



Canadian Human Rights Tribunal

2000-2001
Estimates

Part III – Report on Plans and Priorities

Canada

The Estimates Documents

Each year, the government prepares Estimates in support of its request to Parliament for authority to spend public monies. This request is formalized through the tabling of appropriation bills in Parliament. The Estimates, which are tabled in the House of Commons by the President of the Treasury Board, consist of three parts:

Part I – The Government Expenditure Plan provides an overview of federal spending and summarizes both the relationship of the key elements of the Main Estimates to the Expenditure Plan (as set out in the Budget).

Part II – The Main Estimates directly support the *Appropriation Act*. The Main Estimates identify the spending authorities (votes) and amounts to be included in subsequent appropriation bills. Parliament will be asked to approve these votes to enable the government to proceed with its spending plans. Parts I and II of the Estimates are tabled concurrently on or before 1 March.

Part III – Departmental Expenditure Plans which is divided into two components:

- (1) **Reports on Plans and Priorities (RPPs)** are individual expenditure plans for each department and agency (excluding Crown corporations). These reports provide increased levels of detail on a business line basis and contain information on objectives, initiatives and planned results, including links to related resource requirements over a three-year period. The RPPs also provide details on human resource requirements, major capital projects, grants and contributions, and net program costs. They are tabled in Parliament by the President of the Treasury Board on behalf of the ministers who preside over the departments and agencies identified in Schedules I, I.1 and II of the *Financial Administration Act*. These documents are to be tabled on or before 31 March and referred to committees, which then report back to the House of Commons pursuant to Standing Order 81(4).
- (2) **Departmental Performance Reports (DPRs)** are individual department and agency accounts of accomplishments achieved against planned performance expectations as set out in respective RPPs. These Performance Reports, which cover the most recently completed fiscal year, are tabled in Parliament in the fall by the President of the Treasury Board on behalf of the ministers who preside over the departments and agencies identified in Schedules I, I.1 and II of the *Financial Administration Act*.

The Estimates, along with the Minister of Finance's Budget, reflect the government's annual budget planning and resource allocation priorities. In combination with the subsequent reporting of financial results in the Public Accounts and of accomplishments achieved in Departmental Performance Reports, this material helps Parliament hold the government to account for the allocation and management of public funds.

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Canadian Human Rights Tribunal

2000–2001 Estimates

A Report on Plans and Priorities

Anne McLellan
Minister of Justice

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Section I: Messages



A. Chairperson's Message

The past year has been a time of transition for the Canadian Human Rights Tribunal. With amendments to the *Canadian Human Rights Act* having come into effect on July 1, 1998, we have now completed our first full year of operations as a permanent Tribunal.

One of the stated reasons for the restructuring of the human rights adjudication process at the federal level was the desire to create a truly expert body for the determination of human rights complaints. To enhance the expertise of the Tribunal and to encourage both fairness and efficiency in the hearing process, we provided the members of the new Tribunal with three weeks of comprehensive training. During these sessions, members received specialized training in substantive human rights law, as well as in managing a hearing, evidentiary rules, decision writing, and mediation theory and skills. The training was intended to increase the level of expertise of the Tribunal, as well as to provide members with a sound understanding of their role in providing parties with a consistent and impartial hearing process. I was very pleased with the commitment and enthusiasm demonstrated by the members during the training sessions.

The Tribunal undertook a number of initiatives over the last year in an effort to improve our process. These include the development and implementation of Rules of Procedure for hearings, Mediation Rules, changes to the case planning process, and an increased level of case management.

Mediation provided by the Tribunal has again had a significant impact on the Tribunal's workload. Many cases are now being mediated and a high rate of settlement is being achieved. A recent survey of stakeholders discloses a very high degree of satisfaction with the Tribunal's mediation initiatives. The resolution of disputes through mediation has many positive attributes, not the least of which is significant cost savings to the taxpayer. Experience has shown, however, that the publicity associated with Tribunal hearings and decisions serves a significant educational function. Questions have been raised as to whether the resolution of a significant proportion of cases coming to the Tribunal behind closed doors and on a confidential basis addresses the public education aspects of proceedings under the *Canadian Human Rights Act*. We have asked the Canadian Human Rights Act Review Panel, under the leadership of the Honourable Gérard La Forest, to examine this issue and to provide us with the benefits of their wisdom on the subject.



