

Canadian Artists and Producers Professional Relations Tribunal

Performance Report

**For the period ending
March 31, 2002**

The Honourable Claudette Bradshaw
Minister of Labour

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Section I — Message from the Chairperson

In 1992, Canada became the first nation in the world to enact legislation designed to provide collective bargaining rights to self-employed artists. With the passage of the *Status of the Artist Act*, the Government of Canada recognized the important contribution of artists to the cultural, social, economic and political enrichment of the country. It also underscored the importance of compensation for the use of works, the right of freedom of association and expression, the right of artists' associations to promote the professional and socio-economic interests of their members, and the right of artists to access advisory fora.

The *Status of the Artist Act* contributes to our cultural sovereignty by encouraging constructive professional relations, which are key for cultural production to thrive. The *Act* provides enforcement mechanisms as well as a legal framework for conducting negotiations and resolving disputes.

The Tribunal achieved its objectives in 2001–2002. Faced with an increase in activity, it dealt with cases promptly and competently.

The Tribunal continues to make good progress in achieving its strategic outcome — encouraging constructive professional relations between self-employed artists and producers under its jurisdiction. The Tribunal has defined 23 sectors of artistic activity and has certified 21 artists' associations. Fourteen first agreements have been reached, including some with government producers and specialty television services.

The *Status of the Artist Act* requires that the Minister of Canadian Heritage, in consultation with the Minister of Labour, review the provisions and operations of the *Act* in 2002. Should this review result in legislative amendments to the *Act*, the Tribunal, in line with its commitment to inform and assist its clients, will organize information sessions explaining changes to clients' rights, roles, responsibilities and obligations under the *Act*.

As Chairperson of the Canadian Artists and Producers Professional Relations Tribunal, I reaffirm my commitment to this agency's role in promoting a stable and healthy cultural sector that contributes to our collective spiritual and economic well-being. I am pleased to present to Parliament the Tribunal's sixth annual performance report, for the year ending March 31, 2002.

David P. Silcox
Chairperson and Chief Executive Officer
August 2002

Section II — Departmental Overview

A. Mandate, Role and Responsibilities

The Canadian Artists and Producers Professional Relations Tribunal administers Part II of the *Status of the Artist Act*, which governs professional relations (labour relations) between self-employed artists and federally regulated producers.

A quasi-judicial, independent federal agency, the Tribunal reports to Parliament through the Minister of Labour. Part II of the *Status of the Artist Act* also specifies a role for the Minister of Canadian Heritage, whose clientele includes organizations and individuals who use the Tribunal's adjudication, mediation and information services.

In 1995, the Tribunal became, along with the Canada Industrial Relations Board and the Public Service Staff Relations Board, one of three agencies that regulate labour relations under federal jurisdiction. In Canada, provincial legislatures are responsible for regulating labour relations between the vast majority of workers and employers. Industry sectors regulated by the federal government include broadcasting, telecommunications, banking, interprovincial transportation and federal government institutions.

The Tribunal's jurisdiction covers broadcasting undertakings regulated by the Canadian Radio-television and Telecommunications Commission (CRTC), federal government departments, and the majority of federal government agencies and Crown corporations (such as the National Film Board and national museums).

The self-employed artists within the Tribunal's jurisdiction include artists covered by the *Copyright Act* (such as writers, photographers and music composers), performers (such as actors, musicians and singers), directors and other professionals who contribute to the creation of a production, such as those doing camera work, lighting and costume design. These professionals are specified in the *Act's* Professional Category Regulations.

The Tribunal has the following statutory mandate:

- to define, within its jurisdiction, those sectors of cultural activity that are suitable for collective bargaining between artists' associations and producers;
- to certify artists' associations to represent self-employed artists working in these sectors; and
- to hear and decide complaints of unfair practices filed by artists, artists' associations or producers and to prescribe appropriate remedies for contraventions of Part II of the *Act*.

Business Line

The Tribunal's sole business line is the adjudication of applications, complaints and other matters pursuant to the *Status of the Artist Act*.

