



CANADIAN HUMAN
RIGHTS COMMISSION

Annual Report 2004



Canada

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CANADIAN
HUMAN RIGHTS
COMMISSION

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CANADIENNE DES
DROITS DE LA PERSONNE

Chief Commissioner *Présidente*

March 2005

The Honourable Daniel Hays
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 *2004 Annual Report* of the Canadian Human Rights Commission to you for tabling in the Senate.

Yours sincerely,

Mary Gusella

Encl.

c.c.: Mr. Paul Bélisle
Clerk of the Senate and Clerk of the Parliaments



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March 2005

The Honourable Peter Milliken, 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 *2004 Annual Report* of the Canadian Human Rights Commission to you for tabling in the House of Commons.

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Clerk of the House

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Chief Commissioner's Message

This annual report will outline further improvements the Commission has made by developing and implementing a new business model to deliver its mandates under the *Canadian Human Rights Act* and the *Employment Equity Act* more effectively and efficiently.

Changes such as putting more focus on mediation and streamlining the investigation process are having an impact on how effectively human rights complaints can be resolved. Two years after launching the reforms, the Commission is succeeding in reducing the caseload. The average age of the Commission's caseload has declined from over 25 months in 2002 to about 12 months now, an improvement of 50%.

With more fine-tuning, the new model should help the Commission improve its performance even more.

In employment equity, the Commission has made some adjustments to make the most effective use of its resources. The Commission has continued to make progress in ensuring that employers covered by the *Employment Equity Act* comply with the Act. Since it began conducting compliance audits in 1997, the Commission has now put under audit a total of 282 employers, representing 77% of the workforce covered by the Act.

The Commission is moving into the next phase of its transformation. This involves moving more resources to the front end of the case management continuum by focussing on discrimination prevention and undertaking more studies and proactive initiatives to address key human rights issues. The knowledge gained through these efforts will guide the Commission's work in broader ways.

In 2004, the Commission continued to take part in major human rights files. For example, the Commission appeared before the Supreme Court of Canada on the issue of same-sex marriage.

In all our work, good communication and cooperation with stakeholders are of vital importance. To this end, the Commission has carried out extensive consultations on key principles which should help shape future reforms of the *Canadian Human Rights Act* and its administration.



Guided by modern management practices, the Commission is committed to making the best use of its resources to encourage the fullest possible application of human rights principles in all areas of federal jurisdiction.

Mary Gusella
Chief Commissioner

Highlights

- A reduction in the average age of the Commission's caseload from 25 months in 2002 to 15 months in 2003 and just over 12 months in 2004.
- An improvement in the percentage of active cases aged two years and older in our caseload, from 27% in 2002 to 15% in 2003 and 9% in 2004.
- A 26% reduction over a period of two years in the total active caseload, from 1,287 cases in 2002 to 1,219 in 2003 and 955 cases in 2004.
- An increase of 70% over 2002 in the number of final decisions.
- A relatively steady trend in the number of complaints settled through mediation and conciliation: 46% in 2003 and 41% in 2004. In addition, a more rigorous monitoring system of settlements was introduced.
- A 37% decrease in the number of cases referred to Tribunal.¹
- A 100% increase in the number of cases referred to alternative redress mechanisms.
- From 1997 to 2004, 282 employers, representing 77% of the workforce covered by the *Employment Equity Act*, have been audited.
- An increase in the number of employers found in compliance to 44, a record number and slightly above the 40 found in compliance in 2003 and 32 in 2002.
- The representation of persons with disabilities in the public sector has increased from 3.9% in 1997 to 5.7% in 2003.
- The Commission established a new discrimination prevention unit to work with employers to improve the human rights culture in the workplace.
- The Commission released a special report on the human rights of women in the federal correctional system.
- The Commission acted as an intervener before the Supreme Court of Canada in the Government of Canada's reference of the same-sex marriage issue.
- The Commission participated in a Supreme Court of Canada hearing of *House of Commons et al. v. Satnam Vaid et al.* This case deals with

¹ See Figure 3 – Explanation provided for cases referred to Tribunal.



the question of whether the *Canadian Human Rights Act* applies to parliamentary employees.

- The Federal Court of Appeal rendered a decision in the pay equity case *Canadian Human Rights Commission v. Air Canada*. The appeal court gave a broad interpretation to the meaning of “establishment” under the *Canadian Human Rights Act*, ensuring that pay equity requirements apply broadly throughout Air Canada. The Supreme Court of Canada has given Air Canada leave to appeal.

Moving Forward in Human Rights

Service Improvements in 2004

Over the last two years, significant changes within the Commission have led to more effective, consistent and timely handling of human rights cases. This year, there were additional improvements. These included:

- improving effectiveness and efficiency at the complaint intake level;
- developing a more effective and efficient process for notifying respondents;
- developing a pilot preliminary assessment approach; and
- creating a more rigorous settlement monitoring system.

The new intake process ensures that complaints are carefully scrutinized in a uniform manner at the intake level. Often, this involves referring the complaint for review to a team of legal, policy and operational staff.

This process helps to establish how the complaint should be handled. This might involve accepting it at the Commission for mediation or investigation, referring it back to an internal grievance or conflict management process in the department or company concerned, or directing it to another, more appropriate, agency. If a complaint is referred to another dispute settlement mechanism, the complainant retains the right to return to the Commission if the matter is not resolved.

To further improve resolution of cases at an early stage, the Commission worked on a pilot preliminary assessment project which was launched early in 2005. This involves a human rights specialist helping parties to a dispute to clarify and narrow the issues just after the complaint is received. This may lead to a settlement, an agreement to enter mediation, a non-confidential report that will speed up investigation, or referral to a more appropriate grievance or review procedure.

The advantages of this approach include timeliness and an opportunity to resolve a dispute early, before positions harden.

All these measures aimed at improving the effectiveness and the efficiency of the process contributed to reducing the number of cases referred to investigation.



Finally, the Commission is taking a more stringent approach to monitoring settlements. It wants to make sure settlements are being implemented. So, it has set up a central settlement monitoring unit to:

- review and analyze settlements and maintain records;
- help parties implement terms of the settlements and resolve disagreements over interpretations of wording; and
- verify that the settlements have actually been carried out.

In 2004, the Commission continued to rely on the advice of the council of eminent jurists it had set up in 2003. Comprised of former justices Gérard La Forest, Claire L'Heureux-Dubé, Charles Dubin and Roger Kerans, the Council advises the Chief Commissioner on alternative dispute resolution as it relates to human rights and public interest issues. The Commission wishes to acknowledge the work of the members of the Advisory Council in helping it to improve its processes.

The Commission is working on service standards for each step involved in the complaint process.

The Commission continued to invest in mediation and developed an online list of trained mediators. It also made this roster available to government departments looking for contract mediators to help settle disputes through their own internal mechanisms.

Results in 2004

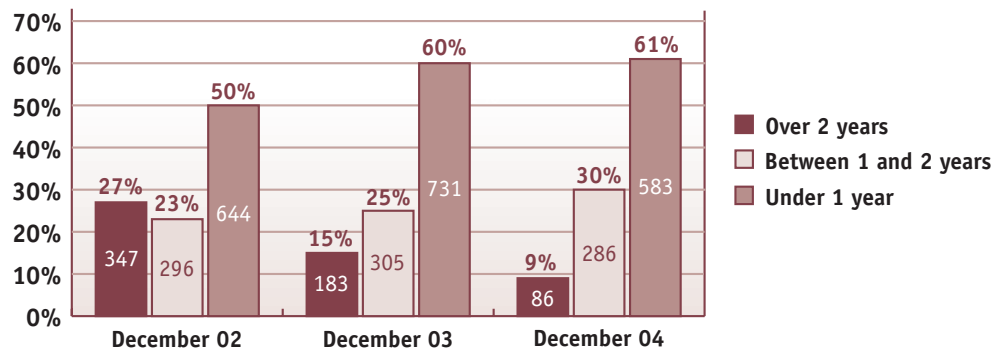
Equipped with these improvements, the Commission continued moving towards achieving the objectives it established at the outset of its reform process.

In 2004, the Commission:

- reduced the number of active cases in its caseload that were two years old or older by 75%, from 347 in 2002 to 86 in 2004;
- reduced the average age of cases to just over 12 months from 15 months in 2003 and 25 months in 2002;
- handled 1,547 cases,² about the same number as in 2003, but an increase of 64% over 2002; and
- produced final decisions in 1,237 cases, about the same as in 2003, but an increase of 70% over 2002.

