

Competition Tribunal

**1999-2000
Estimates**

A Report on Plans and Priorities

John Manley
Minister of Industry

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Section I Minister's Message

Our vision of Canada at the dawn of the new millennium is that of a strong and dynamic country poised to be a global leader in the knowledge-based economy of the 21st century. Canada continues to face the challenges of responding to the rapid pace of global change, and of harnessing the benefits of the knowledge-based economy for all Canadians. The government's goal is to create economic growth and more jobs for Canadians, in order to improve incomes and our standard of living.

Our standard of living depends directly on productivity, and improving productivity growth will be one of Canada's key challenges in the years ahead. The Industry Portfolio has a pivotal role to play in meeting this challenge. With 42 percent of federal science and technology funding and many of the government's micro-economic levers at its disposal, the Industry Portfolio has a unique capacity for innovation, research excellence, and partnership. The 13 Portfolio members bring together a versatile array of complementary programs to help improve Canadian productivity and competitiveness by focusing on such strategic priorities as promoting innovation through science and technology, helping small- and medium-sized enterprises to grow, encouraging trade and investment, and promoting economic growth in Canadian communities.

I am pleased to present the Report on Plans and Priorities for the Competition Tribunal. This Report sets out for Canadians the planned activities, priorities and resources over the course of the next three years. The Competition Tribunal provides Canadians with a court of record to hear and determine, as informally and expeditiously as circumstances and considerations of fairness permit, all applications under Part VIII of the *Competition Act*. It will also hear and determine applications under Part VII.I pursuant to Bill C-20, *An Act to amend the Competition Act and to make consequential and related amendments to other Acts*. The Registry provides registry, research and administrative assistance to the Tribunal

The Industry Portfolio is ...

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

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

members, and provides Canadians with access to case records and decisions. These plans illustrate how the Competition Tribunal, as a member of the Industry Portfolio, will contribute to improving Canada's competitiveness.

Canada is well equipped to be a leader in the knowledge-based economy of the 21st century. We have the people, the institutions and the research excellence. We have the vision to not only connect all Canadians, but also to connect them to the global marketplace. We know the challenges that we face and the opportunities afforded to us. By mobilizing our resources, we can be a leader in the new economy. By working together, we can ensure continuing success as we embark on the new millennium.

The Honourable John Manley

Management Representation Statement

**MANAGEMENT REPRESENTATION
REPORT ON PLANS AND PRIORITIES 1999-2000**

I submit, for tabling in Parliament, the 1999-2000 Report on Plans and Priorities (RPP) for the Registry of the Competition Tribunal.

To the best of my knowledge, the information:

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

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

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

Name: _____

Date: _____

Section II

Departmental Overview

Mandate

The mandate of the Tribunal is strictly adjudicative; it has no function other than that associated with the hearing of applications and issuance of orders. It exercises its adjudicative function at arm's length from government and its departments.

The Competition Tribunal ("Tribunal") is a quasi-judicial tribunal created in 1986 by the *Competition Tribunal Act* to hear applications and issue orders with respect to the civil reviewable matters set out in Part VIII of the *Competition Act* as informally and expeditiously as circumstances and considerations of fairness permit. Part VIII deals with mergers, abuse of dominant position, specialization agreements, delivered pricing, restrictive trade practices (refusal to supply, consignment selling, exclusive dealing, tied selling and market restriction), foreign judgments, laws and directives that have certain adverse effects on economic activity in Canada, and refusals to supply by foreign suppliers.

Although the Tribunal's mandate has not changed since its creation in 1986, Bill C-20, *An Act to amend the Competition Act and to make consequential and related amendments to other Acts*, will extend the Tribunal's jurisdiction to misleading advertising and deceptive marketing practices.

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

Objectives

- The Tribunal's objective is to provide a court of record to hear and determine all applications under Part VIII of the *Competition Act* as informally and expeditiously as circumstances and considerations of fairness permit.
- Under Bill C-20, *An Act to amend the Competition Act and to make consequential and related amendments to other Acts*, the Tribunal will also hear and dispose of

applications brought by the Director of Investigation and Research under Part VII.I of the *Competition Act*, regarding misleading advertising and deceptive marketing practices.

