



Canadian Human Rights Commission



For the
period ending
March 31, 1997



Improved Reporting to Parliament —
Pilot Document

Canada

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Foreword

On April 24, 1997, the House of Commons passed a motion dividing what was known as the *Part III of the Estimates* document for each department or agency into two documents, a *Report on Plans and Priorities* and a *Departmental Performance Report*. It also required 78 departments and agencies to table these reports on a pilot basis.

This decision grew out of work by Treasury Board Secretariat and 16 pilot departments to fulfil the government's commitments to improve the expenditure management information provided to Parliament and to modernize the preparation of this information. These undertakings, aimed at sharpening the focus on results and increasing the transparency of information provided to Parliament, are part of a broader initiative known as "Getting Government Right".

This *Departmental Performance Report* responds to the government's commitments and reflects the goals set by Parliament to improve accountability for results. It covers the period ending March 31, 1997 and reports performance against the plans presented in the department's *Part III of the Main Estimates* for 1996-97.

Accounting and managing for results will involve sustained work across government. Fulfilling the various requirements of results-based management – specifying expected program outcomes, developing meaningful indicators to demonstrate performance, perfecting the capacity to generate information and report on achievements – is a building block process. Government programs operate in continually changing environments. With the increase in partnering, third party delivery of services and other alliances, challenges of attribution in reporting results will have to be addressed. The performance reports and their preparation must be monitored to make sure that they remain credible and useful.

This report represents one more step in this continuing process. The government intends to refine and develop both managing for results and the reporting of the results. The refinement will come from the experience acquired over the next few years and as users make their information needs more precisely known. For example, the capacity to report results against costs is limited at this time; but doing this remains a goal.

This report is accessible electronically from the Treasury Board Secretariat Internet site:
<http://www.tbs-sct.gc.ca/tb/key.html>

Comments or questions can be directed to the TBS Internet site or to:

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Canadian Human Rights Commission

Performance Report

**For the
period ending
March 31, 1997**

Table of contents

Section I : The Chief Commissioner’s Message	1
Section II : Overview	3
Roles, Responsibilities and Mandate	3
Objectives and Priorities	3
Organization and Program Composition	4
Organizational Structure	4
Organization by Service Lines	5
Operating Context and Key Initiatives	6
Section III : Departmental Performance	8
A. Performance Expectations	8
Planned versus actual spending table	8
Planned versus Actual spending by Branch	9
Summary of Voted Appropriations	10
Summary of Performance Expectations	10
B. Performance Accomplishments	11
C. Key Reviews	15
Section IV : Supplementary Information	16
A. Listing of Statutory and Commission’s Reports	16
B. Contacts for Further Information	16
C. Statutes Administered by the Canadian Human Rights Commission	16
APPENDIX - Organizational Chart	

Section I : The Chief Commissioner's Message

I am pleased to present the Canadian Human Rights Commission's Performance Report for the period of April 1996 to March 1997.

The past few years have been a period of transition for the Commission. In order to enhance service to the public and reduce expenses, we have taken steps to improve performance in each of our major program areas. We have also streamlined the Commission's overall organization, with a view to clarifying roles and responsibilities and simplifying the management structure.

The centralization of the complaints process at our Ottawa headquarters, which began in 1995, has proven to be an efficient way of handling complaints. Most investigations are now completed within nine months from the date the complaint is filed, and our backlog of complaints has been largely eliminated. These are important accomplishments, which reflect the quality of the service we provide to the Canadian public.

Another significant improvement was the creation of a Human Rights Promotion Branch in December 1996. This Branch was set up to coordinate the work of the Commission's six regional offices and to strengthen our activities in the area of promotion, education and outreach. Informing and educating the public about their rights and responsibilities is a key element of our mandate, and one on which I place great importance. I believe that our efforts to promote equality, tolerance and respect contribute to improving the quality of life for all Canadians.