² The number of cases handled by the Commission represented by the number of interim and final decisions rendered during the year. Final decisions include pre-tribunal settlements and conciliation-tribunal settlements.

Figure 1 Age of Caseload



In 2004, 61% of cases were one year old or less, compared to 50% in 2002.

The caseload includes all complaints where there are ongoing investigation, mediation or conciliation activities, as well as those complaints in which analyses of section 40/41 issues are required. It also includes cases that are awaiting a decision by Commission members.

This figure excludes inactive cases—that is cases that were stood down by the Commission pending a Court/Tribunal decision. Work will resume on these cases once the Court/Tribunal decision has been rendered.

Inactive cases: 2002: 125 cases
 2003: 32 cases
 2004: 61 cases

The actual caseload declined to 955 active cases in 2004, from 1,219 in 2003 and 1,287 in 2002, a 26% decrease over two years.

In 2004, the Commission rendered 1,237 final decisions, of which 340 were section 40/41 analyses. In the 897 remaining cases, the allegations were addressed through alternative dispute resolution or investigation. Of these, 369 or 41% were settled. This compares closely to the result of 46% for 2003. These settlements included terms that were crafted by the parties themselves. As such, they not only included the types of remedy described in the Act, but also created solutions designed to meet the particular needs and interests of the parties. In a small number of cases, the parties settled the matter on their own, and the complaint was withdrawn as part of the settlement. In most cases, however, the settlements were submitted to the Commission for approval, and in all of these cases, the Commission satisfied itself that the settlement was consistent with the public interest before giving its approval.

Figure 2 Total Number of Final Decisions

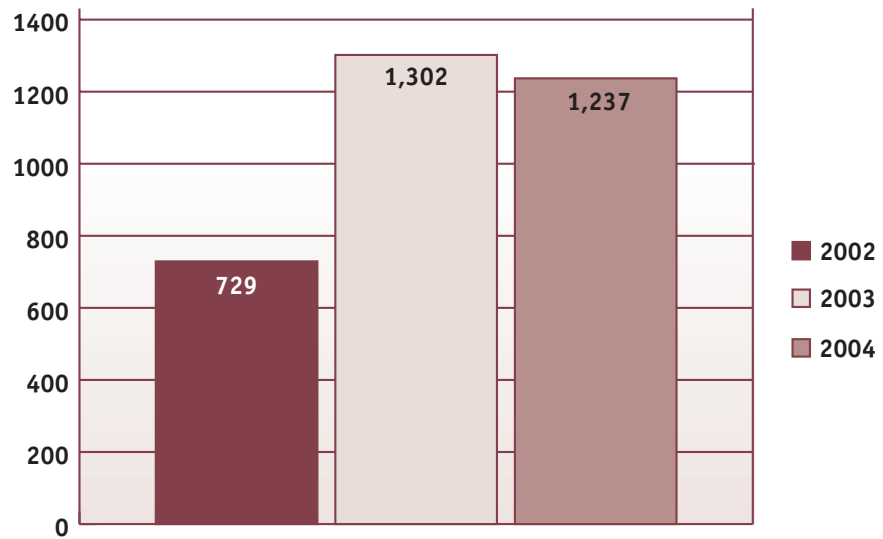
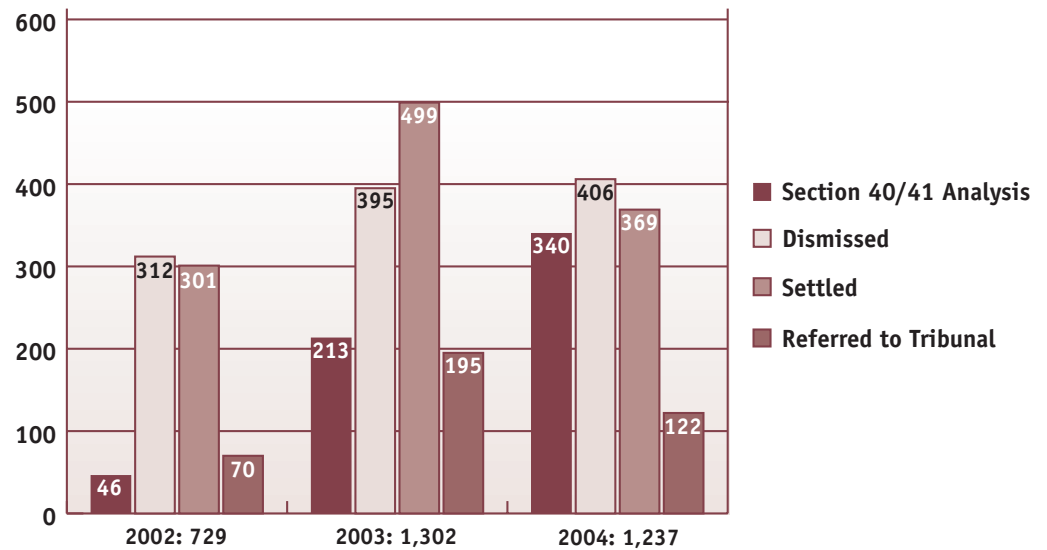


Figure 3 Final Decisions by Type in 2004 vs 2003 and 2002



Section 40/41 Analysis: Cases that the Commission decided not to pursue under section 40-41 of the *Canadian Human Rights Act* because they were filed more than one year after the alleged act of discrimination, or because the complainants were asked to first pursue other redress mechanisms or other reasons.

* **Dismissed:** Including cases in which the Commission took no further proceedings because the complainants withdrew or abandoned their complaints.

* **Settled:** Settled in mediation, in the course of investigation, through conciliation or before Tribunal hearing.

Referred to Tribunal: Decisions made to request the appointment of a Tribunal to inquire into a complaint. The figure for 2004 of 122 is 17 less than the 139 reported by the Tribunal for two reasons. First, the Tribunal counts referrals based on the date it receives a letter of referral from the Commission whereas the Commission uses the date upon which its decision was made. For decisions rendered in December of a year, the letter of referral may not be received by the Tribunal until January. Secondly, some cases settle through conciliation but after a letter of referral has been sent to the Tribunal. The Commission counts those cases as settled rather than referred. Figures for 2003 and 2004 have been adjusted accordingly and may differ slightly from figures given in previous annual reports.

* The numbers for dismissed and settled cases have been adjusted. In the 2003 Annual Report, the number of settlements had been under-reported and the number of dismissed cases over-reported.