- The Registry's objectives are to provide efficient and effective registry, research and administrative assistance to the Tribunal for the timely and expeditious conduct of pre-hearing procedures, hearings, issue of decisions and to use and develop technologies to improve the efficiency and effectiveness of the Tribunal's operations and services.

Organization Composition

The Tribunal is composed of not more than four judicial members and not more than eight lay members. The judicial members are appointed, on the recommendation of the Minister of Justice, by the Governor in Council from among the judges of the Federal Court, Trial Division. The Governor in Council designates one of the judicial members as Chairman of the Tribunal. The lay members are appointed by the Governor in Council on the recommendation of the Minister of Industry. Appointments are for a fixed term not exceeding seven years; members may be re-appointed. Two judicial members were appointed in 1993 and a third judicial member was appointed in 1998. There are presently one full-time economist lay member and three part-time lay members.

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

The Registry provides registry, research and administrative support services to the Tribunal. The Registry has been designated a department for the purposes of the *Financial Administration Act*, the Minister of Industry as the appropriate minister, and the Registrar as the deputy head. The organizational structure is illustrated in section IV, table 2.2.

Operating Context

Although the Tribunal does not receive advance notice of applications, it must be ready to respond in a timely manner to ensure expeditious proceedings in matters that invariably involve significant financial stakes and can have an impact on private enterprise and industry. As a rule, applications involve multiple litigants represented by counsel. Fast-track

scheduling and active case management is a priority of the Tribunal. Once the hearing date has been established, the Tribunal does not allow postponement except in the most unusual circumstances.

To provide a framework for informal and expeditious proceedings consistent with the requirements of a fair and impartial hearing, the Tribunal has developed and keeps under review the set of rules that regulates its practice and procedure. The rules aim for simplicity and clarity, leaving the Tribunal flexibility to direct proceedings to avoid undue delay.

Although the time limits set by the rules for contested applications contemplate that the hearing should commence within six months of filing, a wide range of variables comes into play that are not in the Tribunal's control, such as scope and complexity, number of parties and intervenors, interlocutory appeals, and urgency.

The Registry's workload is non-discretionary and focuses on the documentary, procedural, hearing and research activities required until final disposition of applications. Voluminous documentation, usually including confidential commercial information, is typical. A fully automated case management system enables the Registry to process, track and monitor cases efficiently.

Proceedings may be in either or both official languages. In the latter instance, all notices, directives, decisions, orders and reasons must be issued simultaneously in both official languages. Since they are usually of national interest, final reasons and orders are as a rule issued simultaneously in both official languages. Given the scope and complexity of the cases and precedential significance of the decisions, these documents are lengthy and detailed; technical accuracy and timely preparation of texts are imperative. Editing of all documents in both official languages is done in-house.

The Registry responds to requests for information by the legal community, researchers, the media and public on the status of cases, the Tribunal's rules of practice and procedure and its case law.

Competition Tribunal Financial Spending Plan				
(thousands of dollars)	Forecast Spending 1998-1999*	Planned Spending 1999-2000	Planned Spending 2000-2001	Planned Spending 2001-2002
Gross Program Spending	1,253	1,270	1,269	1,269
Less: Revenues Credited to the Vote	-	-	-	-
Net Program Spending	1,253	1,270	1,269	1,269
Plus: Cost of Services Provided by other Departments	405	405	405	405
Net Cost of the Agency	1,658	1,675	1,674	1,674

*Reflects best forecast of total planned spending to the end of the fiscal year.

Section III

Plans, Priorities Strategies and Expected Results

Summary of Priorities and Expected Results

The following table summarizes the key plans, priorities and strategies of the program:

