To ensure that Canadians have equal access to the opportunities that exist in our society through the fair and equitable adjudication of human rights cases that are brought before the Tribunal.

Canada

CANADIAN HUMAN RIGHTS TRIBUNAL

Created by Parliament in 1977, the Canadian Human Rights Tribunal is a quasi-judicial body that adjudicates complaints of discrimination referred to it by the Canadian Human Rights Commission and determines whether the activities complained of violate the *Canadian Human Rights Act* (CHRA). The Tribunal has a statutory mandate to apply the CHRA based on the evidence presented and on current case law.

The purpose of the Act is to protect individual Canadians from discrimination and to promote equality of opportunity. The Act applies to all undertakings within federal jurisdiction, such as federal government departments and agencies, Crown corporations, chartered banks, airlines, telecommunications and broadcasting organizations, and shipping and interprovincial trucking companies. Complaints may relate to discrimination in employment or in the provision of goods, services, facilities or accommodation that are customarily available to the general public. Complaints may also relate to the telecommunication of hate messages. The CHRA prohibits discrimination on the basis of race, national or ethnic origin, colour, religion, age, sex, marital status, family status, sexual orientation, disability and conviction for which a pardon has been granted. Complaints of discrimination based on sex include allegations of wage disparity between men and women performing work of equal value in the same establishment.

In 1996, the Tribunal's responsibilities were expanded to include the adjudication of complaints under the *Employment Equity Act*, which applies to federal government employees and to federally regulated private sector employers with more than 100 employees. Employment Equity Review Tribunals are assembled as needed from the members of the Canadian Human Rights Tribunal.

The Tribunal is not a policy-making body. Its sole purpose is to hear and adjudicate cases of discrimination, based on the facts of each case and the current law. As such, it may only deal with cases referred to it by the Commission. The Tribunal cannot create its own caseload; it cannot lobby or attempt to influence or adjust the government's or the Commission's agendas, other than by its decisions on cases; and it cannot take sides on human rights issues. In addition, its process must be fair and efficient, without being seen as a rush to complete the adjudicative process. Unreasonable delay is not acceptable, but neither is speed for the sake of expediency. In this, the Tribunal must find balance. Human rights, both for the individual and the respondents — and for Canadians as a whole — are too important to forgo an equitable and accessible process.

Message from the Chairperson

The number of complaints referred by the Canadian Human Rights Commission for inquiry by the Tribunal decreased slightly again in 2006 from the record highs we experienced in 2003 and 2004.

One issue that has seriously challenged the Tribunal over the past few years has been the significant number of parties appearing before us without legal representation. These complainants are often people of modest means who are unable to afford legal representation. In 2005, the Tribunal developed a new system of case management to address this issue. The new system requires that a teleconference be conducted at a very early stage in the inquiry process by a member of the Tribunal with all the parties and their counsel present. During the teleconference, the member explains the Tribunal's pre-hearing and hearing processes and what is required from the parties. The member also sets time frames, in consultation with the parties, for document and witness disclosure and hearing dates. In addition to explaining the Tribunal's hearing process, case management is designed to ensure that complaints are heard and decided without undue delay.

In 2007 the Tribunal will continue to monitor its case management process. We are also planning further enhancements to our automated case management system, called the Tribunal Toolkit, which was installed in 2005 to enhance information retrieval efficiency and data integrity. As well, the Tribunal will be working toward achieving certification in accordance with the new government's Management of Information Security initiative.

The Tribunal remains well positioned to continue to offer Canadians a full, fair, efficient and timely hearing process.

J. Grant Sinclair

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Canadian Human Rights Tribunal/Annual Report 2006

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The Year in Review

The very high volume of complaints received by the Tribunal during the 2003–2005 period continued to affect the Tribunal's workload in 2006. Despite our very small size and limited resources, the Tribunal has nevertheless been able to avoid a backlog by actively engaging parties to complaints through a case management process that was introduced in 2005.

How Are We Doing?