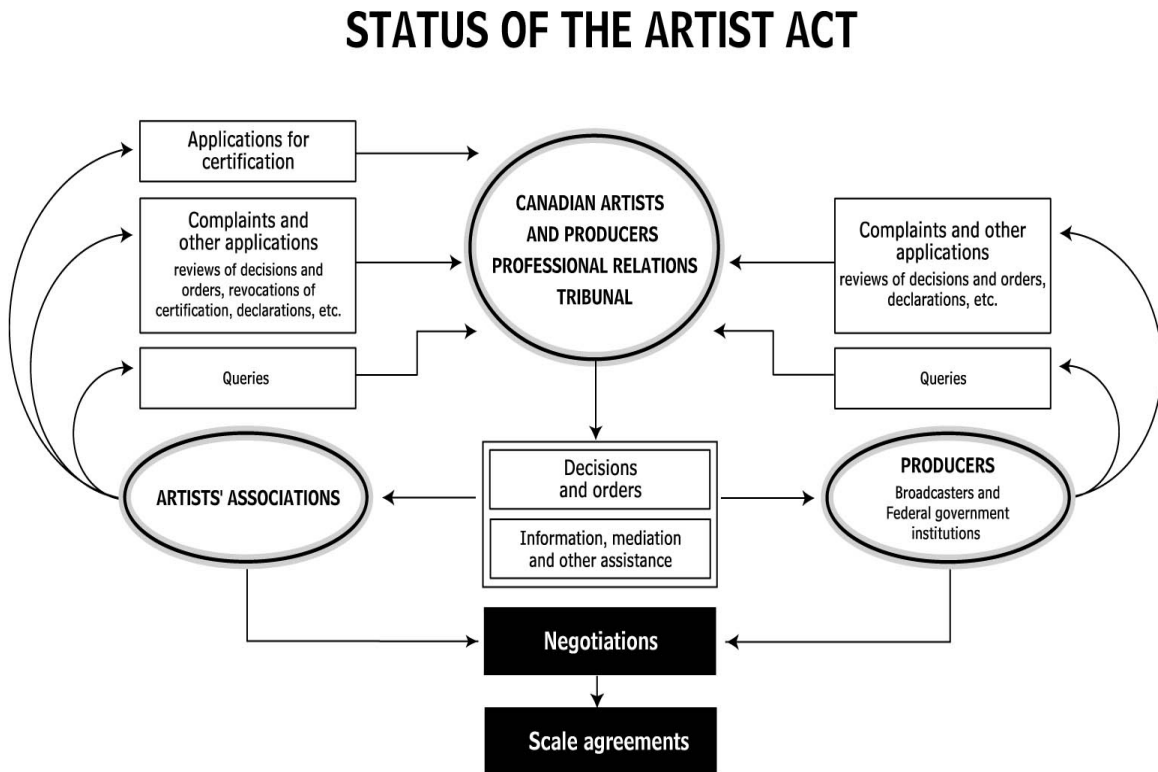
The Tribunal's approach is to act informally and expeditiously, and to facilitate and encourage mutual agreement.

By following the procedures specified in the *Act*, certified associations have the exclusive right to negotiate scale agreements with producers. A scale agreement specifies the minimum terms and conditions that a producer must respect when engaging the services of, or commissioning work from, a self-employed artist in a specified sector.

The *Status of the Artist Act* and the Tribunal's statutory responsibilities, professional category regulations, decisions and performance reports can be found on the Tribunal's Web site at www.capprt-terpap.gc.ca.

The pictogram in Figure 1 illustrates the Tribunal's role and responsibilities.