In the last year, a significant number of cases settled prior to a hearing — many as a result of mediation, others by the parties on their own. Many of these cases had been scheduled for several weeks of hearing and were settled shortly before the hearing was to commence. This makes it very difficult to use the freed-up time effectively. As a result, we have reviewed our case scheduling procedures to ensure that full-time Tribunal members are better utilized.

What the future will hold for the Tribunal is a difficult question to answer. The Canadian Human Rights Act Review Panel is scheduled to report to the Minister of Justice in the spring of 2000. The Review Panel's recommendations and the government's legislative response to those recommendations may well establish new roles and responsibilities for the Tribunal in the future. We look forward to the Panel's recommendations for improvements to the human rights process.

B. Management Representation



Report on Plans and Priorities 2000–2001

I submit, for tabling in Parliament, the 2000–2001 Report on Plans and Priorities (RPP) for the Canadian Human Rights Tribunal.

To the best of my knowledge, the information:

- Accurately portrays the mandate, plans, priorities, strategies and planned results of the organization.
- 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:

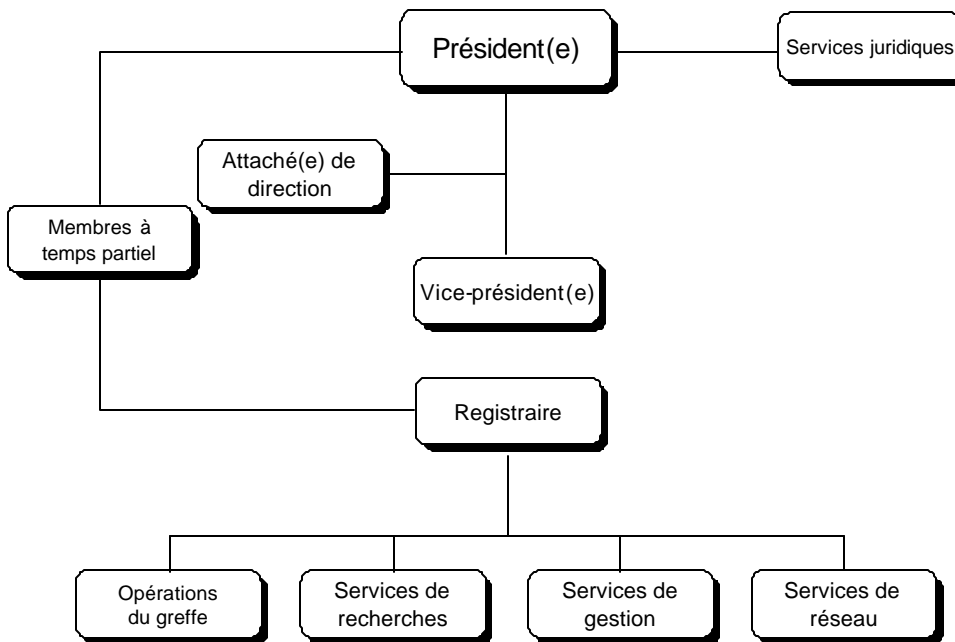
Date:

February 23, 2000



Section II: Departmental Overview

Departmental Organization Chart Canadian Human Rights Tribunal/ Employment Equity Tribunal



A. Mandate, Roles and Responsibilities

Although the *Canadian Human Rights Act* was amended by Parliament in 1998 to create a smaller permanent Tribunal, our role and obligations to Canadians remain the same. The amendments to the Act were directed at creating a more specialized and expert Tribunal to deal with their increasingly complex cases. We are fortunate that Tribunal members are skilled, knowledgeable and competent. They meet the ever-increasing challenge of protecting individual rights in a complex and diverse society.

