia Human Rights Commission, chaired the business meeting of the conference of the Canadian Association of Statutory Human Rights Agencies. In February, she spoke in Timmins, Ontario at the Northern College of Applied Arts and Technology's Centre for Students with Disabilities. Commissioner Sigmund Reiser attended the May launch of the Ontario Human Rights Commission's campaign against sexual harassment.

In February, the Secretary General gave a speech on the relationship between the creative arts and human rights at the Toronto launch of an art exhibit that marked Black History Month. In June, he delivered a paper on Canada's approach to employment equity at an International Conference on Comparative Non-Discrimination Law in Utrecht, the Netherlands.

The Commission's six regional offices — in Vancouver, Edmonton, Winnipeg, Toronto, Montreal and Halifax — serve as its front line. During the year, regional staff continued to meet with employers, unions, advocacy groups and individuals. They organized and participated in community forums and workshops; they worked to develop useful partnerships to make sure Canadians hear about human rights; they provided training and education sessions to employers, the Canadian Forces, and advocacy groups for human rights and employment equity; and they worked with Commissioners to mark events such as Black History Month, Human Rights Day, International Women's Day, National Access Awareness Week, and the International Day for the Elimination of Racial Discrimination.

Fifty years after the Universal Declaration of Human Rights was adopted, its principles are as relevant to our lives as ever. But the challenge in realizing those principles changes every day. As the Chief Commissioner noted in her encounters with Canadians across the country, "now is the time to ask where we, as a society, are heading ... and to ask what we must do, now and in the future, to make sure that our human rights principles do not get lost along the way."

The Commission's International Role

It is commonplace to say that the world's borders are disappearing. Today, news travels at the speed of light. So too does the impact of events that occur beyond our borders. The rape and other violence directed towards ethnic Chinese in Indonesia, the excesses and brutality of security forces and terrorists in Algeria, the murder of a bishop associated with human rights causes in Guatemala — these are common knowledge in Canada almost as soon as they occur.

Arguably, we feel the impact of these events in Canada more directly than many other nations, given that Canadians come from all corners of the globe. Events in Bosnia, Rwanda and Malaysia are more than just news items for many of our fellow citizens. These are the countries where our friends and family reside, and to which many of us still have an economic and emotional attachment.

Furthermore, because of Canada's reputation as a human rights leader, many other countries look to us as an example when they begin to explore how to establish and strengthen their own human rights mechanisms.

During the year, the Commission received a number of foreign visitors seeking information, and accepted invitations to participate in important conferences abroad, where these dealt with human rights concerns relevant to the Commission's work. The Commission also continued to provide technical assistance where possible to fellow agencies.

Supporting Development

As in the past, 1998 was a busy year internationally.

The Chief Commissioner hosted a parallel conference of national human rights institutions at a Canada-China Plurilateral Conference on Human Rights in British Columbia in March. Agencies from the Philippines, Australia, New Zealand and Indonesia and the Ombudsman of Norway — together with representatives of countries from the Asian region, including China — discussed the practical role that independent human rights bodies can play in supporting international human rights norms.

Commissioner Sigmund Reiser represented the Commission in May at a Warsaw conference on national institutions for the promotion and protection of human rights. The international meeting, attended by nearly one hundred

countries, international organizations, and non-governmental organizations, was sponsored by the Council of Europe and the Organization for Security and Cooperation in Europe. It examined ways in which human rights agencies and ombudsman offices work to secure human rights in their own countries. The objective was to promote such institutions in the newly emerging democracies in Eastern Europe.

The Director General of the Anti-Discrimination Branch represented the Commission at a major international conference in Ethiopia. The Ethiopian government has since indicated its intent to create a national human rights institution, and may seek assistance from Canada.

Many other countries look to Canada as a human rights leader

The Chief Commissioner attended a session on human rights commissions in Thailand in September. Thailand is required, under the terms of its new constitution, to establish a human rights commission within the next year. In this context, the Chief Commissioner was asked to describe the experiences of the Canadian Commission, and to offer advice on issues such as ensuring independence and establishing links with non-governmental organizations. The session was attended by participants from both governmental and non-governmental organizations. What they learned should help Thai human rights activists ensure that the legislation establishing their Commission is as strong as possible.