Figure 1. Tribunal Roles and Responsibilities



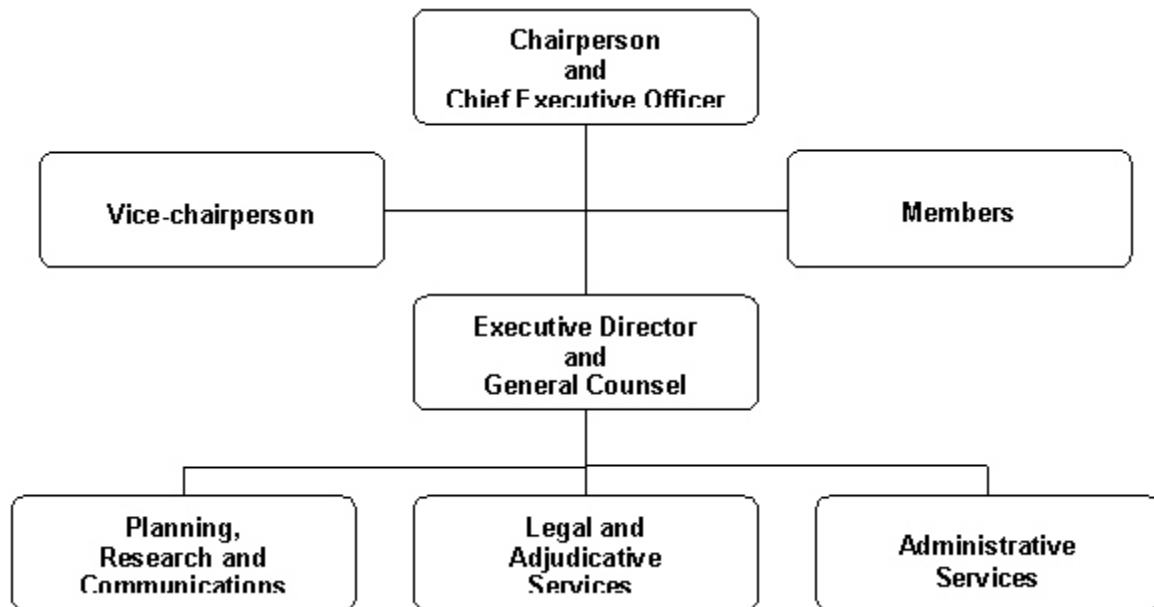
B. Departmental Organization

The Tribunal is composed of a chairperson (who is also the chief executive officer), a vice-chairperson and four other members. Members are appointed by the Governor in Council, and all six members are part-time appointees.

The executive director heads the Tribunal Secretariat and reports to the chairperson. Nine staff members carry out the functions of legal counsel, registrar, planning, research, communications, mediation and administrative support. An additional legal counsel joined the staff in February 2002. The Tribunal outsources some corporate services that are not required full time, such as informatics, human resources and finance.

The pictogram in Figure 2 illustrates the Tribunal's organizational structure.

Figure 2. Organization Chart



Section III — Departmental Performance

A. Strategic Outcome

The Tribunal's strategic outcome is to encourage constructive professional relations between self-employed artists and producers under its jurisdiction.

In pursuit of its strategic outcome, the Tribunal has the following objectives:

- to deal with matters promptly and competently;
- to fully inform and assist its clients; and
- to manage financial resources well.

The Tribunal spent \$1.26 million, out of a budget of \$1.75 million, to realize its objectives in fiscal year 2001–2002.

B. Government Priorities

In its 2001 Speech from the Throne, the government committed itself to foster a vibrant Canadian culture. “In these times of rapid change and globalization, it is more important than ever that we know who we are as Canadians and what brings us together.” The speech announced two goals for Canada's cultural policy: excellence in the creative process and diverse Canadian content. To achieve both, the government increased funding for existing programs and instituted new ones. The Tribunal contributes to a vibrant Canadian culture by encouraging constructive professional relations, which help to ensure an equitable economic and social status for artists and a stable, predictable labour environment with an adequate pool of skilled artists for producers.

C. Social and Economic Factors

The economic contribution of the arts and culture sector is significant. In 1996–1997, the sector contributed more than \$22 billion to the Canadian economy and provided 640,000 direct and indirect jobs (Department of Canadian Heritage).

Although the works of Canadian artists enrich our daily lives and help define who we are in the world, the valuable contribution of artists is not reflected in their earnings. According to the most recent Statistics Canada census data (the 2001 census data are not yet available), in 1995 artists had an average income of \$23,000 (including income from other employment), compared with an average income for all Canadian workers of \$26,000.

**The economics of
artistic
endeavours**

Although exact figures are not available, estimates indicate a jump in the percentage of Canadian artists who are self-employed from 32 percent in 1991 to 42 percent in 1996. The proportion of self-employed artists ranges as high as 80 percent for certain occupations (such as writer, musician and visual artist). An estimated 100,000 of these workers fall under the Tribunal's jurisdiction. In addition to having lower earnings, most self-employed artists do not have the advantages enjoyed by those working as employees, such as employment insurance and training benefits.