The Canadian Human Rights Tribunal is a quasi-judicial body created by Parliament to publicly inquire into complaints of discrimination and to decide if particular cases have contravened the *Canadian Human Rights Act* (CHRA). Only the Tribunal may legally decide if there has been a discriminatory practice. The Tribunal's decision is based on (often conflicting) evidence and the law. If it finds discrimination has occurred, the Tribunal decides on the appropriate remedy



to prevent future discrimination and to compensate the victim of the discriminatory practice.

The vast majority of discriminatory acts are not malicious. Most problems arise from long-standing systemic practices, legitimate concerns of the employer, or conflicting interpretations of the statutes and precedents. As highlighted in the Auditor General's Report in September 1998, very few cases are clear-cut, and the evidentiary and legal issues are extremely complex. As a result, the Tribunal's members frequently put in long hours analysing evidence and the law before reaching their conclusions.

The Tribunal may inquire only into complaints referred to it by the Canadian Human Rights Commission, usually after the Commission itself has completed a full investigation. The Commission resolves most cases without the Tribunal's intervention. Cases referred to the Tribunal generally involve complicated legal issues, new human rights issues, unexplored areas of discrimination, or multifaceted evidentiary complaints that must be heard under oath.

The Canadian Human Rights Tribunal is not an advocate; that is the role of the Canadian Human Rights Commission. The Tribunal has a statutory mandate to apply the *Canadian Human Rights Act*, based on the evidence presented and on current case law. Decisions of the Tribunal may be reviewed by the Federal Court of Canada.

The Tribunal's responsibilities were expanded in 1996 with the proclamation of the *Employment Equity Act*. As well as being the Canadian Human Rights Tribunal, it is also the Employment Equity Review Tribunal. Hearings under this Act are expected to begin in 2000. The Tribunal is drafting guidelines and rules of procedure to deal with this new area of responsibility. A group of potential stakeholders will review and comment on the draft rules prior to publication in the *Canada Gazette*.

The Tribunal continues to increase the number of cases sent to alternative dispute resolution (ADR). Introduced in 1996, ADR has proven to be very successful. In the first year, 12 complaints were referred to mediation, six of which were settled. In 1997, 19 complaints went to ADR. Sixteen of those were settled and only one is still pending. Only two complaints proceeded to the hearing stage. Generally, parties involved in the process have been pleased to avoid having the Tribunal impose a solution on them. ADR saved the Tribunal \$75,000 in 1996, \$705,000 in 1997, \$203,000 in 1998 and \$230,000 in 1999.

Because the terms of ADR settlements remain confidential, however, ADR may not always serve the public interest on a wider social level. Tribunal case decisions tend to set precedents and can have broad social implications. Therefore, while the complainant may be well served by mediation, others who confront similar conditions cannot benefit because the settlement remains confidential. With this in mind, the Tribunal is reviewing the ADR process to determine its effect on the principles of social justice and its effectiveness in meeting the needs of all parties.



The Canadian Human Rights Tribunal consists of two parts: the members and the Registry. The Tribunal is composed of up to 15 full- and part-time members appointed by the Governor in Council. By statute, the Chair and Vice-Chair must be full-time members. This is a change from earlier years when the Panel comprised 50–60 part-time members. The backgrounds of members vary, but most have legal training and all must have experience in and sensitivity to human rights issues. The Tribunal Registry provides full administrative support services to the members and is responsible for planning and organizing the hearing process.

The Tribunal deals with matters concerning employment or the provision of goods, services, facilities or accommodation. The CHRA makes it illegal for anyone to discriminate against any individual or group on the ground of:

- race
- national or ethnic origin
- colour
- religion
- age
- sex (including pregnancy)
- family status
- marital status
- disability
- conviction for an offence for which a pardon has been granted
- sexual orientation

The Tribunal's jurisdiction covers matters that come within the legislative authority of the Parliament of Canada. This includes federal government departments, agencies, banks, airlines, and other federally regulated employers and providers of goods, services, facilities and accommodation. In employment equity matters, the legislation applies only to employers with more than 100 employees.