The Chief Commissioner was also invited to Cuba in November for in-depth discussions with representatives of the Citizens Complaints Commission of Cuba. While there, she also met with representatives of the community of non-governmental organizations.

Assistance and Cooperation

As busy as the Commission was preparing and participating in these events, the largest part of its efforts were devoted to providing technical assistance and cooperation.

For example, in Indonesia, a senior officer on loan from the Canadian Commission helped advise the Indonesian Commission on improving the design of its complaint-handling process. The officer will continue to provide guidance in areas such as staffing, organization, training and information technology for at least the next year.

The Commission also helped its Indonesian counterpart build closer links with non-governmental organizations and other members of civil society. In particular, support was provided for an initiative that brought together representatives of non-governmental organizations, educators, and law enforcement communities to explore the development of human rights training for their own constituencies. These efforts are aimed at ensuring that human rights education will be delivered to a broad cross-section of Indonesian society.

The South African Human Rights Commission requested the Canadian Commission's

assistance in several areas: developing and pursuing an appropriate litigation strategy; developing a framework to monitor the progress of economic, social and cultural rights; and expanding its capacity to deal with issues of concern to people with disabilities. The Canadian Commission's General Counsel attended a meeting of experts in Capetown, and offered his South African counterparts advice on the development of a comprehensive legal strategy for enforcing the provisions of the South African Human Rights Act.

A highlight of the year was the Commission's hosting of a two-week study tour on disability issues for a nine-member working group from Mexico and a three-member group from South Africa. Mexico was represented by its national and state commissions and non-governmental organizations. South Africa was represented by its Human Rights Commission. The program featured the participation of a number of disability experts from Canadian non-governmental organizations and government. The South African and Mexican representatives and the Canadian experts and practitioners examined disability issues from a number of aspects: the movement from a rehabilitative to a rights-based model; the role of non-governmental organizations; the impact of international standards; methods of addressing issues such as accessibility; the development and implementation of the Canadian AIDS Strategy; and the investigation of human rights complaints. Feedback from the group was positive, and it is hoped that a number of the lessons learned here will be translated into action. To that end, the Mexican Commission organized a follow-up conference in Mexico City involving more than 130 participants from the government and non-governmental organization sectors, as well as from the national and state human rights commissions. The Canadian Commission was an active participant, as were a select number of Canadian experts.

The Commission's contribution to improving global human rights may not immediately affect the lives of those who experience discrimination and disadvantage as their daily fare. Its role is limited to providing advice and practical assistance to human rights commissions operating at the national level. Over time, however, it may be hoped that these agencies can improve the level of human rights protection available, notwithstanding differences in political and legal systems.

The United Nations High Commissioner for Human Rights has noted the valuable part that established national institutions have to play in helping new institutions become important players. While the Commission's efforts in this area are often funded externally, most notably by the Canadian International Development Agency, it will need increased resources if it is to continue to devote attention to this important task. This is an issue that the Commission has raised before and one that it will continue to bring forward. Increasingly, countries with newer commissions, or those wanting to create commissions, are seeking the Commission's assistance. The Commission has reason to believe that what it does is helpful. But it will need greater support for these efforts if it is to stay the course, let alone meet the real demand.

Structure of the Commission

Under the overall direction of the Chief Commissioner, the *Secretary General,* as the Commission's chief operating officer, is responsible for the Commission's operations at headquarters and in the regions.

The *Executive Secretariat* provides administrative services to the executive offices, including coordinating Commission meetings, supporting the Senior Management Committee, managing executive correspondence, and preparing briefing materials. It is also responsible for access to information and privacy.

The *Legal Services Branch* provides advice to the Chief Commissioner, Commission members and staff. Legal officers also represent the Commission in litigation before tribunals and the courts.

The *Anti-Discrimination Programs Branch* is responsible for the investigation and conciliation of complaints, including pay equity complaints, as well as the monitoring of complaint settlements. The Branch also provides a quality assurance function for cases presented to the Commission, trains staff involved in anti-discrimination activities, and establishes performance standards and operational policies.

The *Employment Equity Branch* conducts employment equity audits with employers in the private and public sectors to assess their compliance with the requirements of the Employment Equity Act.

The *Human Rights Promotion Branch,* which includes staff at headquarters and in the Commission's six regional offices, conducts programs to promote the principles of equality, foster public understanding of the Canadian Human Rights Act, and inform people of the work of the Commission. The Branch is responsible for contacts with the media and for editorial services.