As of this year, a significant change for the Commission is its new role with respect to the *Employment Equity Act*, which came into force in its revised form in October 1996. In October 1997, the Commission will begin conducting employment equity audits of private and public sector employers covered by the Act. The Commission's Employment Equity Directorate has been reorganized in preparation for this new role. In order to ensure that the audit process is as effective as possible, the Directorate made use of the one-year transition period to conduct a series of voluntary trial audits, and to consult with all of the stakeholders, including employers, unions and advocacy groups.

Finally, the Commission is putting in place a new planning framework which will help us to establish Commission-wide priorities and related performance indicators to guide our work. This report is a first step in that direction.

Section II : Overview

Roles, Responsibilities and Mandate

The Canadian Human Rights Commission was established in 1978 to administer the *Canadian Human Rights Act*. The purpose of the *Act* is to promote equality of opportunity and to protect individuals from discrimination based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability, or conviction for an offence for which a pardon has been granted.

The new *Employment Equity Act* seeks to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability, and, in the fulfilment of that goal, to correct the conditions of disadvantage in employment experienced by women, Aboriginal people, persons with disabilities and members of visible minorities.

Both, the *Canadian Human Rights Act* and the *Employment Equity Act* apply to federal departments and agencies, Crown Corporations, chartered banks and private sector companies in the fields of interprovincial transportation and communications.

Objectives and Priorities

In order to carry out its mandate, the CHRC has set the following objectives:

- ◆ improving the complaint-handling process;
- ◆ implementing the new employment equity audit program;
- ◆ enhancing the Commission's profile and image with the public and increasing the public's understanding of human rights issues;
- ◆ developing strategic alliances with selected organizations.

Organization and Program Composition

The Commission's program comprises three areas of activity: compliance, promotion, and employment equity. The Commission investigates complaints of discrimination in employment and in the provision of goods and services customarily available to the general public, based on the grounds enumerated above. It also investigates complaints of wage inequities between men and women in areas under federal jurisdiction. Complaints are investigated by staff and the findings submitted to the Commissioners for decisions. The Commissioners consider the evidence in the investigation reports, review any submissions received from the complainants or respondents, and decide how to dispose of each complaint. Commissioners can approve a settlement reached in the course of the investigation, dismiss the complaint if there is insufficient evidence of discrimination, appoint a conciliator to attempt to resolve the matter, or refer the case to a Human Rights Tribunal.

Under the new *Employment Equity Act*, the Commission will conduct audits of federal government departments and federally-regulated private companies to help identify obstacles to the employment and promotion of women, Aboriginal people, persons with disabilities, and members of visible minorities. When obstacles are identified, the Commission will work with the employer to ensure that they are removed. The Act came into force in October 1996, and employers had one year in which to prepare themselves for audits. During that period, the Commission conducted a number of voluntary audits in order to test and refine its procedures.

The Commission has a statutory duty to discourage and reduce discrimination through public education, liaison, and other means that it considers appropriate. It fulfils this responsibility by producing educational materials, conducting information programs, promoting human rights principles through the media, and working cooperatively with community groups, unions, employers and service providers throughout the country.

Organizational Structure

The Commission consists of a Chief Commissioner and can include a Deputy Chief Commissioner and a maximum of six part-time members appointed by the Governor-in-Council. The Chief Commissioner and the Deputy Chief Commissioner are full-time members appointed for a term not exceeding seven years; other members are appointed for a term not exceeding three years.

As shown in the Appendix, the Commission delivers its program through the offices of the Chief Commissioner and the Secretary General, and the following headquarters branches: Anti-Discrimination Programs, Employment Equity, Human Rights Promotion, Policy and Liaison, Legal Services, the Executive Secretariat, and Corporate and Personnel Services. The Human Rights Promotion Branch is responsible for six Regional Offices in Vancouver, Edmonton, Winnipeg, Toronto, Montreal, and Halifax. This organizational structure was implemented in December 1996.