Figure 4 Outcome of Section 40/41 Analysis

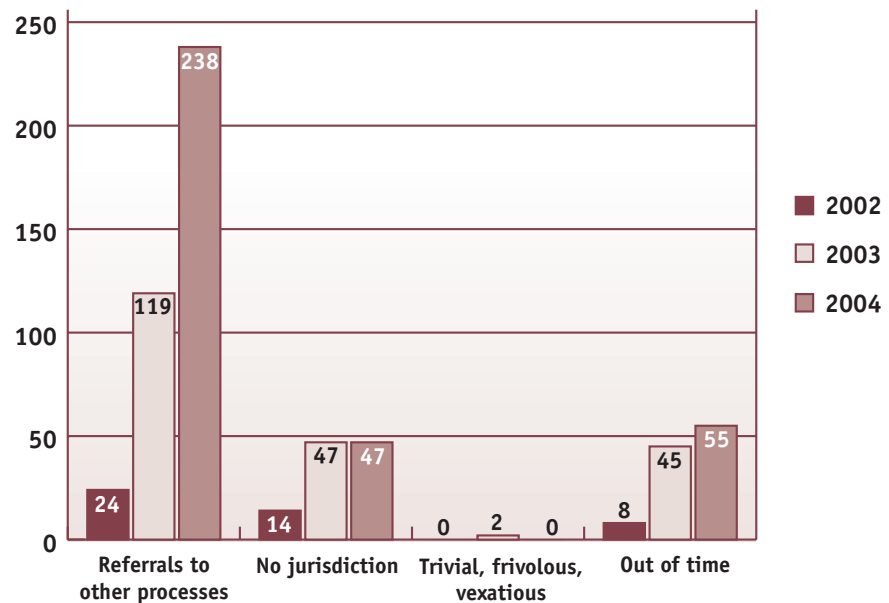


Figure 5 Investigation Caseload 2002 to 2004

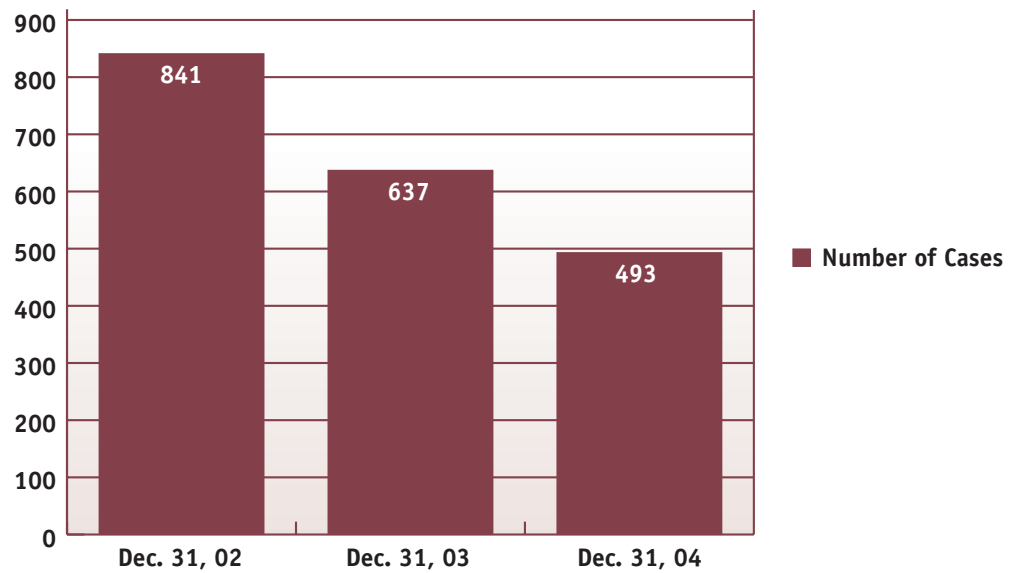


Table 1 Complaints Received by Types of Respondents

	2004			
	Inquiries and complaints received		Signed complaints	
	#	%	#	%
Public Sector	887	47	373	45
Private Sector	619	33	308	37
Individuals	242	13	81	10
Reserves, Band and Councils	116	6	45	5
Unions	32	1	21	3
Total	1,896	100	828	100

Almost half of all signed complaints filed with the Commission come from the public sector.

Table 2 Complaints Received by Province or Territory

	2002				2003				2004			
	Inquiries and complaints received		Signed complaints		Inquiries and complaints received		Signed complaints		Inquiries and complaints received		Signed complaints	
	#	%	#	%	#	%	#	%	#	%	#	%
Ontario	655	40	329	41	863	40	464	43	786	41	357	43
British Columbia and Yukon	184	11	99	12	200	9	112	10	259	14	127	15
Quebec	315	19	140	18	320	15	168	15	242	13	106	13
Alberta, Northwest Territories and Nunavut	190	11	91	11	282	13	133	12	249	13	98	12
Nova Scotia	75	5	51	6	105	5	45	4	87	5	41	5
Saskatchewan	60	4	22	3	121	6	39	3	89	5	35	4
Manitoba	88	5	32	4	131	6	60	6	107	6	31	4
New Brunswick	63	4	21	3	77	4	32	3	38	2	14	2
Newfoundland and Labrador	10	0.5	8	1	31	1	17	2	20	1	12	2
Outside of Canada	10	0.5	4	1	12	0.5	7	1	11	-	4	-
Prince Edward Island	3	-	3	-	11	0.5	7	1	8	-	3	-
Total	1,653	100	800	100	2,153	100	1,084	100	1,896	100	828	100



Table 3 Grounds of Discrimination Cited in Complaints*

	2002				2003				2004			
	Inquiries and complaints received		Signed complaints		Inquiries and complaints received		Signed complaints		Inquiries and complaints received		Signed complaints	
	#	%	#	%	#	%	#	%	#	%	#	%
Disability	888	43	438	44	795	33	495	37	910	43	389	39
Sex	379	18	188	19	413	17	204	16	307	14	165	17
National or ethnic origin	214	11	94	9	281	12	141	11	237	11	109	11
Race	144	7	71	7	289	12	146	11	216	10	105	11
Family status	84	4	30	3	91	4	38	3	133	6	61	6
Age	171	8	65	7	262	10	159	12	116	6	60	6
Religion	46	2	30	3	63	3	35	3	68	3	34	3
Colour	56	3	30	3	89	4	59	4	51	3	26	3
Sexual orientation	49	3	31	3	99	4	27	2	47	2	21	2
Marital status	27	1	14	2	35	1	15	1	42	2	14	2
Pardon	8	-	3	-	2	-	1	-	7	-	5	-
Total	2,066	100	994	100	2,419	100	1,320	100	2,134	100	989	100

* Total number of grounds cited exceeds the number of complaints received because some complaints deal with more than one ground of discrimination.

Table 4 Type of Allegations Cited in Complaints*

	2002				2003				2004			
	Inquiries and complaints received		Signed complaints		Inquiries and complaints received		Signed complaints		Inquiries and complaints received		Signed complaints	
	#	%	#	%	#	%	#	%	#	%	#	%
Employment-related (sections 7, 8, 10)	1,212	64	666	65	1,683	61	1,048	66	1,638	65	834	67
Services-related (sections 5, 6)	290	15	128	13	456	16	195	12	424	17	179	14
Harassment - employment (section 14)	311	16	164	16	455	16	249	16	346	14	175	14
Retaliation (section 14.1)	17	1	15	2	45	2	33	2	39	1	22	2
Harassment – services (section 14)	51	3	26	3	69	2	31	2	43	2	18	1
Hate messages (section 13)	11	-	4	-	29	1	10	1	18	1	10	1
Union membership (section 9)	7	-	7	0.5	3	-	2	-	11	-	7	1
Pay equity (section 11)	15	1	7	0.5	13	1	7	-	3	-	-	-
Notices, signs, symbols (section 12)	0	-	2	-	13	1	9	1	3	-	-	-
Total	1,914	100	1,019	100	2,766	100	1,584	100	2,525	100	1,245	100

* Total number of allegations cited exceeds the total number of complaints received because some complaints dealt with more than one allegation.





Legal Activities

As in 2003, the Commission used its legal services to support its new strategy. That meant members of the legal staff dealt increasingly with cases early in the complaint process. They also helped shape new initiatives, such as the prevention and proactive projects described in the *Fostering Human Rights* section.

In helping with the complaint process, legal services participated in multidisciplinary teams, provided advice on a new approach to conciliation, and helped develop the preliminary assessment project.

With respect to its work before the Canadian Human Rights Tribunal, the Commission continues to refine its public interest role in that forum. This means deciding, on a case-by-case basis, the scope and nature of the Commission's participation in the formal Tribunal hearing. The decision is based on such factors as whether the case raises broad policy issues, new points of law, or relates to a major policy concern.

In 2004, there were 122 complaints in which the Commissioners rendered a decision to refer to Tribunal. Within the year, the Commission made 218 appearances before the Tribunal, representing 72% of total Tribunal hearing days.

The Commission continues to be active in all aspects of the Tribunal process, including mediation. As part of that, the Commission is always present for Tribunal-sponsored mediation. Commission counsel was involved in the settlement of 77 complaints prior to a Tribunal hearing, totalling 67% of the complaints completed at Tribunal in 2004.

In addition, the Commission proposed to the Tribunal a new case management system. This involves channelling more resources into the pre-hearing stage of the Tribunal process so that cases can be handled more effectively at the hearing level.

The Commission was involved in a number of notable legal developments in 2004, including:

- a Supreme Court of Canada hearing of *House of Commons et al. v. Satnam Vaid et al.*, which deals with the question of whether the *Canadian Human Rights Act* applies to parliamentary employees;
- the Government of Canada's reference on same-sex marriage before the Supreme Court of Canada;
- a decision by the Federal Court of Appeal in the pay equity case *Canadian Human Rights Commission v. Air Canada* (the appeal court gave a broad

interpretation to the meaning of “establishment” under the *Canadian Human Rights Act* and the Supreme Court of Canada has given Air Canada leave to appeal); and

- a complaint before the Canadian Human Rights Tribunal dealing with hate messages (the Commission continues to identify this area as a very significant public interest issue).