The Tribunal's decision-making process must remain clearly independent and impartial, offering fair process to all parties. Tribunal members make decisions



solely on the merits of the individual complaints and on the evidence presented at the hearing.

The Registry's activities are entirely separate from the decision-making process. The Registry is accountable for the resources allocated by Parliament. It plans and arranges hearings, acts as liaison between the parties and members, and gives members the administrative support they need to carry out their duties. It must provide high-quality, effective services to the Canadian public.

To control costs while maintaining services, the Registry regularly monitors and adjusts its procedures and practices. At the same time, it has to deal with varying numbers of cases — some of which are highly complex and require hearings in different locations. The Registry has no control over the number, location or duration of these hearings. Under these circumstances, providing support to the Tribunal and services to the public while staying within a fixed budget is often a challenge.

B. Objectives

The Tribunal's objective is to interpret, apply and uphold the human rights of Canadians, in accordance with the *Canadian Human Rights Act* and the *Employment Equity Act*, through properly conducted hearings and fair decisions.

The Registry's objective is to support the Tribunal in its operations, to help ensure its independence and impartiality, and to create a positive environment in which members can fulfil their responsibilities.

C. External Factors Influencing the Department

The Canadian Human Rights Tribunal operates in the following areas:

- **public expectations and concerns** — The Tribunal recognizes the significance and consequence of its decisions for employers and individuals. Therefore, the Tribunal's functions are carried out with diligence and open-mindedness to ensure equity and fairness to all.
- **government commitments** — The Tribunal shares the government's commitment to human rights and fairness in the workplace. The government's human rights legislative initiatives are reflected in the Tribunal's decisions.

- **decentralization** — As a small, Ottawa-based, independent body, the Tribunal feels no direct effect as a result of decentralization. Under statute, members are appointed on a regional basis.
- **technological advances** — The Tribunal is continuing to modernize its technology systems to allow improved access to the Tribunal's public documents by the members, its clients and the general public.

Other External Factors

Review of the Act

In April 1999, the Minister of Justice announced the creation of a panel of experts to review the *Canadian Human Rights Act*, chaired by former Supreme Court Justice, Gérard La Forest. The Panel's mandate is to review the role of the Commission, the role of the Tribunal and designated provisions of the Act to improve the process of resolving human rights disputes.

We endorse the Minister's direction. The Review Panel will submit its recommendations to the Minister in April 2000.

Although there have been many changes to the *Canadian Human Rights Act* since its introduction in 1978, no one has yet completely reviewed the legislative mandate of the Commission and the Tribunal. Previous changes have been made as a result of court decisions requiring amendments to the legislation. A complete review will enable Parliament to bring the *Canadian Human Rights Act* up to date, to respond to today's current trends on human rights issues.

The effect on the Tribunal is difficult to predict. The Panel has not announced its recommendations. However, we do agree that change is required. The Tribunal has agreed to cooperate with the Panel and provide the information it needs to complete this difficult task. Adjudicating human rights issues has become much more complicated over the past few years. Another area needing to be addressed is judicial review, as it relates to the process for the Tribunal, its authorities and ability to enforce its decisions.

New Initiatives in 2000

The following Tribunal initiatives will continue in the upcoming year:

- continued training for members
- timeliness
- mediation
- technological assessments



D. Departmental Planned Spending

(\$ Thousands)	Forecast Spending 1999–2000 *	Planned Spending 2000–200 1	Planned Spending 2001–2002	Planned Spending 2002–200 3
Budgetary Main Estimates	4,018	3,527	2,847	2,047
Total Main Estimates	<u>4,018</u>	<u>3,527</u>	<u>2,847</u>	<u>2,047</u>
Adjustments to Planned Spending	<u>733</u>	<u>3,527</u>	<u>2,847</u>	<u>2,047</u>
Net Planned Spending	4,751	3,527	2,847	2,047
Plus: Cost of Services Received Without Charge	<u>488</u>	<u>488</u>	<u>488</u>	<u>488</u>
Net Cost of Program	5,239	4,015	3,335	2,535
Full-Time Equivalents	17	17	17	17

* In years 2001–2002 and 2002–2003, the decrease in planned spending is caused by no approved planned spending for pay equity cases.