Organization by Service Lines

The **Office of the Secretary General** provides advice to the Commissioners and oversees the work of the branches. The **Executive Secretariat** works closely with the Secretary General to provide administrative services to the executive offices, coordinate Commission meetings, provide support to the senior management team, and oversee activities related to access to information and privacy.

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*, inform people of the work of the Commission, and reduce discrimination. The Branch is responsible for contacts with the media, activities in the community and for editorial services.

The **Regional Offices** carry out education and liaison activities with community groups, employers, service providers, unions and provincial human rights commissions. They are also the first point of contact for people wishing to file complaints of discrimination, and provide the Anti-Discrimination Programs Branch with assistance in the processing of complaints.

The **Anti-Discrimination Programs Branch** is responsible for investigating and conciliating all complaints filed with the Commission, and for monitoring employment equity settlements. The Branch presents cases to the Commission, trains staff involved in compliance 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 **Policy and Liaison Branch** is responsible for providing policy, planning 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 **Legal Services Branch** provides advice to the Commission and staff on legal and policy issues and specific human rights cases. The Branch also represents the Commission in cases before the Human Rights Tribunal and the Courts.

The **Corporate and Personnel Services Branches** provide headquarters and regional offices with support services in assets management, finance, informatics, information management, strategic planning and review, 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.

Operating Context and Key Initiatives

Although Bill S-5 was introduced in the Senate on October 9, some important amendments to the *Canadian Human Rights Act* have yet to be enacted. There is a continuing need for adjustments to the law, most notably to guarantee the right of "reasonable accommodation" for people with disabilities and others, and to repeal the provisions that permit mandatory retirement.

Other contextual factors which affect the Commission include:

- ◆ the general environment in human rights matters remains litigious; both complainants and respondents are more prepared to seek judicial intervention to protect their interests; this has resulted in longer and more complex cases before the Tribunal and the Courts;
- ◆ the Federal Court has imposed requirements aimed at ensuring the fairness of the Commission's decision making procedures (e.g. additional disclosure of materials to the parties, and additional evidence to support Commission decisions);
- ◆ the complaints-based approach presents particular problems in the area of pay equity;
- ◆ the demographics of the country are changing; most notable are the growth

of the visible minority community, the rapid increase in the number of aboriginal youth and the general aging of the population; and

- ◆ the perception, in some quarters, that human rights legislation promotes “special rights” for “special interest groups” at the expense of the majority of Canadians.

Section III : Departmental Performance

A. Performance Expectations

Planned versus actual spending table

Comparison of Total Planned Spending to Actual Expenditures, 1996-97 by Branches

Branch	FTE	(\$millions)					
		Operating ¹	Capital	Voted Grants and Contributions	Total Gross Expenditures	Less: Revenue Credited to the Vote	Total Net Expenditures
Executive Offices	14	1.590	--	--	1.590	--	1.590
	14	1.558	--	--	1.558	--	1.558
Legal Services	16	1.498	--	--	1.498	--	1.498
	16	1.438	--	--	1.438	--	1.438
Anti-Discrimination Programs	56	3.878	--	--	3.878	--	3.878
	53	3.773	--	--	3.773	--	3.773
Employment Equity	14	0.958	--	--	0.958	--	0.958
	9	0.762	--	--	0.762	--	0.762
Human Rights Promotion	17	1.797	--	--	1.797	--	1.797
	18	1.718	--	--	1.718	--	1.718
Regional Offices	21	1.735	--	--	1.735	--	1.735
	19	1.697	--	--	1.697	--	1.697
Policy and Liaison	5	0.461	--	--	0.461	--	0.461
	5	0.456	--	--	0.456	--	0.456
Corporate and Personnel Services	36	3.508	--	--	3.508	--	3.508
	33	3.470	--	--	3.470	--	3.470
Human Rights Tribunal	--	0.352	--	--	0.352	--	0.352
	--	--	--	--	--	--	--
TOTALS	179	15.777	--	--	15.777	--	15.777
	167	14.872	--	--	14.872	--	14.872

Other revenues and Expenditures

Revenue credited to the Consolidated Revenue Fund	--
	--
Cost of services provided by other departments	2.436
	2.436
Net cost of the Program	18.213
	17.308

Note: Shaded numbers denote actual expenditures in 1996-97.
These figures reflect a reorganization conducted in December 1996.