Global competition and the convergence of broadcasting and telecommunications technologies have led to horizontal and vertical integration in the media production, programming and distribution industries. Negotiating scale agreements in an environment of continual organizational upheaval is challenging for producers and artists' associations alike. Moreover, in some cases it's difficult for the parties — and, ultimately, for labour boards — to determine where provincial jurisdiction ends and federal jurisdiction begins.

**The changing
industry
environment**

The CRTC has determined that some Internet transmissions constitute broadcasting, although it has exempted these broadcasters from licensing for the time being. As expected, it is taking time to initiate negotiations in this emerging sector. The CRTC's decision may broaden the Tribunal's jurisdiction to include unlicensed Internet broadcasters, although the Tribunal has yet to rule on this subject. This may change during the next fiscal year, however, as the Government of Canada has asked the CRTC to hold consultations and report on the broadcasting regulatory framework concerning re-transmission of over-the-air television or radio signals on the Internet.

The amount of work offered to self-employed artists by producers under the Tribunal's jurisdiction is modest compared with the total amount of activity in the cultural sector in Canada. Most labour issues in the cultural sector fall under the jurisdiction of the provinces, which includes all or substantially all independent film and television production, sound recording, art exhibitions, theatrical production and book publishing. As of March 2002, only Quebec had legislation similar to the *Status of the Artist Act*, although artists' associations and organizations in Saskatchewan and Newfoundland and Labrador have lobbied for such legislation. In June 2002, Saskatchewan introduced legislation that enables the Minister of Culture, Youth and Recreation to establish advisory committees to investigate several issues, including labour relations and collective bargaining rights in the arts sector.

**Need for
provincial
legislation**

Although the Tribunal supports the adoption of status of the artist legislation by more provinces, it is not the Tribunal's role to advocate such action. The Tribunal will continue to provide information and advice to policy makers and others interested in the benefits of such legislation.

The process of becoming certified and negotiating scale agreements can be daunting. Many artists' associations are small, lack financial resources and have little or no experience in labour relations. Despite the fact that collective bargaining has the potential to improve artists' earnings, artists' associations may not always be able to enter into negotiations quickly after they are certified under the *Act*.

**Financial
difficulties of
artists'
associations**

Because they lack sufficient time and resources, artists' associations would rather negotiate with producers' associations than with individual producers. And many government producers would prefer to designate one department as their lead negotiator. The Tribunal encourages the parties to discuss this strategy, which could facilitate the bargaining process and make it more cost-effective.

D. Performance Expectations and Accomplishments

For the government's performance reporting exercise, departments and agencies attempt to show the impact they have had on Canada and Canadians. This impact is not always easy to quantify, however, nor to trace back to the department or agency responsible. The Tribunal strives to deal with these issues and to improve how it measures its performance. For this report, we have chosen both objective and subjective indicators to assess whether we have met our strategic outcome and its three underlying objectives.

Our client consultations carried out in early 2000 provided feedback on client perceptions of the results of the Tribunal's work and these were presented in the performance report for 1999–2000. Over the past two fiscal years, we have, through improved communications and consultation, addressed the principal shortcoming identified in the consultations report: the inadequate understanding of artists' associations and producers of their rights and obligations under the *Status of the Artist Act*.

The *Status of the Artist Act* provides that a review of the legislation is to take place seven years after the *Act* comes into full effect. The Department of Canadian Heritage, with Human Resources Development Canada, is now conducting this review. As required by the legislation, the review will cover the provisions and operations of the *Act*. Artists' associations and producers have had an opportunity to make their views known, and legislators will subsequently decide whether to take any action based on the recommendations resulting from the process.

**Legislation under
review**

**Strategic Outcome:
Constructive professional relations between artists and producers**

The *Act* and its collective bargaining regime are intended to encourage constructive professional relations between artists and producers. We have chosen several indicators to measure this strategic outcome.

The Tribunal encourages parties to resolve as many issues as possible before proceeding to a hearing. Staff of the Tribunal Secretariat may investigate a case and assist with mediation. This informal approach not only fosters constructive relations between artists and producers, but also saves time and money for the Tribunal and its clients by reducing the number of hearings required.