Pay Equity

The Commission took a number of steps to make the pay equity complaints system more effective and efficient. Pay equity benefited from broader changes the Commission introduced to the human rights complaint process including mediation and new intake measures.

The Commission made final decisions on 13 pay equity files in 2004. Five more cases are at conciliation and 10 are at the investigation stage.

The Commission was also involved in two pay equity cases before the Canadian Human Rights Tribunal—*CTEA et al v. Bell Canada* and *Public Service Alliance of Canada v. Canada Post*.





Moving Forward in Employment Equity

Overview

The 1986 *Employment Equity Act* gives the Commission the mandate to ensure that some 500 employers, with a combined workforce of nearly a million employees, comply with the Act.

Census statistics released in April 2004 show a growing presence of certain groups—particularly Aboriginal people and visible minorities, as well as women—in the workforce.

Over the last two years, the Commission has refined its approach to auditing and monitoring employers for compliance with the *Employment Equity Act*. In addition, it has continued to provide employers with information and guidance on their obligations under the legislation.

The Commission began conducting compliance audits in late 1997. By the end of 2004, it had put under audit 282 employers, representing 77% of the workforce covered by the Act.

For the second year in a row, the Commission did not have to issue any direction to employers to comply, nor to refer any employer to the Employment Equity Review Tribunal. This positive outcome reflects in part the emphasis that the Commission has put on helping employers better understand their obligations by providing additional tools and more thorough explanations of audit standards and expectations.

By 2007, the Commission expects that 90% of the workforce subject to the *Employment Equity Act* will have been covered by audits.

Audit Results

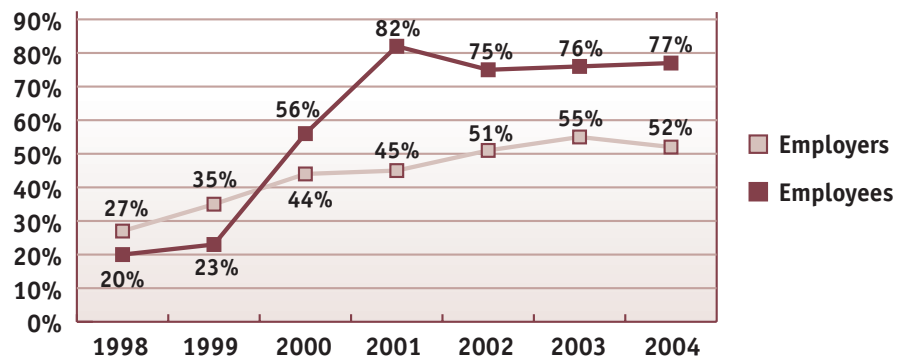
Table 5 provides information on the number of audits completed to date under the Act and the number of audits that remain to be done.

Table 5 Audits of Employers Under the EE Act as of December 31, 2004

Employer Status	Number of Organizations
AUDITS DONE AND UNDER WAY	
Employers in compliance	189
Employers currently under audit	93
Total: employers audited or under audit	282
REMAINING AUDITS	
Canadian Forces, CSIS, RCMP	3
Employers with more than 500 employees	59
Employers with 100 to 500 employees	247
Total: unaudited employers	309
Note: Data on audits remaining to be done is approximative, since the number of employers changes from year to year. Data on current audits includes some audits put on hold or cancelled.	

Figure 6 shows that 52% of employers currently under the Act have been audited or are under audit. These employers represent 77% of the workforce covered under the Act. The decrease in the percentage of employers covered by audits or under audit from the previous year (55%) is due to the addition of a substantial number of new smaller employers during the past year.

Figure 6 Percentage of Employers and Employees under the EE Act Covered by Audits



The Commission's efforts in 2004 were focussed on finishing the audits previously launched. The Commission found 44 employers in compliance in 2004, slightly more than in 2003 (40).

Table 6 shows that since 1998, 189 employers have been found in compliance with the Act.

Table 6 Employers in Compliance

STATUS	2002	2003	2004	Cumulative 1998–2004
Employers with full representation, in compliance at the initial audit	0	0	0	2
Employers with under-representation, in compliance at the initial audit (without having to sign undertakings)	3	20	23	53
Employers with under-representation, in compliance at the follow-up audit (after signing undertakings)	29	20	21	134
Total employers in compliance	32	40	44	189
Employers who were issued a direction by the Commission	3	0	0	23
Tribunals (requested by the Commission or by employers)	1	0	0	8

The Commission started four new initial audits in 2004, down from 25 in 2003. This was largely due to a change in approach. In 2004, the Commission focussed on completing audits that were ongoing in 2003, rather than on starting new ones. In addition, it began the first five implementation audits with employers that had not made reasonable progress under the Act.

Table 7 outlines the audits started and completed by the Commission.

Table 7 Audits Started and Completed

	2004		Cumulative 1998–2004	
	Started	Completed	Started	Completed
Initial Audits				
Initial audits	4	33	282	264
Follow-up to initial audits	22	21	188	156
Follow-up to directions	0	0	22	21
Cancelled*	0	6	0	41
Implementation Audits				
Implementation audits	5	0	5	0
Total audits	31	60	497	482
<p>* Audits may be cancelled for the following reasons: company shut-down, company merger, or workforce reduction below 100 employees. Cancelled audits are considered to be completed and closed.</p>				

The Commission also completed extensive discussions with Human Resources and Skills Development Canada (HRSDC) on the Commission’s role in assisting HRSDC with the development of the Racism in the Workplace Strategy. A letter of understanding was signed early in 2005 outlining this partnership.





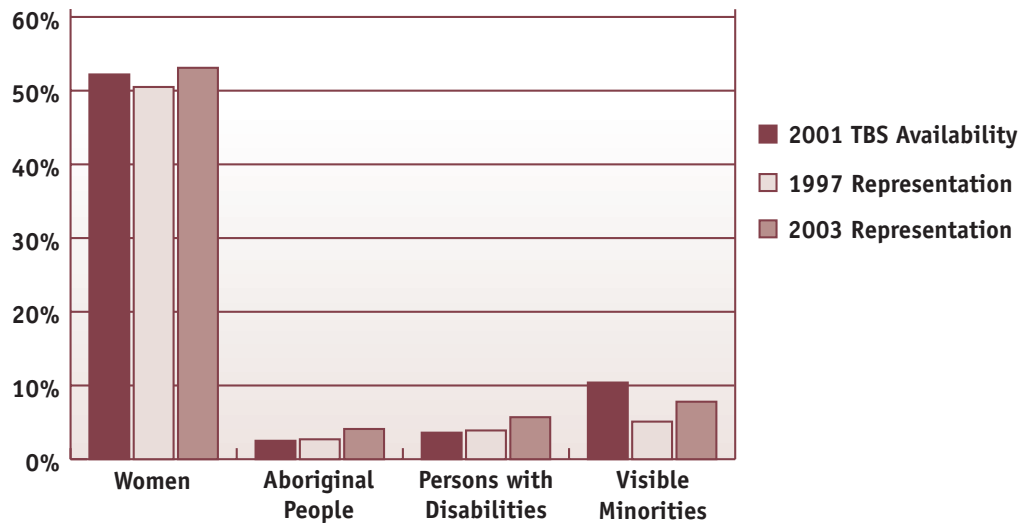
Progress of Designated Groups

This past year, 454 employers in banking, communications, transportation and the “other” sector filed data on their combined workforces of about 620,000 employees as of December 31, 2003. The “other” sector includes a variety of employers such as grain companies, uranium mines, nuclear power operations, credit corporations and museums. Although there were 6,500 fewer hires in the private sector in 2003 than in the previous year, there were still more than 77,000 opportunities to hire designated group members.

In addition, Treasury Board Secretariat reported on employment equity in 70 federal departments and agencies, with a combined workforce of about 166,000 employees, as of March 31, 2004. More than 12,300 job openings were filled, about 4,000 fewer than the previous year. Over 4,000 of these hires were for permanent jobs.

The Act also applies to “separate employers”—part of the public sector, but not part of the “core” public service—such as the Canada Revenue Agency. Because these employers file separate reports, it is not possible to comment on the progress of designated groups in their combined workforces. However, they are being audited and must put in place employment equity plans to achieve full representation of designated groups in their workforces.