The Competition Tribunal and its Registry	
will provide Canadians with:	strategies to be demonstrated by:
<p>Competition Tribunal: Business Line</p> <p>A court of record to hear and determine as informally and expeditiously as circumstances and considerations of fairness permit:</p> <ul style="list-style-type: none"> • all applications under Part VIII of the <i>Competition Act</i> and • applications under Part VII.I pursuant to Bill C-20, <i>An Act to amend the Competition Act and to make consequential and related amendments to other Acts</i>. 	<ul style="list-style-type: none"> • Review and, if necessary, amendment of rules of practice and procedure to effect timely disposition of applications. • Aggressive case management to avoid unwarranted delay. • Use of new and developing information technology such as electronic filing and video conferencing to accelerate case processing and management.
<p>Registry: Service Line</p> <p>A Registry service to provide registry, research and administrative assistance to Tribunal members and provide access to case records and decisions.</p>	<ul style="list-style-type: none"> • Efficient case processing and hearing services to the Tribunal and litigants. • Management of the Tribunal's case records according to archival standards. • Public access to information on the Tribunal's rules of practice and procedure, case records and decisions. • Efficient administrative infrastructure that effectively exploits economies of shared support services with other agencies. • Technological environment which facilitates process and hearing services as well as access to Tribunal information and services. • Professional and qualified staff to provide court registrar, research and legal services.

Program and Business Line Plans

Tribunal Business Line

Objective

The Tribunal's objective is to provide a court of record to hear and determine as informally and expeditiously as circumstances and considerations of fairness permit applications under Part VIII of the *Competition Act* and Part VII.I pursuant to Bill C-20, *An Act to amend the Competition Act and to make consequential and related amendments to other Acts*.

Strategy

A permanent Tribunal/Bar Liaison Committee has been established and meets at least twice yearly for discussion of issues of common interest. The Tribunal through the Tribunal/Bar Liaison Committee will undertake the review of its rules of practice and procedure in order to simplify and expedite the resolution of matters brought before it. As well, it will develop and implement rules of practice and procedure to hear and decide misleading advertising and deceptive marketing applications.

The Tribunal will exploit evolving informatics technology to further accelerate the hearing process. Enhancement to the existing electronic filing and active use of technologies such as video and telephone conferences will be encouraged. Present technologies will be extended to pilot electronic hearings.

Performance standards will be developed and implemented for misleading advertising and deceptive marketing applications.

Expected Results

The review of its rules of practice and procedure will bring about amendments that will enhance the Tribunal's effectiveness and transparency while preserving fairness. Continuing with the use of electronic filing and developing a system to accommodate electronic hearings could result in significant cost and time savings. Promoting the use of technology will accelerate document interchange among parties and make information more readily available to all Canadians.

Aggressive case management will avoid unwarranted delays and provide better client service. The development and implementation of performance standards for misleading and deceptive marketing applications will assist the Tribunal in meeting its objective. The use of technologies such as video and telephone conferences will be encouraged as a means of accelerating certain types of motions and pre-hearing conferences and cutting down on travel costs.

Registry Service Line

Objective

A Registry service to provide registry, research and administrative assistance to Tribunal members and provide access to case records and decisions.

Strategy

Efficient case processing and hearing services to the Tribunal and litigants and management of the Tribunal's case records:

Plan:

- To support the Tribunal's objective, the Registry will reorganize its human resources in light of the Tribunal's expanded mandate;
- To support this re-organization and continue providing skilled and knowledgeable workers, training plans to promote continuous learning will be developed with Registry staff;
- Emphasis will be put on implementing changes to the Registry's information technology environment, to improve the case management system, the distribution of documents to the public, and to explore alternative means of access to hearings; and
- Access to and management of case records will be administered according to archival standards.

Expected Results

The Registry will provide specialized expertise and advice on technical process functions to the Chairman and members of the Tribunal. Innovative approaches to judicial administration will be used to support decision-makers and to facilitate processes involving varying situations and problems during unique and complex cases. Timely access to documentation and appropriate information to assist in the accurate understanding of case proceedings and disposition will be provided to litigants and the general public. The exploration of new technologies will result in efficiencies and cost reduction, and facilitate the advancement of cases.

Strategy

An efficient administrative infrastructure that effectively exploits economies of shared support services with other agencies:

Plan:

- When appropriate for hearings outside Ottawa arrange cost-effective short-term secondments with Federal Court regional registries to provide court services;
- Use of hearing room facilities will be negotiated with regional offices of other federal agencies in order to avoid the high cost of commercial facilities for hearings outside Ottawa;
- The Memorandum of Understanding with the Office of the Commissioner for Federal Judicial Affairs for corporate services will be renegotiated. This will allow the Registry to obtain support services related to expertise in financial administration, pay and benefit functions;
- The arrangement with Public Works and Government Services Canada for the provision of a fax-on-demand service whereby the public can obtain copies of Tribunal documents at their own cost will be extended for another year; and
- Active promotion of optimum use of the Tribunal's hearing room facilities by other departments and agencies will continue.