Parties resolve differences themselves

Issuing notices to bargain and negotiating scale agreements are also indicators of constructive professional relations. The Tribunal can facilitate negotiations by granting certification and providing information about the *Act*'s provisions for negotiations and resolving complaints, but it has no control over whether the parties pursue negotiations after certification or over the results of such negotiations. Although Human Resources Development Canada (Labour Program) also cannot control the outcome of negotiations, it may have more of an impact on negotiations because it can provide mediation assistance should the parties have difficulty reaching an agreement.

Negotiation of scale agreements

Much progress in negotiations has been made. Most of the 40 agreements in place before the *Act* came into force have been renewed, and 14 first agreements have been negotiated. However, as Table 1 shows, less has been accomplished than expected. The Tribunal expects that its increased efforts to build awareness and offer assistance during the past two years will lead to an increase in the number of new agreements.

Constructive professional relations also involve recognition and improved earnings and working conditions for artists. For producers and artists alike, constructive professional relations imply a stable and predictable working environment.

Recognition and improved conditions for artists

Table 1 lists the Tribunal's indicators of constructive professional relations and the targets and results for each. Because it takes time to see changes in professional relations, each indicator is tracked from 1996 to 2002.

Table 1 — Constructive professional relations

<i>Indicator</i>	<i>Target</i>	<i>Results (1996–2002)</i>
Percentage of complaints resolved without a hearing	At least half of all complaints are resolved without a hearing.	Of the nine complaints received, five were withdrawn or resolved without a hearing, two were heard by the Tribunal, one is scheduled for a hearing and one is in abeyance at the request of the complainant. The Tribunal has given the parties considerable assistance in settling disputes.
Client satisfaction	Client satisfaction, as determined by survey, is high.	Client consultations indicate that those who sought assistance and information were very satisfied with the Tribunal's response.
Negotiation of first agreements	All certified artists' associations have negotiated at least one new scale agreement within five years of being certified.	Of the 13 associations certified for five years or more, eight have negotiated a total of 14 first agreements. Four others had given notice to bargain a first agreement to at least one producer, and one has not yet issued a notice to bargain.
Greater recognition and improved wages and working conditions for artists	Targets are being developed.	The Tribunal will measure these indicators by consulting with clients and by using other methods (currently in development). The Tribunal intends to begin tracking these indicators in two or three years, when more first agreements — particularly in sectors new to such agreements, such as specialty TV services and government institutions — have been signed.
A stable and predictable working environment for artists and producers	Targets are being developed.	

The task of measuring constructive professional relations is difficult. Some indicators, such as improved recognition for artists, are subjective and will have to be determined by client survey. Changes in the wages and working conditions of artists under the Tribunal's jurisdiction could likely be measured by tracking scale agreements over time. However, teasing apart how much of any improvement or deterioration to attribute to the *Status of the Artist Act* and the Tribunal's work, and how much to other factors such as the general labour relations climate and the economy, is a complicated task.

Objective 1: Cases dealt with promptly and competently

As expected, case activity increased in 2001–2002. The Tribunal made significant progress in processing applications for certification that had been postponed one or more times at the request of the parties. The Tribunal held 12 days of hearings and rendered 13 final or interim decisions, including the granting of three new certification orders. Four applications for review and three complaints were received. For details, see the Tribunal's eighth annual report, which will be available on the Tribunal's Web site at www.capprt-terpap.gc.ca after it has been tabled in Parliament.

Because of some complex cases, a decision to combine two cases, and requests by some parties to postpone scheduled hearings, the Tribunal did not meet its targets for issuing reasons for decisions and processing applications (*see* Table 2). Although clients are still satisfied with the Tribunal's speed in dealing with applications and issuing reasons for decisions, the Tribunal will continue to strive to meet the high standards set by its ambitious targets.

Table 2 — Cases dealt with promptly

<i>Indicator</i>	<i>Target</i>	<i>Results 2000–2001</i>	<i>Results 2001–2002</i>
Average time to issue reasons for a decision after the hearing	Maximum of 35 calendar days	37 days	66 days
Average time to process applications for certification (from the date of receipt of the completed application to the date of the decision)	Maximum of 300 calendar days	252 days	618 days

Under the *Act*, a party may, under specific circumstances, challenge a Tribunal decision by requesting a judicial review by the Federal Court of Appeal. The Tribunal uses the results of these requests for judicial review as an indicator of its competence in dealing with cases. Two of the Tribunal's 60 interim and final decisions have been challenged. One request for judicial review, filed in 1998–1999, was dismissed in November 2000 by the Federal Court of Appeal, which ruled that the Tribunal had acted within its jurisdiction. As of March 31, 2002, a second request was in abeyance before the court.