Section III: Plans, Results and Resources



A. Business Line Objective

Public Hearings

The Tribunal has one business line — to conduct public hearings and render decisions. With a smaller and permanent Tribunal, members can devote more time to cases and develop greater expertise. We expect cases will be decided more quickly, hearings will be scheduled in a more timely fashion and delays previously encountered by the Tribunal will be minimized. This should improve service for the parties appearing before the Tribunal. Human rights law is taking a new direction in its complexity and importance to Canadian society. The courts are continually emphasizing the importance of the application of human rights, and to some extent, express frustration with the previous process. The current Act should meet the needs of Canadians better than it has.

Last year, we anticipated the average cost of a case and cost per day would decrease with the new Act. That has proven to be true as the average cost of a case, in cost per day, has decreased by about 20 percent. The Tribunal also finished setting up for training and renovating the office, within its budget and within the expected time frame. With full-time members and the Tribunal's greater efficiency, the average cost of hearings should continue to decrease slightly. Mediation has also decreased the average case cost.

The Commission anticipates an increase in referrals to the Tribunal. The statistical information (Exhibit 1) provided within this report shows hearing days have been reduced over the last few years. However, with the increase in our case load, the number of hearing days in the next two to three fiscal years will likely increase.

Last year, we reported an increase in disability and hate message cases. Bill S-5, passed by Parliament in 1998, changed how we interpret and apply these types of cases. There was no increase last year as the Commission continues to investigate these new types of complaints. However, the Tribunal will be called on to interpret the new legislated standard. In the fall of 1999, the Supreme Court changed the legal test for an employer's defence for *bona fide* occupational requirements. In brief, the Court eliminated the distinction between direct and adverse effect discrimination. The Tribunal will evaluate how these changes will affect future cases related to individual complaints. The past jurisprudence, which until recently eliminated most disability cases going to Tribunal, is no longer defining these cases. New case law must be developed.



Exhibit 1: Public Hearings Expectations

	1998–1999 Forecast	1998–1999 Actual	1999–2000 Actual (as at January 2000)	2000–2001 Estimated
<i>Cases Appointed</i>				
Commission Referrals	31	20	30	48
Employment Equity Review Tribunals	0	0	0	2
Total Appointments	31	20	30	50
Cost per Case (\$ thousands)	50	50	50	40
<i>Hearing Days</i>				
Regular	141	104	85	200
Pay Equity	121	45	92	225
Employment Equity Review	0	0	0	20
Total Hearing Days	262	149	177	445
Cases Expected to be Resolved Through Mediation	10	4	7	25
Months to Render a Decision from Conclusion of Hearing	4.5	4.5	4.0	3.5
Months to Process a Case from Commission Referral to Rendering of Decision	13	12	12	10

All cases now require the employer to consider reasonable accommodation in cases where a *bona fide* occupational requirement is applicable. This will also add to the Tribunal’s burden of disability-based complaints, until the new test is fully explored and applied by Tribunals and the courts.

The new Employment Equity Review Tribunal will be monitored carefully over the next fiscal year to determine its effect on Tribunal resources. The first case will be concluded in the early part of 2000–2001.

The following are also expected to affect Tribunal spending:

Increase in Travel Days — Previously, members from each geographical location would have taken hearings from their own region. Now there are fewer members, leaving some regions without their own. For example, there are no members for British Columbia. Members will have to travel to hear cases in other regions. Consequently, we anticipate being billed additional time for travel days.

Employment Equity Hearings — We foresee the need for Employment Equity hearings for the current fiscal year, because the Commission has started its statutory audit process of federally regulated employers. Hearings conducted by our members should start in the next fiscal year.



Members' Meetings and Workshops — The Chairperson requires that all members meet twice a year to share ongoing information and ideas, and to deal with specific topics. The courts and the public have demanded consistency in the Tribunal's work and decisions. Such consistency requires regular discussions among members, which was not possible when the Panel had 50 or 60 members.