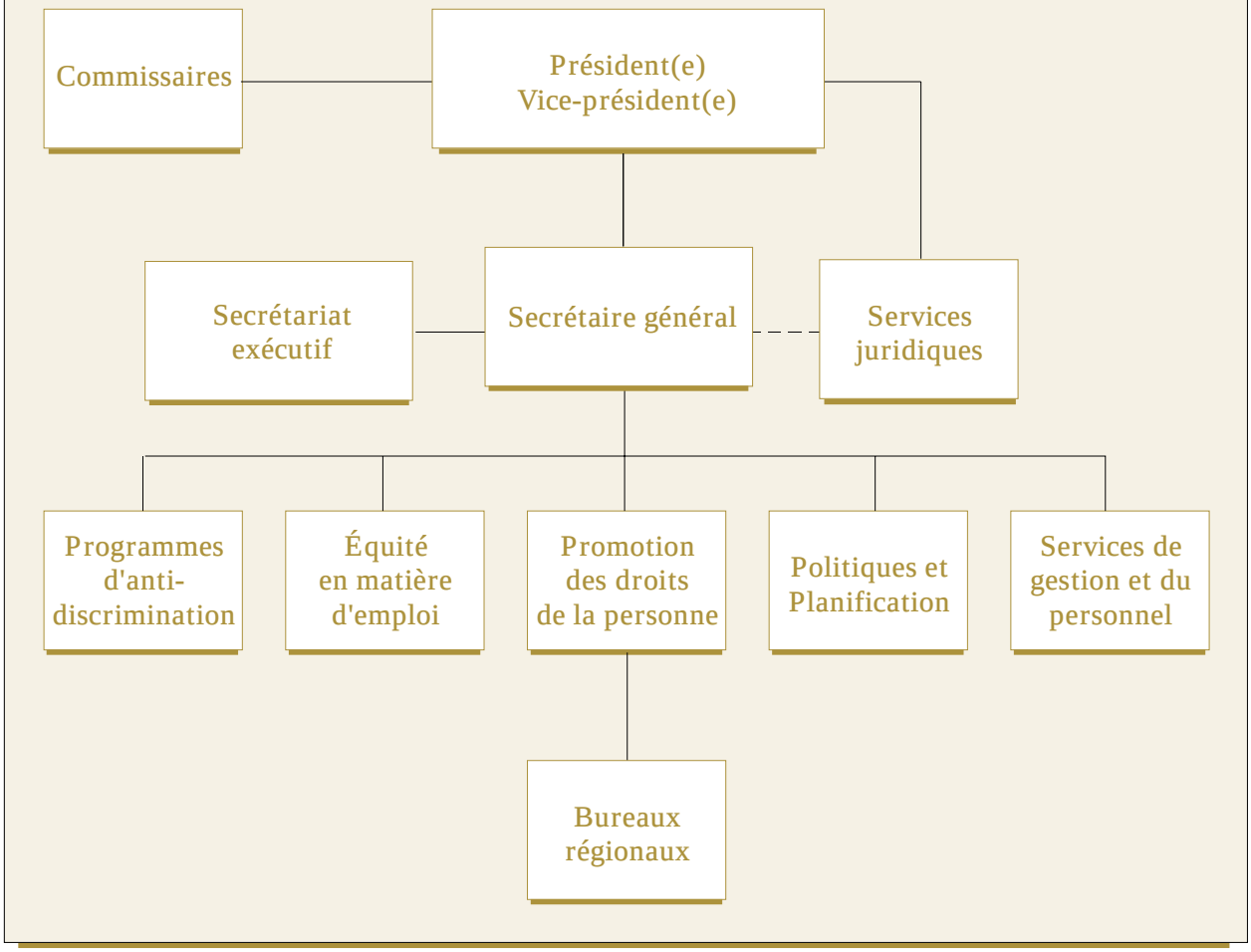
The *Regional Offices* perform a promotion and compliance role. They carry out education and outreach activities with community groups, employers, service providers, unions and provincial human rights commissions. They are the first point of contact for people wishing to file complaints of discrimination, and provide assistance in the processing of complaints.