The budget surplus achieved in 1996-1997 is largely attributable to the fact that the Canadian Human Rights Tribunal became a separate organization and that there was a delay in the implementation of the new Employment Equity Program.

¹Operating includes contributions to employee benefit plans.

Planned versus Actual spending by Branch (\$millions)

Branch	Actual 1993-1994	Actual 1994-1995	Actual 1995-1996	Total Planned 1996-1997	Actual 1996-1997
Executive Offices	1.199	1.229	1.278	1.590	1.558
Legal Services	1.477	1.232	1.307	1.498	1.438
Anti-Discrimination Programs	3.580	3.311	3.701	3.878	3.773
Employment Equity	1.136	1.120	1.260	0.958	0.762
Human Rights Promotion	1.086	0.926	1.095	1.797	1.718
Regional Offices	3.624	3.289	2.669	1.735	1.697
Policy and Liaison	0.427	0.423	0.401	0.461	0.456
Corporate and Personnel Services	3.122	2.919	3.039	3.508	3.470
	15.651	14.449	14.750	15.425	14.872
Human Rights Tribunal	2.369	2.017	2.014	352	--
Total	18.020	16.466	16.764	15.777	14.872

These figures reflect a reorganization conducted in December 1996.

The budget surplus achieved in 1996-1997 is largely attributable to the fact that the Canadian Human Rights Tribunal became a separate organization and that there was a delay in the implementation of the new Employment Equity Program.

Summary of Voted Appropriations

Authorities for 1996-97 - Part II of the Estimates

Financial Requirements by Authority (\$millions)

Credit		1996-97	1996-97	1996-1997
		Main Estimates	Total Authority	Actual
Canadian Human Rights Commission				
10	Program expenditures	14.279	14.279	13.376
(S)	Contributions to employee benefit plan	1.438	1.493	1.493
(S)	Spending of proceeds from the disposal of surplus Crown Assets	--	0.005	0.003
Totals for the Commission		15.717	15.777	14.872

Summary of Performance Expectations

The Canadian Human Rights Commission having a budget of \$14,175,000 in 1997-1998	
Provides to Canadians :	As evidenced by:
<i>The furtherance of equal opportunity and non-discrimination for all Canadians</i>	
An increased awareness among Canadians of the principles of human rights and equal opportunity	A reduction in discriminatory practices
Recourse for Canadians whose rights have been violated	Efficient handling of complaints of individual and systemic discrimination
Compliance by federally regulated employers with the new <i>Employment Equity Act</i>	Improved representation of minority groups in the workplace

B. Performance Accomplishments

- ▶ The centralization and computerization of the complaints process, undertaken in the previous year, has made the process more efficient. As a result, more than fifty percent of the complaints brought before the Commission for decision had been filed within the last two years. The majority of complaints brought before the Commission had been completed within nine months of the filing date.
- ▶ A newly-formed Employment Equity Branch completed an extensive round of consultations with employers, unions, advocacy groups, federal departments and interested individuals across the country to discuss a compliance audit framework which would guide the implementation of the Commission's new mandate under the Employment Equity Act. Under this legislation, the Commission must conduct compliance audits of employment equity programs of some 425 federally regulated employers, as well as federal departments and agencies which are legislated for the first time. In this latter respect, consultations with the Treasury Board led to a Memorandum of Understanding signed on January 27, 1997, setting out the Commission's mandate in a public service context. To complement these various consultations, 14 private and public sector organizations volunteered to undergo trial audits in order to allow the Commission to test its processes. A subsequent evaluation of these trial audits led to the implementation of some thirty recommendations to refine the Commission's approaches and streamline the process. As a result, a Framework Document outlining a revised audit process, assessment factors and a time line summary was published in time for the start of compliance audits on October 24, 1997. The Employment Equity Branch now includes nine compliance review officers and three audit supervisors who have started compliance audits of the first group of 41 employers selected for the first half of the year. The Branch will strive for 82 compliance audits and follow-up audits during the calendar year 1998.
- ▶ The Commission announced a detailed policy on AIDS and HIV-related discrimination in the workplace which encourages all federally-regulated employers to adopt their own guidelines to ensure fair treatment of affected individuals.