The Tribunal is developing a second indicator to evaluate the soundness of its decisions.

Table 3 — Cases dealt with competently

<i>Indicator</i>	<i>Target</i>	<i>1996–2002</i>
Percentage of applications for judicial review that have been granted	Less than 50%	0%

Objective 2: Clients fully informed and assisted

The Tribunal has always treated very seriously its responsibility to ensure that artists’ associations and producers are fully aware of their rights and responsibilities under the *Status of the Artist Act*. For clients to benefit from the *Act*, for negotiations to take place and for the long-term objectives of the *Act* to be realized, the Tribunal’s clients must fully understand the legislation. Despite the Tribunal’s efforts, however, clients have taken a long time to initiate negotiations and to sign agreements partly because they have not been sufficiently informed about the *Act*.

As a result, the Tribunal Secretariat has considerably stepped up its outreach activities over the past two fiscal years. This outreach included comprehensive information sessions for artists’ associations, federal government producers and broadcasters.

Outreach activities

According to evaluation reports, the participants appreciated these sessions; some even requested regular sessions to keep them up to date and one-on-one meetings about specific issues.

In addition to holding meetings and other presentations, the Tribunal Secretariat has improved its information bulletin and updated the Tribunal’s Web site to make it easier to find information. The Secretariat is also looking into the possibility of collaborating with other federal institutions on a Government On-Line (GOL) initiative. The Tribunal’s Web site meets GOL standards, and the Secretariat will implement its plan for meeting the GOL requirements of the Common Look and Feel initiative in the next fiscal year.

Improved communications materials

Since its inception, the Tribunal has attempted to use procedures that are fair and transparent and to this end has made several amendments to its procedures based on client consultations. The Tribunal initiated a process to have these draft procedures adopted as regulations. In January 2001, as part of this process, the Tribunal invited artists, artists’ associations and producers to comment on the proposed regulations, which were then modified based on their feedback. By the close of March 2002, the proposed regulations had been submitted to the Department of Justice.

Draft regulations

Table 4 lists the indicators, targets and results for the Tribunal's second objective: to fully inform and assist its clients.

Table 4 — Clients fully informed and assisted

<i>Indicator</i>	<i>Target</i>	<i>Results 2000–2001</i>	<i>Results 2001–2002</i>
Quality and timeliness of information bulletins	At least three information bulletins are issued annually. Clients are satisfied (as determined by client consultations).	Three bulletins were issued. More relevant information was added. (Clients were not surveyed.)	Three bulletins were issued. More relevant information on scale agreement negotiations and the collective bargaining process was included in the bulletins. (Clients were not surveyed.)
Quality of the Tribunal's Web site.	The Web site contains timely and accurate information and meets GOL standards. Clients are satisfied (as determined by client consultations).	The Web site meets the requirements of GOL Tier 1. Comments received informally were positive.	Information on our Web site is continuously updated. Work is under way to ensure timely compliance with the Common Look and Feel standard.
Accuracy and timeliness of responses to enquiries and requests for information	Enquiries and requests for information are dealt with within two working days. Clients are satisfied (as determined by client consultations).	The Tribunal responded to telephone requests within one working day on average.	The Tribunal responded to requests within one working day on average.
Fair and effective procedures and regulations	Simple and appropriate procedures and regulations explained in easily understood documents.	The Tribunal's clients are following its procedures and have not made any negative comments about them.	The Tribunal's clients are following its procedures and have not made any negative comments about them.

Objective 3: Financial resources managed well

The Tribunal's expenditures for 2001–2002 are almost the same as the previous year's, despite an increase in activity. We continue to operate with a small, dedicated and professional staff, which allows us to respond with speed and efficiency to an increased workload.

The Tribunal continues to manage its funds carefully. Cost-saving agreements and outsourcing were used as alternatives to full-time staffing for services (such as human resource and financial services, hearing rooms and library services) that the Tribunal requires only part time. We began to share accommodation and administrative services with the Office of the Chief Review Officer, established under the *Canadian Environmental Protection Act, 1999*, during 2001–2002. This has led to savings for both organizations. We also continue to seek savings in our procurement activity, and to ensure that our internal procedures and processes are efficient.