Figure 7 Designated Groups - Federal Public Sector



The following section compares workforce data in both the private and public sectors with the 2001 Census availability for women, visible minorities and Aboriginal people. The availability estimates for persons with disabilities are from the 2001

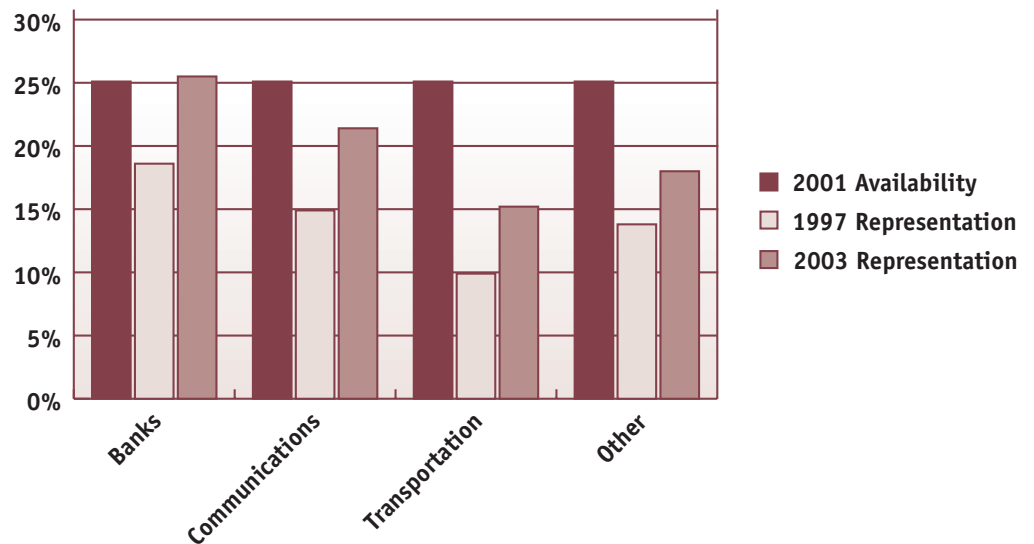
Participation and Activity Limitation Survey (PALS). The accompanying graphs compare the progress of the four designated groups for the six-year period from 1997, when the current *Employment Equity Act* came into effect, to 2003. In the case of women, the graph looks at progress achieved in management ranks.

The availability estimates that Treasury Board Secretariat has prepared for all designated groups include only Canadian citizens, since the *Public Service Employment Act* gives an absolute preference to Canadian citizens in hirings into the public service. This has the impact of reducing the overall availability of visible minorities from 12.6% to 10.4%.

Women

In the private sector: Women held 44.0% of all jobs in 2003, in line with their 47.3% availability and virtually unchanged since 1997.


Figure 8 Women in Senior Management - Federally Regulated Private Sector



Women's share of senior management positions increased to 20.4% in 2003 from 14.8% in 1997, but remains lower than their 2001 Census availability of 25.1% for these positions.

Women's representation was highest in the banking sector at 70.3%, because they hold 84.6% of the large number of clerical jobs in this sector. However, women have made gains elsewhere in banking, and now occupy over half of all professional and managerial positions. Their share of senior management jobs has risen from 18.6% in 1997 to 25.5% in 2003, in line with 2001 Census availability.





Women's representation was lowest in the transportation sector. In 2003, they held 25.1% of all jobs, a slight increase from their 23.3% share in 1997. One third of all jobs in this sector are in the semi-skilled manual workers occupational group which includes various kinds of drivers. Women hold 12.0% of these jobs—almost half of these women work as part-time school bus drivers. In this sector, women hold 15.2% of senior management positions.

In 2003, 23.1% of women worked in part-time and temporary jobs compared to 10.3% of men. Although this holds true for visible minority women and women with disabilities, it is most noticeable for Aboriginal women, 25.0% of whom work on a part-time or temporary basis. On average, women receive 80.7% of the salary received by men, largely due to their concentration in part-time and temporary employment and in lower paying clerical, sales and service positions.

In the public sector: Women's representation in the federal public sector was 53.1% as of March 31, 2004, higher than the Census benchmark of 47.3%. They received 57.2% of all hires, in line with their share the previous year.

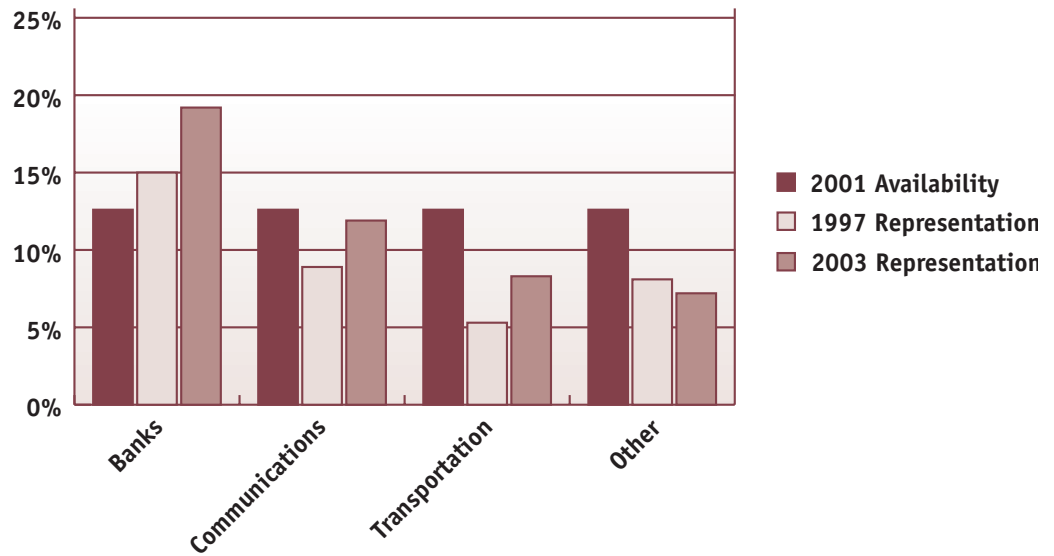
Since 1997, women's share of positions in the executive group has risen from 25.0% to 34.9% in March 2004. Women received 38.7% of all hires into this group, a notable increase from the 28.6% they received in 1997, but lower than the 43.9% they received the previous year. In the scientific and professional category, women's representation also rose from 32.2% in 1997 to 41.4% in March 2004.

Nevertheless, there is room for further progress. A total of 29.8% of all women in the public service work in the administrative support category, and women are three times more likely to be hired into this category than men are. In addition, women occupy 59.0% of all term positions. These factors contribute to the fact that 56.1% of women in the public service earn less than \$50,000 compared to 34.2% of men.

Members of Visible Minority Groups

In the private sector: The share of jobs held by visible minorities increased from 9.7% in 1997 to 12.7% in 2003, in line with the 2001 Census benchmark of 12.6%. Since 1997, their share of hires has been consistently higher than their Census availability and, in 2003, they received 12.9% of all hires. Their progress varied, however, from sector to sector, and they are under-represented in senior management positions.

Figure 9 Visible Minorities - Federally Regulated Private Sector



The representation of visible minorities was highest in the banking sector where their share of jobs increased from 15.0% in 1997 to 19.2% in 2003 due to consistently high shares of hires. In addition, visible minorities now hold 6.3% of all positions in senior management, up from 4.3% in 1997, and 22.6% of all professional occupations, compared to 18.3% in 1997.

Visible minorities also registered increases in the communications sector, from 8.9% in 1997 to 11.9% in 2003, and in the transportation sector, from 5.3% in 1997 to 8.3% in 2003. In contrast, the representation of visible minorities in the “other” sector fell from 8.1% in 1997 to 7.2% in 2003.

In the public sector: In contrast to their progress in the private sector, visible minorities made little progress in the public sector. As of March 31, 2004, their representation was 7.8%, a slight increase from the previous year when they held 7.4% of all jobs, and considerably lower than the 2001 availability set by Treasury Board Secretariat at 10.4% for the public service. Their share of permanent hires fell for the third year to 11.0%, down from 11.2% in 2002, and 12.3% in 2001.