A series of research reports prepared by the Commission on accessibility as it relates to persons with disabilities, helped to sensitise Departments to issues confronting disabled employees and to suggest possible solutions.

The Commission also monitored Parliamentary consideration of sexual orientation as a ground of discrimination and argued persuasively and cogently for the amendment of the law to this effect.

- ▶ The Commission has endeavoured to put a stop to the dissemination of hate propaganda through messages transmitted “by means of a telecommunication undertaking within the legislative authority of Parliament.” In particular, the Commission requested that a human rights tribunal be appointed to examine allegations that an Internet web site “could expose Jews to hatred and contempt on the basis of their race, religion and ethnic origin.”.

In 1996-97 the Human Rights Promotion Branch worked to increase the visibility of the Commission with community associations, human rights advocacy groups, business and labour organizations, and senior managers, by discussing current issues, explaining the Commission’s work and undertaking joint initiatives.

In working with partners in provinces and other organizations the Commission was able to expand its reach on a number of projects. As a result of an alliance with different groups in the province of Manitoba, thirty-five thousand copies of a poster on race relations - **Stop the Hatred** - were distributed to nearly all urban, rural and reserve schools in Manitoba for grades 7 to Senior 4.

- ▶ There were several significant court or tribunal decision in 1996-1997, which contributed to the achievement of equality and established precedents which will assist in the effective application of the *Canadian Human Rights Act*.

In *National Capital Alliance for Race Relations v. Canada (Health Canada, Treasury Board and the Public Service Commission)*, a Human Rights Tribunal ruled that systemic race discrimination had occurred in the promotion and selection systems for senior management positions within Health Canada, ordered a mandatory review of these systems, and set specific appointment and promotion figures for the Department. This is the first Canadian Tribunal decision to find systemic race discrimination in employment, the first case to address the way in which a “glass ceiling” exists, and the first case in ten years to order the implementation of mandatory hiring and promotion for a specific target group. Health Canada has moved to implement this decision, and reports on progress are being submitted to the Commission.

In *Canadian Civil Liberties Association v. Toronto-Dominion Bank*, the Federal Court ruled that a drug testing policy for all new and returning employees had an adverse effect on employees who are drug dependent. The Court ordered that the case be remitted back to the Tribunal for it to determine whether the policy was justified on the basis of operational requirements. The Bank has appealed to the Federal Court of Appeal.

This decision is the first ruling on the scope of permitted drug testing in a situation where no safety concern exists. If upheld, it will establish the tests to be used to determine whether drug testing of employees is permitted.

A key issue in disability discrimination law is the duty to accommodate - i.e. the duty of an employer or service-provider to take steps to meet the particular needs of persons with disabilities. In *MacNeil (Holmes) v. A.G. Canada* the Federal Court upheld a Commission decision to dismiss a complaint when it found that the employer had done enough to accommodate the complainant after she became physically incapable of performing her full range of job duties. The employer had attempted to arrange modified job duties, and had searched for another position for the complainant for an extended period of time. In the end, a suitable change in job duties could not be found, and the complainant was released.