Expected results

Partnerships with other federal departments and agencies through memoranda of agreement will realize savings while providing the Registry with access to broad-based expertise. These

agreements will result in the sharing of best practices and help the Registry to maximize its ability to meet its workload.

Strategy

The Registry will be a technological environment which facilitates access to Tribunal hearings, information and services:

Plan:

- Cost effective improvements will be made to the Registry's Website in order to expand the level of service currently provided to litigants, counsel, the media and the public; and
- The technological environment will be brought to current standards and allow the Registry to increase the application of new technologies in court administration and modernize its case management computer system.

Expected Results

Upgrading and modernizing the Registry's technology environment will provide efficiency gains in service to the Tribunal, litigants and the public in the areas of process management, hearing support, access to case documents and in the provision of information to the public.

Context Overview

Resource Plans

Human Resources: The Registry's human resource base of 12 employees constitutes the absolute minimum required to provide efficient support in a specialized law and economics milieu to up to four judicial members, up to eight lay members, panels, litigants, counsel, media and the public. The proposed expansion of the Tribunal's jurisdiction to include misleading advertising and deceptive marketing practices will require additional human resources. Continuous learning and multi-skill training will be a key priority for Registry staff. Individual learning plans will be developed in support of this key activity.

Financial Resources: As a single program agency supporting a quasi-judicial tribunal, the Registry disposes of very limited discretionary resources. Since the Registry is precluded from eliminating any activities, the strategy for the Registry will be to use existing best practices such as video conferences and share common services with other departments and agencies in order to build cost-effective initiatives.

External Factors Influencing the Business Line

Enforcement: The number of applications brought before the Tribunal depends on the enforcement policy adopted by the Director of Investigation and Research. The Tribunal has no function other than those associated with the hearing of applications and the issuance of orders. It is a responsive institution reacting entirely to external demands. It does not have any investigative powers or supervision over the inquiries conducted by the Director of Investigation and Research. While mergers and abuse of dominant position are two of five enforcement priorities, case screening criteria are used to identify priority cases in terms of economic impact and general deterrence value.

The Director of Investigation and Research has expressed a commitment to greater use of the consent order process before the Tribunal. Consent orders are generally recognized as an important mechanism in the administration of competition law that can result in innovative solutions and reduction in costs of lengthy and complex litigation.

Consolidated Reporting

a) Regulatory Initiative:

There are two regulatory initiatives which will affect the Tribunal's rules of practice and procedure.

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

The second regulatory initiative flows from Bill C-20, *An Act to amend the Competition Act and to make consequential and related amendments to others Acts*. It will be necessary to develop and amend the Tribunal's rules of practice and

procedure as well as reorganize the existing administrative infrastructure to accommodate new applications.

b) Year 2000 Initiative:

The Registry's information technology is Year 2000 compliant.

Section IV Supplementary Information

Spending Authorities

Table 1: Spending Authorities - Ministry Summary Part II of the Estimates

Competition Tribunal			
Vote	(thousands of dollars)	1999-2000 Main Estimates	1998-1999 Main Estimates
45	Program expenditures	1,152	1,132
(S)	Contributions to employee benefit plans	118	121
	Total Agency	1,270	1,253