The government has not met the goals it set in endorsing the action plan of the Task Force on the Participation of Visible Minorities in the Federal Public Service. The action plan had set a recruitment target for visible minorities of 20% by the end of fiscal year 2002–2003. The goal was not met that year, and during this past year—2003–2004—visible minorities received 10.1% of all hires, lower even than the Treasury Board availability of 10.4%.

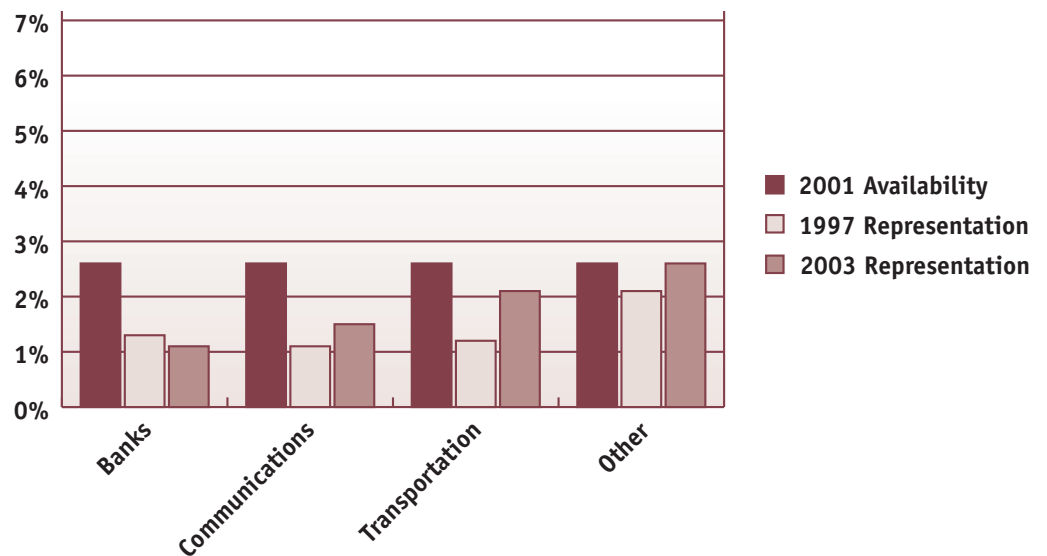


The action plan also set a target of one in five entries into the executive category to be reached by the end of fiscal year 2004–2005. This past year, visible minorities received 10—or 13.3%—of the 75 hires into this category. Their share of executive positions was 4.8% as of March 31, 2004.

Aboriginal People

In the private sector: The share of jobs held by Aboriginal people in the federally regulated private sector increased from 1.3% in 1997 to 1.7% in 2003, but was still lower than the 2001 Census benchmark of 2.6%. Their share of hires in 2003 was 1.9%, unchanged from 2002. As in the past, their termination rates were higher than average, indicating that progress requires attention to problems with retention as well as more hires.

Figure 10 Aboriginal People - Federally Regulated Private Sector



The representation of Aboriginal people was highest in the “other” sector, at 2.6%. This sector includes some mining, fish marketing and grain operations located in northern and western regions that employ a large number of Aboriginal people. In this sector, their share of hires for the last four years has been in line with availability, and their termination rate relatively low.

Aboriginal people’s representation was lowest in the banking sector where they held 1.1% of jobs, down from 1.3% in 1997. They received 1.0% of all hires, a slight increase from the 0.9% received in 2002, but still less than half the 2.6% Census benchmark.

In the public sector: In contrast to the private sector, Aboriginal people's share of jobs in the public sector has risen every year since 1997 when it was 2.7%, reaching 4.1% in March 2004. This past year, they received 4.5% of all hires overall, and 4.4% of all hires into permanent positions.

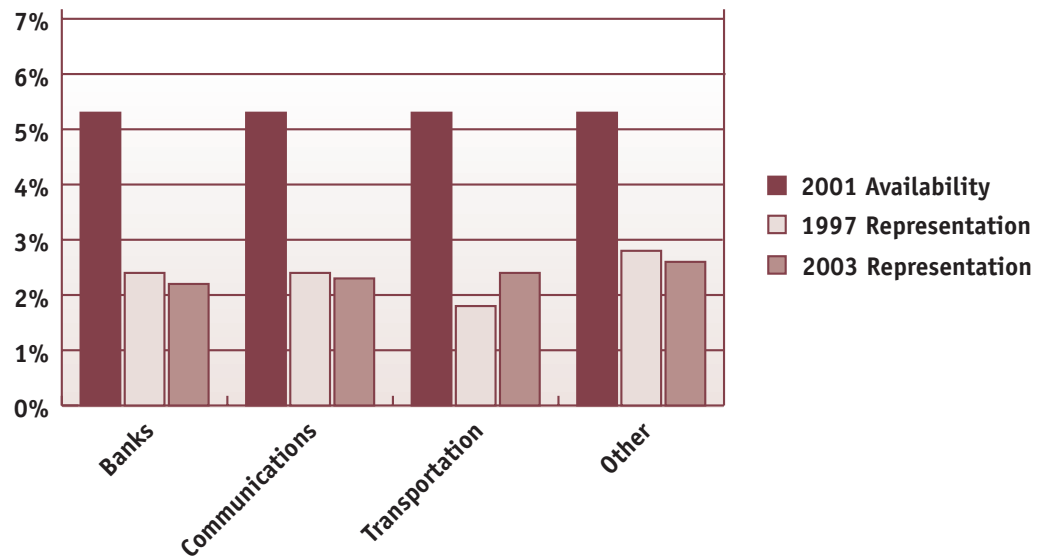
Among the 41 federal departments and agencies with 200 or more employees, the Department of Indian Affairs and Northern Development (DIAND) employs 17.5% of all Aboriginal employees in the federal public service. However, even with DIAND removed, the representation of Aboriginal people in the public service is 3.4%, substantially higher than the 2.6% Census benchmark.

Overall, Aboriginal people received a share of hires substantially higher than the Census benchmark of 2.6% in all occupational categories. In the executive category, they received three hires, or 4.0% of all hires, bringing their representation to 2.9%.

Persons with Disabilities

In the private sector: Persons with disabilities have benefited the least from employment equity in the private sector. Their representation in 2003 remained at 2.3%, unchanged since 1997. In 2003, they received 1.1% of all hires, substantially lower than the 2001 PALS benchmark of 5.3%. Since 1997, their representation has fallen in all sectors except transportation, where it rose from 1.8% to 2.4% in 2003.

Figure 11 Persons with Disabilities - Federally Regulated Private Sector





The representation of persons with disabilities was lowest in the banking sector, where they held 2.2% of jobs in 2003, slightly lower than their 2.4% representation in 1997. Their share of hires in the sector as a whole increased from 0.8% in 2002 to 1.3% in 2003. In the six largest banks, with total hires close to 16,000, the share going to persons with disabilities also increased from 0.9% in 2002 to 1.4% in 2003. Nevertheless, these shares remain considerably lower than their 5.3% availability.

In the public sector: The representation of persons with disabilities in the public sector has increased annually from 3.9% in 1997 to 5.7% in 2003. This is above the 5.3% availability from the 2001 PALS, and substantially higher than the Treasury Board benchmark of 3.6%. Persons with disabilities occupied 4.9% of all positions in the executive category.

The increased representation of persons with disabilities in the federal public service appears to be mainly due to increased self-identification rather than to hires, since they received 3.1% of all hires in 2003. As in the previous year, no persons with disabilities were hired in the executive category, and their share of hires in the Scientific & Professional, Technical, and Operational categories was substantially lower than either the Treasury Board benchmark of 3.6% or their 5.3% representation in the Canadian workforce.

Fostering Human Rights

Overview

The recent reforms to the Commission's human rights complaint process also include a new emphasis on preventing discrimination and tackling specific human rights issues that may affect groups of people.

The ultimate goal of these efforts is to address human rights issues quickly, before they escalate and lead to formal complaints. The reforms to the complaint process have made it possible to shift resources into these initiatives.

The following sub-sections provide more information.

Discrimination Prevention Program

The Commission set up a new discrimination prevention program in 2004. The program's objectives are to assist employers and service providers in:

- preventing discrimination by encouraging managers to be aware of their responsibilities under the *Canadian Human Rights Act* and the *Employment Equity Act*;
- putting in place and supporting human rights-related policies and practices;
- establishing and maintaining effective mechanisms to address complaints internally; and
- dealing more effectively and rapidly with human rights concerns.