The decision reviews the law on the duty to accommodate, and examines the scope of the employer's obligations. This is a significant step towards clarifying an area of the law which will have a broad impact on all federal employers and service-providers, and on the rights to equality of disabled persons.

The Commission intervened in the Supreme Court of Canada in the case of *Gibbs v. Battleford & District Co-operative Ltd.* This is the first case involving a claim of employment discrimination on the basis of disability to come before the Supreme Court. The case involved a claim that Ms. Gibbs was discriminated against when her long-term disability benefits were cut off. She has a mental disability and, under the terms of the employer's policy, in order to continue to receive benefits she had to be incapable of any work, and housed in a hospital or institution. By contrast, persons with a physical disability were eligible if incapable of any work, and so certified by a physician or specialist. This difference in benefits was found to constitute discrimination by the Supreme Court of Canada.

This is a precedent-setting decision which recognized the unique disadvantages experienced by persons with a mental disability. It provides a framework for analysing future disability discrimination claims which should significantly assist disabled persons in Canada.

The Commission continued to participate in Tribunal hearings on two major pay equity cases. In *P.S.A.C v. Treasury Board*, two major developments occurred. One of the Union complainants, the Professional Institute of the Public Service, negotiated a settlement of their complaints with the Treasury Board, under which their members received more than \$80 million in back pay. The complaint filed by the Public Service Alliance has not been resolved, and the Commission and the other parties completed final arguments in this case, after 248 days of hearing between April 1991 and April 1997. The Tribunal has not yet released its decision.

In *P.S.A.C. v. Canada Post Corporation*, the hearings continued into the complaint laid under section 11 of the CHRA. A total of 197 days of hearing have

now been held. The case is expected to continue into 1998-99 and possibly longer.

In the case of *C.U.P.E. v. Canadian Airlines International and Air Canada*, a Tribunal is holding a hearing into a preliminary issue involving equal pay claims brought by flight attendants seeking to compare their work to that of male groups such as baggage handlers and first officers. The issue before the Tribunal is whether the male-dominated and female-dominated groups work in the same establishment as required by s. 11 of the Act. If the Tribunal finds this to be the case, it will be possible to compare the pay of the two groups of employees.

These cases are contributing towards an emerging framework for implementing pay equity in the federal domain, which could have a direct impact on the pay cheques of many working women.

There were several judicial decisions involving CHRC procedures for handling complaints, which will clarify the law and assist the Commission in ensuring that it is both prompt and fair. For example, the Federal Court upheld the criteria and administrative process used by CHRC for deciding whether to deal with complaints filed outside of the normal one-year time limit. In another series of decisions the Court clarified the Commission's process for receiving submissions from the parties. Finally, the Court ruled that the Commission is essentially the master of its own procedures, and that it is invested with a wide discretion to deal with complaints.

C. Key Reviews

Results of Internal Audits	
Official Languages Program:	The results of the audit were fully satisfactory with minor recommendations which have been implemented.
Key Reviews	
Organizational Review:	Required to realign the organization to meet operational changes such as our new mandate under the <i>Employment Equity Act</i> , the centralization of the complaints process, the new outreach function of the regional offices.
Communications function:	Evaluation of the required expertise for human rights promotion. A more co-ordinated and effective structure to support promotion activities was implemented.

Section IV : Supplementary Information

A. Listing of Statutory and Departmental Reports

Annual Report to Parliament due on or before March 31st.

B. Contacts for Further Information

Joanne Baptiste - Director Corporate and Personnel Services Branch 943-9033

Martine Bélanger - Manager Strategic Planning and Review 943-9047

C. Statutes Administered by the Canadian Human Rights Commission

Canadian Human Rights Act	1976-77, C.33, 5.1. amended R.S., C.1985, C.31 (1 st Supp) R.S., C.1985, C32 (2 nd Supp)
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<i>Employment Equity Act</i>	1995, C.44
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APPENDIX

Canadian Human Rights Commission Organizational Chart