Pay Equity Cases — Three major pay equity cases are expected to continue this year: *Public Service of Canada (PSAC) v. Canada Post*, *Public Service of Canada (PSAC) v. Government of the Northwest Territories*, and *CTEA et al. v. Bell Canada*. All three are complex and will require an enormous amount of the Tribunal's time and resources — some of it for travel to Yellowknife in the Northwest Territories.

Public Service of Canada (PSAC) v. Canada Post is the Tribunal's longest-running case. It has been in hearings since 1993. In 1999, the case sat for 47 days, for a total of 330 days. The complainants have rested their case, and the respondent is now presenting its case. The evidence should be completed in the next fiscal year.

CTEA et al. v. Bell Canada's hearings just began in 1999. The original Tribunal hearing the case was quashed in Federal Court, Trial Division. Then the Federal Appeal Court overturned that decision in November of 1998 and sent the case back to be heard by a differently constituted Tribunal under the new CHRA amendments. The parties have started the hearings before the new Tribunal, which sat for 15 days in 1999. The case may proceed for two to three years.

Public Service of Canada (PSAC) v. Government of the Northwest Territories had a total of 29 days of hearings in 1999. Since the case's referral to the Tribunal in 1997, the parties have brought forward many motions and requests for judicial review. Hearings are ongoing, however, and have been scheduled for 2000. The bulk of the case will be heard in Ottawa, but evidence of witnesses who reside in the North may be heard in Yellowknife or Iqaluit. The hearing will be concluded in the North.

Review of the *Canadian Human Rights Act* — The La Forest Panel will likely make recommendations that could greatly affect the Tribunal's role and mandate. If the government decides to act on the Panel's recommendations, the Tribunal will



substantially change the way it conducts business. Any long-term forecast related to the Tribunal's plans and workload would be meaningless until the Panel has completed its work.

Planned Spending

The Business Line Spending Plan is the same as for the agency's overall plan. (See details as stated in Section II, Departmental Planned Spending, page 8.)

Objective

The Tribunal works to ensure the equitable application of the CHRA and the *Employment Equity Act* through the conduct of fair and efficient public hearings.

B. Key Results Commitments

to provide Canadians with:	to be demonstrated by:
a fair, impartial and efficient public inquiry process for enforcing and applying the <i>Canadian Human Rights Act</i> and the <i>Employment Equity Act</i> .	<ul style="list-style-type: none">• a timely hearing and decision process.• well-reasoned decisions, consistent with evidence and the law.• changes to policies, regulations and laws made as a result of the Tribunal's decisions.• application of innovative processes to resolve disputes.• service that is satisfactory to the members, the parties involved and the public.• equity of access.• public awareness and use of the Tribunal's public documents.

Section IV: Financial Information



Net Cost of Program for the Estimates Year

(\$ Thousands)	TOTAL
Net Planned Spending	3,527
Plus:	
<i>Services Received Without Charge</i>	
• Accommodation from Public Works and Government Services Canada	458
• Contributions Covering Employees' Share of Insurance Premiums and Costs from Treasury Board Secretariat	30
• Workers' Compensation Coverage from Human Resources Development Canada	-
• Salary and Associated Expenditures of Legal Services from Justice Canada	-
	488
Net Cost of Program	4,015

Calculations: Employee Benefit Plans 19.5% of 537,000 = 104,715;
 Insurance Plans 5.6% of 537,000 = 30,072



Section V: Other Information



Contacts for Further Information and Web Site

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Legislation and Associated Regulations Administered

The Minister of Justice is responsible to Parliament for the *Canadian Human Rights Act* (R.S.C. 1985, CH-6, amended).

The Minister of Labour is responsible to Parliament for the *Employment Equity Act* (Bill C-64, given assent on December 15, 1995).

Statutory Annual Reports and Other Departmental Reports

The following documents can be found on the Tribunal's Web site.

Annual Report (1998)
Performance Report (for period ending March 31, 1999)
Procedures for Mediation
Report on Plans and Priorities (1999-2000 Estimates)
Rules of Procedure