The Commission has begun establishing memoranda of understanding (MOU's) with employers under federal jurisdiction. These initial MOUs will focus on large employers that are willing to work with the Commission to prevent discrimination and resolve complaints effectively and quickly.

In early 2005, the Commission signed the first MOU with the Canadian Forces.



CHRC Chief Commissioner **Mary Gusella** and **General R.R. Henault**, Chief of the Defence Staff, Canadian Forces, signing the memorandum of understanding.

In general, the Commission will consult with the management teams of these organizations to select the main areas of concern and develop strategies to deal with them. Commission staff will work closely with stakeholders on solutions to human rights issues. These solutions could include creating new policies or changing existing ones; sharing best practices through human rights training and information; and developing instruments to assist employers, such as case studies, presentations, posters and interactive teaching tools.

Also in 2004, the Commission played an active role in an interdepartmental working group developing resources on informal conflict management systems for departments and agencies.³ And, in September 2004, it helped organize a conference on resolving workplace conflicts in the federal public service, as a member of the Federal Committee on Workplace ADR.

Proactive Initiatives

In 2004, the Commission also created a Proactive Initiatives Team to look into and propose action on systemic issues that have an impact on a group of people or on the overall human rights system.

The objective is to try to resolve human rights issues primarily through research, study and dialogue. The Commission may undertake a special study or inquiry on a particular matter or carry out a round of public consultations.

The Commission is building on past initiatives in this area, such as *Protecting Their Rights*, a special report to Parliament in 2004 on the human rights situation of women in federal prisons.

³ Deputy Minister Sub-Committee on Labour Relations and Dispute Resolution.

Three issues have been chosen for study: repeal of section 67 of the *Canadian Human Rights Act*; telephone access for the deaf and hearing impaired; and hate on the Internet.

Under section 67 of the *Canadian Human Rights Act*, the ability of First Nations people living on reserve to file a complaint against band councils or the federal government is restricted. The Commission has long sought repeal of this section. Commissioner Kelly Russ, who has experience in Aboriginal legal and rights issues, has been asked to prepare a report on section 67 and how it should be replaced.

Making a phone call to get information from a government department is often difficult for Canadians who are deaf, deafened or hard of hearing, or who have a speech impediment. The Commission is studying this problem and will work with the government to foster equal access for all.

The Commission has been receiving an increasing number of complaints under section 13 of the Act, which prohibits transmitting hate messages through the Internet. It will carry out a long-term strategy to deal with this issue. This will include making the best use possible of the Commission's own legal powers and working with other groups to encourage a better understanding of the dangers of hate on the Internet.

Public Information

The Commission is also responsible for developing and conducting information programs to foster public understanding of the *Canadian Human Rights Act*, the *Employment Equity Act*, and the role and activities of the Commission.

In 2004, the Commission launched its new website and prepared and distributed written material informing Canadians and employer organizations about the Commission's programs and services.

The Commission continued to use its website as a key way to reach Canadians and as its main communications tool for sharing information with the public. The website now includes a new e-mail notification service, which had close to 500 subscribers as of December 31, 2004, a number that is rising steadily by an average of 40 new subscribers every month.

In 2004, the Commission welcomed 339,095 visitors on its website, distributed more than 71,000 publications to Canadians and responded to more than 20,000 inquiries (via mail, e-mail, telephone and personal visit). The enhancement of the



website and the automated telephone reply system introduced in 2003, which provides 24-hour, seven-days-a-week service, contributed to reducing the total number of calls handled in the past year.

SERVING CANADIANS	2003	2004
Website visitors	198,374	339,095
Publications distributed	95,467	71,433
Telephone inquiries	25,646	14,194
E-mail inquiries	5,024	5,496

Modern Management

In 2004, the Commission continued improving management practices to ensure sound delivery of human rights and employment equity programs. It is committed to making progress in all 10 areas listed under the federal government's Management Accountability Framework, ranging from public service values to risk management. Following are highlights of activities over the past year in some of these areas:

Public Service Values

The Commission launched a formal dialogue with staff on public sector values and ethics with half-day mandatory workshops in both official languages in 2004. Staff explored case studies and ethical issues at these workshops. Further sessions are planned.

Learning, Innovation and Change Management

One of the Commission's objectives is to develop a corporate culture that encourages learning, fosters innovation and manages change. In 2004, an Individual Learning Plan Pilot Project was developed to address short- and long-term needs and interests of employees, taking into account the mandate of the organization.

Performance Measurement


The Commission has been working for some time on better reporting of results of human rights complaints and employment equity audits. The results of these efforts are evident in parliamentary reports. The objective is to finalize a core set of measures in the next few months that can be used year-over-year to guide decision makers and report results to Parliament.

People

The Commission continues to foster diversity in its workforce, respect for the two official languages and improved human resources practices through corporate employment equity, official languages and human resources plans. As of December 31, 2004:

- there were 194 employees,⁴ of whom 65.5% were women, 11.9% were persons with disabilities, 9.8% were visible minorities and 3.6% were Aboriginal people (these numbers meet or exceed the Commission's employment equity targets);
- 75% of positions at the Commission were designated bilingual imperative, 23% were English essential, and 2% were either English or French;

⁴ Excluding students, casuals and temporarily struck off strength employees.

- 
- 47% of employees said their mother tongue was English and 53% French;
 - the ground work was laid for future changes under the *Public Service Modernization Act*, particularly ongoing labour-management consultation and dialogue.

Staff turnover remains relatively low at 9.7% for 2004.

Stewardship

The Commission has further strengthened management of its finances. Among the highlights are the following:

- an audit of the Financial Services Division, carried out by Progestics International in 2003, found that an effective financial management system is in place. The final report is posted on the Commission website;
- program and financial managers have worked together to reduce costs and ensure value for money. A methodology is being developed to assess the average cost per case year-over-year, including the cost of litigation, for human rights complaints. It sets out the average costs at each stage of the complaint process.
- work continued on activity-based costing to improve business processes and reduce costs if possible. The Commission has so far used this accounting approach to analyze delivery of legal and alternative dispute resolution services; and
- an executive-level committee has been set up to oversee all contracts over \$10,000. The Commission is seeking clarification from the Department of Justice Canada on its authority to contract for legal services.

Accountability

Accountability for performance flows from the Commission's Report on Plans and Priorities to Parliament, which serves as the corporate business plan, branch plans and management accords. Executive performance pay takes into account, among other elements, individual results, team skills and contribution to the overall results of the Commission.

Risk Management

A risk profile and framework is being developed. The consultation and final report will be completed by spring 2005. The Commission's Audit and Evaluation Committee, chaired by the Chief Commissioner, has approved the Commission's risk-based, three-year audit and evaluation plan. Audit reports for Legal Services and Financial Services have been posted on the Commission website.

Consultations

Overview

In the last annual report, the Commission outlined five key principles to guide future reform of the *Canadian Human Rights Act* and its administration.


The Commission made a commitment to discuss these principles with stakeholders. As a result, the Commission consulted stakeholders between October and December 2004. The Commission sought meetings or written comments from federal government departments; private sector organizations; advocacy groups; unions and employer representatives; groups representing the interests of Aboriginal persons, visible minorities, persons with disabilities and women; and individual experts.

In general, there was support for the principles, but some issues were identified. The following summarizes main points resulting from the consultations.

The Five Key Principles

The Commission outlined five principles to guide future changes to the Act and its administration. The principles proposed that any reform should accomplish the following:

1. **serve the public interest.** Practically, this may mean such measures as non-complaints tools to deal with systemic problems, including legislative and regulatory changes; and alternatives to complaints such as audits;
2. **transform workplace behaviour.** This includes encouraging alternate redress mechanisms in the workplace;
3. **be comprehensive.** For example, this may mean repealing section 67 of the *Canadian Human Rights Act* which restricts the ability of First Nations people on reserve to file complaints with the Commission. It could also mean adding social condition as a ground of discrimination;
4. **be preventive and forward looking.** This includes such measures as a prevention strategy, proactive initiatives and periodic reports on the state of human rights in Canada; and
5. **ensure Commission's independence, impartiality and good governance.** This may require changing the Commission's structure to reinforce its accountability directly to Parliament.



These principles drew broad support. Some said it is important to take into account the special circumstances of disability and race cases when applying these principles.