As mentioned in our Report on Plans and Priorities 2002–2003, the Tribunal and three other small, quasi-judicial agencies formed a group to address modern comptrollership. Capacity assessments were undertaken in February, March and April 2002 as part of the Modern Comptrollership Initiative. The Tribunal's Comptrollership Capacity Assessment Report (dated May 14, 2002) describes the Tribunal's strengths and weaknesses in the area of modern comptrollership and sets out the groundwork for a detailed plan to implement modern comptrollership over the next two to three years.

Appendix A — Financial Summary Tables

We have included the following financial tables:

Table 1 — Summary of Voted Appropriations

Table 2 — Comparison of Total Planned Spending to Actual Spending

Table 3 — Historical Comparison of Total Planned Spending to Actual Spending

The summary financial information presented below includes three figures:

- **Planned Spending** — what the plan was at the beginning of the fiscal year;
- **Total Authorities** — planned spending plus any additional spending Parliament has seen fit to approve to reflect changing priorities and unforeseen events; and
- **Actuals** — what was actually spent during the fiscal year.

Financial Table 1 Summary of Voted Appropriations

Financial Requirements by Authority (\$ thousands)				
		2001–2002		
Vote		Planned Spending	Total Authorities	Actual
	Canadian Artists and Producers Professional Relations Tribunal			
30	Program expenditures	1,570	1,610	1,121
(S)	Contributions to employee benefit plans	140	140	140
	Total Department	1,710	1,750	1,261

**Financial Table 2
Comparison of Total Planned Spending to Actual Spending**

Departmental Planned versus Actual Spending (\$ thousands)			
Business Line: Adjudication	2001-2002		
	Planned	Total Authorities	Actual
FTEs	10		9
Operating	1,710	1,750	1,261
Capital			—
Grants and Contributions			—
Total Gross Expenditures	1,710	1,750	1,261
Less:			
Respendable Revenues			—
Total Net Expenditures	1,710	1,750	1,261
Other Revenues and Expenditures			
Non-respendable Revenues			—
Cost of services provided by other departments			455
Net Cost of the Program	1,710	1,750	1,716

**Financial Table 3
Historical Comparison of Total Planned Spending to Actual Spending**

Historical Comparison of Departmental Planned versus Actual Spending (\$ thousands)					
	2001-2002				
	Actual 1999-2000	Actual 2000-2001	Planned Spending	Total Authorities	Actual
Canadian Artists and Producers Professional Relations Tribunal	1,150	1,290	1,710	1,750	1,261
Total	1,150	1,290	1,710	1,750	1,261

Appendix B — Supplementary Information

A. Contact for Further Information

Canadian Artists and Producers Professional Relations Tribunal
240 Sparks Street, 8th Floor West
Ottawa, Ontario K1A 1A1

New address as of November 4, 2002

Canadian Artists and Producers Professional Relations Tribunal
240 Sparks Street, 1st Floor West
Ottawa, Ontario K1A 1A1

Telephone: (613) 996-4052 or 1-800-263-2787

Fax: (613) 947-4125

E-mail: info@capprt-tcrpap.gc.ca

Web site: www.capprt-tcrpap.gc.ca

B. Legislation Administered and Associated Regulations

An Act respecting the status of the artist and professional relations between artists and producers in Canada (Short Title: *Status of the Artist Act*) S.C. 1992, c.33, as amended

Status of the Artist Act Professional Category Regulations SOR 99/191

C. Statutory and Other Departmental Reports and Publications

Canadian Artists and Producers Professional Relations Tribunal Annual Report

Canadian Artists and Producers Professional Relations Tribunal Performance Report (annual)

Canadian Artists and Producers Professional Relations Tribunal Report on Plans and Priorities (annual)

Canadian Artists and Producers Professional Relations Tribunal Information Bulletins (several per year)

Canadian Artists and Producers Professional Relations Tribunal Procedures, 3rd Edition,
February 1999 (updated occasionally)

The Status of the Artist Act Annotated, prepared by the Legal and Adjudicative Services
Branch of the Canadian Artists and Producers Professional Relations Tribunal, published
by Carswell, 1999.