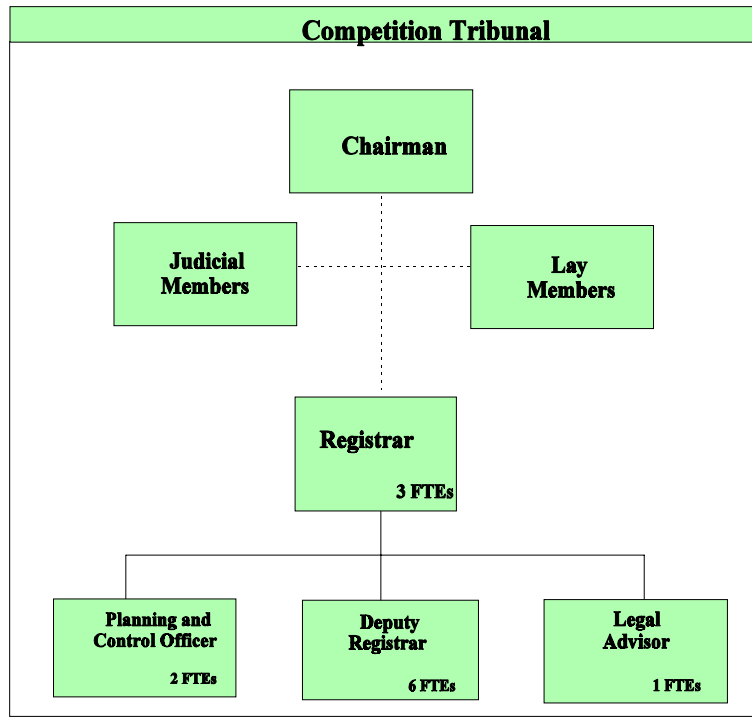
Personnel Information

Table 2.1: Details of Personnel Requirements by Business Line (FTEs)*

	Forecast 1998-1999	Planned 1999-2000	Planned 2000-2001	Planned 2001-2002
Competition Tribunal	12	12	12	12
Total	12	12	12	12

* Proposed expansion of the Tribunal's jurisdiction will require additional FTE's.

Table 2.2 : Organization Structure



Additional Financial Information

Table 3: Summary of Standard Objects of Expenditures

	Competition Tribunal			
	Forecast Spending 1998-1999	Planned Spending 1999-2000	Planned Spending 2000-2001	Planned Spending 2001-2002
(thousands of dollars)				
<i>Personnel</i>				
Salaries and wages	578	590	589	589
Contributions to employee benefit plan	121	118	118	118
Other personnel costs	-	-	-	-
<i>Total Personnel</i>	699	708	707	707
<i>Goods and Services</i>				
Transportation and communications	96	100	100	100
Information	88	60	60	60
Professional and special services	272	294	294	294
Rentals	12	20	20	20
Purchased repairs and upkeep	8	15	15	15
Utilities, materials and supplies	40	48	48	48
Minor Capital	38	25	25	25
<i>Total Operating</i>	554	562	562	562
<i>Total Program</i>	1,253	1,270	1,269	1,269

Table 4: Program Resources by Program and Business Ligne for the Estimates Year

1999-2000 Main Estimates								
(thousands of dollars)								
	FTEs	Operating	Capital	Grants and Contribution s	Gross Total	Gross Planned Expenditures	Less: Revenue Credited to the Vote	Net Planned Spending
Competition Tribunal	12	1,270	-	-	1,152	1,270	-	1,270
Total	12	1,270	-	-	1,152	1,270	-	1,270

Table 5: Net Cost of Program for the Estimates Year

(thousands of dollars)	Competition Tribunal	Total
Gross Planned Spending	1,270	1,270
Plus: <i>Services Received without Charge</i>		
Accommodation provided by PWGSC	379	379
Contributions covering employees' share of insurance premiums and costs paid by TBS	26	26
Workman's compensation coverage provided by Human Resources Canada	-	-
Salary and associated costs of legal services provided by Justice Canada	-	-
1999-2000 Estimated Net Program Cost	1,675	1,675

Other Information

Table 6: Enabling Legislation and Rules

<i>Competition Tribunal Act</i>	R.S.C. 1985 (2nd Supp.), c. 19
<i>Competition Act</i> , Part VIII	R.S.C. 1985, c. C-34
<i>Competition Tribunal Rules</i>	SOR/94-290, SOR/96-307

Table 7: References

Registry of the Competition Tribunal	
600-90 Sparks Street	
Ottawa, Ontario K1P 5B4	
(613) 957-3172	
Facsimile:	
General	(613) 957-3170
Registry Services	(613) 952-1123
Fax-on-demand:	(819) 956-7139 from a fax machine for case documents
World Wide Web:	http://www.ct-tc.gc.ca