Recent Changes

Although the consultations focussed on the five principles, organizations also expressed their support for the changes that have taken place at the Commission over the past two years. Some organizations with similar mandates are looking to the Commission's experience as a model for change in their own organizations. Other stakeholders commented that the improvements in the complaint process resulted in the advancement of human rights in their organizations in general.

Nevertheless, the consultations made it clear that stakeholders also need to be reassured that the introduction of new measures and more flexible tools will not be pursued to the detriment of the Commission's traditional complaint-handling function, and that there will always be room for litigation in the human rights system.

Additional Reforms

Stakeholders also had views on practical issues arising from recent and proposed reforms. This helps the Commission as it considers further improvements to service and plans to expand the reach of its mandate.

Discussions with stakeholders revealed areas of consensus along with some key issues.

Areas of Consensus

A consensus developed among stakeholders on a variety of changes that are just underway or are at the concept stage. This consensus includes the following points:

- solid support for the Commission's prevention and proactive initiatives, publication of a human rights report card and greater independence for the Commission;
- general agreement with the principle of transforming workplace behaviour. However, some stakeholders raised questions about practical issues related to applying and monitoring alternative dispute resolution and internal redress mechanisms. The Commission shares these concerns and will closely monitor employers' internal redress systems through its new prevention program;

-
- agreement about the importance of monitoring settlements arising from mediation, investigation and conciliation to ensure they are implemented. The Commission has enhanced its Settlement Monitoring Unit within its Alternative Dispute Resolution Branch for this purpose;
 - agreement about the importance of training mediators and other human rights personnel. To meet these needs, the Commission has taken such steps as creating a Learning and Development Branch and arranging for information sessions for Alternative Dispute Resolution staff. The Commission agrees that developing employee knowledge and skills is critical to delivering better human rights results;

We believe that the changes implemented by the Commission since that time illustrate that the CHRC too recognizes that an overhaul of its procedures was needed. It is the view of the Federally Regulated Employers - Transportation and Communications (FETCO) members who have had recent dealings with the Commission that some of the changes initiated by the CHRC are having a positive impact on the way complaints are being processed.

FETCO, December 2004

- widespread backing for legislative and administrative reforms to strengthen the Commission's ability to use such tools as enhanced powers to gather evidence and a deadline to respond to reports;
- strong support for repealing section 67 of the *Canadian Human Rights Act*. The Commission will recommend that the Act be amended accordingly;
- general recognition of the necessity to add something that speaks to social condition as a new ground, although considerable concern was expressed over how this would be defined;
- divided opinions on proposals for more flexible investigation powers. Although these met with general agreement, some stakeholders said that any changes should be enforced in a consistent and sensitive manner.





Some Issues

The principle on serving the public interest generated the most discussion, and there was much confusion over the term “triage.” Triage refers to the process of assessing individual cases and determining the best way of dealing with them.

Triage recognizes the advantages of streaming complaints into procedures that are accessible, fair and proportional to the nature of the complaint. It also acknowledges the reality that different complaints require different remedies and that every complaint deserves to be treated in the best way possible. Once this was explained to stakeholders, the concept received support, but concerns remain and will be addressed.

Another widely discussed issue was the role of the Commission before the Tribunal. Stakeholders generally understood the need for the Commission to realign its role to more properly reflect the requirements of the Act to represent the public interest. Some cautioned the Commission not to change its role at all.

The Commission continues to be involved in all cases referred to Tribunal. However, as noted in the *Legal Activities* section, the nature and extent of its participation at the hearing of a complaint is decided on a case-by-case basis in light of the public interest.

It is clear to the Commission that some people have the erroneous view that somehow the Tribunal process is like a criminal trial. In fact, unlike a criminal trial, where there are two parties to the case—the Crown and the defendant—at Tribunal, there are three parties: the complainant, the respondent and the Commission. Under the *Canadian Human Rights Act*, the Commission may only represent the public interest; it cannot be the representative of either the complainant or the respondent. While many complainants and respondents believe their positions on cases equate to the public interest, under the law, it is the Commission that is mandated to represent the public interest before the Tribunal.

There was no consensus on the proposal to grant the Commission an audit power in human rights. While the employer community registered its opposition, other stakeholders cautioned the Commission to carefully spell out the criteria that would apply, and analyze the potential impact on other sections of the Act such as the powers of the Tribunal. The introduction of non-complaint tools and related proposals to strengthen the Commission’s approach, as well as operational improvements in the recent past, suggest that the Commission can work effectively without introducing an audit power.

The Commission will be considering these and other views expressed by stakeholders in this consultation exercise and will be making a full report public in 2005.

Biographies of Commissioners

Mary M. Gusella


Mary Gusella was appointed Chief Commissioner on August 7, 2002. A member of the Bar of Ontario, she obtained her LLB from the University of Ottawa. She also holds a certificate from the Canadian Securities Institute and has completed courses in negotiation and mediation in the Professional Instruction for Lawyers Program at Harvard Law School. In her three decades in the Public Service of Canada, Ms. Gusella served in many senior level positions including that of Deputy Minister of Multiculturalism and Citizenship, President of the Atlantic Canada Opportunities Agency and Chairman and President of Enterprise Cape Breton, Commissioner of the Public Service Commission, Head of The Leadership Network, and the Canadian Chair of the International Joint Commission. Ms. Gusella's major areas of expertise and professional interest are organizational change, people management and innovation. She has served on the Board of Trustees of the National Film Board of Canada, on the Board of Directors of the Institute of Public Administration of Canada and as President of that institute in 1999–2000.

Anne Adams

Anne Adams of Montréal joined the Commission in 1999 and completed her mandate in February 2005. She holds a BA from the University of Montréal and a Masters in industrial relations from Queen's University. She is a bilingual and bicultural Canadian who, during her career in the public service of Canada, worked to advance the cause of women's rights and human rights at home and abroad. She developed the women's employment policy for Canada and managed the implementation of the *Employment Equity Act* and the Federal Contractors Program in the Quebec Region. As Executive Director of the Canadian Human Rights Foundation, she went on to develop a very successful international human rights training program. In 1992, Ms. Adams received the Commemorative Medal for the 125th Anniversary of Confederation in recognition of these efforts. She has served on a number of boards of trade and boards of directors of community organizations, including la Fédération des femmes du Québec. Since 1998, she has served as president of FRAPPE (Femmes regroupées pour l'accessibilité au pouvoir politique et économique). In 1996, she launched AEA Strategies and Development Inc., specializing in employment equity and international development.

Robinson Koilpillai

Robinson Koilpillai, C.M., was a member of the Commission from 1995 until February 2004. An educator, school principal, and community volunteer, 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 Co-operation, and President of the Canadian Multicultural Education Foundation. In 1980, Mr. Koilpillai received the federal Minister of Multiculturalism's Man of the Year Award and, in 1988, the Canada Council's National Award for Outstanding Educator. In 1998, Mr. Koilpillai



was inducted into Edmonton's Hall of Fame and won the Alberta Achievement Award and 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 was a member of the Commission from November 1995 until February 2005. 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 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 was appointed Chair of the Nova Scotia Human Rights Commission in 1996, after serving two terms as a member. In 1999, Ms. Mac Lennan accepted the post of Equity Coordinator with St. Francis Xavier University, and is continuing her work on the human rights aspects of new reproductive and genetic technologies. She has also served on the editorial board of *Just Cause*, a law journal for people with disabilities and for legal professionals interested in disability rights issues.

Aimable Ndejuru

Aimable Ndejuru of Montréal was appointed Commissioner in December 2004. He earned a doctorate in sport science and anthropology from the University of Cologne and the German Graduate School of Sports in 1982. Over the years, he has acquired a solid grounding in human rights and immigration law. He has held various positions in his career, including Commissioner and professional development consultant with the Immigration and Refugee Board. Prior to this, he taught anthropokinetics and education at the *Université du Québec à Montréal (UQÀM)*, and worked as a journalist, teacher and sports trainer in Germany and Rwanda. Mr. Ndejuru has always been actively involved with ethnic communities and with sports and community organizations, including the committee of women and children claiming refugee status. He is also a founding member of the *Amitiés Canada-Rwanda*, an organization devoted to the promotion of friendship between the two countries. Mr. Ndejuru speaks French, German and English.

Kelly Russ

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