The *Policy and Planning Branch* is responsible for providing policy, planning and review, and research assistance. Human rights issues are monitored by the Branch, and policy proposals, guidelines, and research reports

assist Commission decisions and support the operational branches. The Branch also coordinates the Commission's activities to assist human rights institutions outside Canada.

The *Corporate and Personnel Services Branch* provides headquarters and regional offices with support services in assets management, finance, informatics, information management, and library services. It also provides support services in staffing, classification, pay and benefits, staff relations, training and human resources planning, official languages, and health and safety.

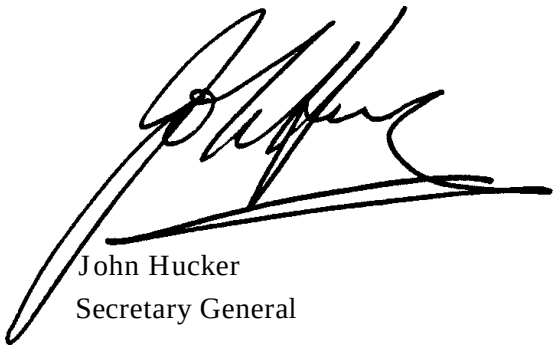
Organigramme



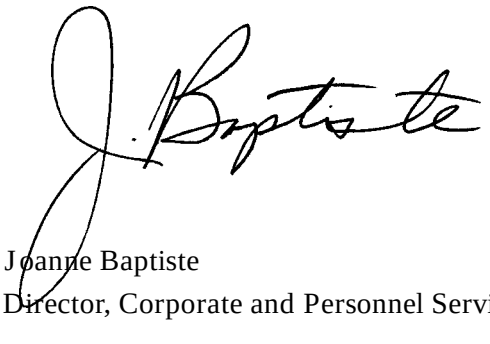
Financial Statement

The financial statement that follows has been prepared in accordance with significant accounting policies and with the requirements and standards for reporting established by the Receiver General for Canada.

The management of the Canadian Human Rights Commission is responsible for developing and maintaining a system of internal controls designed to provide reasonable assurance that all transactions are accurately recorded, that they comply with the relevant authorities, and that the financial statements on the Commission's results of operations are safeguarded. Financial information included in the ministerial statements, in the Report on Plans and Priorities, and elsewhere in the Public Accounts of Canada is consistent with this financial statement, unless otherwise indicated.



John Hucker
Secretary General



Joanne Baptiste
Director, Corporate and Personnel Services

Statement of Operations for the Canadian Human Rights Commission
For the Year Ending March 31, 1998
In Thousands of Dollars

Service Line	1997-98 Actual	1998-99 Forecast
Promotion of Human Rights	3,688	3,624
Complaints	6,857	7,733
Employment Equity Audits	1,620	1,919
Corporate and Personnel Services	2,621	2,882
Total use of appropriation	14,786	16,158*
Add: Cost of services provided by government departments	1,913	1,785
Total	16,699	17,943

* *The 1998-99 forecast was developed as of December 31, 1998, and includes contributions to employee benefit plans, amounting to $2.0 million.*

Notes on the Statement of Operations

These notes form an integral part of the Statement of Operations.

1. Authority, Mandate and Operations

The Canadian Human Rights Commission was established in 1977 under Schedule II of the Financial Administration Act in accordance with the Canadian Human Rights Act.

The mandate of the Canadian Human Rights Commission is to discourage and reduce discriminatory practices by dealing with complaints of discrimination on the prohibited grounds in the Canadian Human Rights Act; conducting audits of federal departments and agencies and federally regulated private companies to ensure compliance with the Employment Equity Act; conducting research and information programs; and working closely with other levels of government, employers, service providers, and community organizations to promote human rights principles.

The Commission's expenditures are funded by an annual appropriation from Parliament.

2. Significant Accounting Policies

This statement of operations has been prepared in accordance with the requirements and standards for reporting established by the Receiver General for Canada. The most significant accounting policies are as follows:

1) Expenditures Recognition

All expenditures are recorded for all goods and services received or performed up to March 31, 1998, in accordance with the government's payable-at-year-end accounting policies.

2) Capital Purchases

Acquisition of capital assets are charged to operating expenditures in the year of purchase.

3) Services Provided without Charge by Government Departments

Estimates of amounts for services provided without charge from government departments are included in the operating expenditures. They mainly consist of accommodation costs and payments to employee insurance plans.