The Tribunal's mission is to better ensure that Canadians have equal access to the opportunities that exist in our society through fair and equitable adjudication of the human rights cases brought before it. Pursuit of that goal requires that the determination of human rights disputes be made by the Tribunal in a timely, well-reasoned manner that is consistent with the law. The Tribunal remarked in its 2005 report that it had continued its focus on these objectives even while handling a record-high caseload, where issues continued to be increasingly complex and many parties before the Tribunal were without expert legal representation. Although the Tribunal began to receive fewer case referrals in 2005, both the complexity of these cases and the lack of legal representation for complainants continued to present significant challenges for the Tribunal in 2006.

To address these challenges, the Tribunal introduced a new way of managing its caseload in 2005. At key stages throughout the pre-hearing process, a Tribunal member now conducts conference calls with the parties to ensure that the inquiry process unfolds efficiently without undue delay. The member helps the parties understand what they need to do to prepare for the hearing and sets deadlines for meeting these obligations. Early intervention by an experienced Tribunal member also helps the parties focus on the issues that must be addressed to substantiate or refute the complaint. This early intervention by the Tribunal member also helps resolve key preliminary issues that might otherwise create delays or inefficiencies at the hearing.

Anecdotal evidence from the first 12 months of implementation indicate that the new case management model is making Tribunal proceedings more efficient and enabling the parties to arrive at hearings better informed and better prepared.

New technologies have also contributed to the more efficient management of Tribunal cases. In 2005 the Tribunal installed new software to automate document recording and data retrieval. The new technology proved itself highly useful in 2006, not only for retrieving information, but also for safeguarding the security and integrity of the Tribunal's official record. In 2006 the Tribunal continued to research other automation technologies, including automatically converting fax transmissions to electronic files as part of a case record and digital voice recording software that could eventually be integrated with the Tribunal's automated case management system. These technologies would lower administrative costs, contribute to further efficiencies and ultimately provide better results for Canadians.

Tribunal Membership

The Tribunal's membership in 2006 consisted of a Chairperson, Vice-Chairperson, two full-time members and seven part-time members representing various geographical areas of Canada (see Appendix 3). This includes two new part-time members appointed in 2006.

The Tribunal's Chairperson had served as Vice-Chairperson until 2004 and its current Vice-Chairperson had earlier been a full-time member of the Tribunal. This continuity of composition has been of considerable value in helping the Tribunal cope with its exceptionally heavy workload occasioned by the continued high volume of complex new cases.

TABLE 1 New Case Files Opened, 1996–2006

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	Totals
Human Rights Tribunals/Panels	15	23	22	37	70	83	55	130	139	99	70	743
Employment Equity Review Tribunals	0	0	0	0	4	4	0	0	2	0	0	10
Totals	15	23	22	37	74	87	55	130	141	99	70	753

Note: In accordance with the provisions of the *Canadian Human Rights Act*, the number of case files opened by the Canadian Human Rights Tribunal is determined by the number of complaints referred by the Canadian Human Rights Commission.

The Tribunal's Results in 2006

Vigorous advocacy and the growing complexity of cases in recent years have made the Tribunal's inquiry process more labour-intensive, time-consuming and expensive. The Tribunal is nevertheless committed to reducing to 12 months the time it takes to complete most new cases and is actively seeking new ways to improve its efficiency.

Workload Issues

Although its caseload is decreasing, the volume of work in 2006 continued to strain the Tribunal's resources. The Tribunal opened fewer new cases in 2006 than it had in 2005 — 70 compared with 99 — and fewer still than the 130 cases it opened in 2003 and the 139 cases opened in 2004, when those referrals reached historical highs (see Table 1). Based on projections from the Canadian Human Rights Commission, the Tribunal expects to open between 50 and 60 new case files in 2007.

In 2005 the Tribunal suspended its practice of setting hearing dates at the outset of each inquiry and began instead to fix those dates later in the inquiry process — after the parties had finished exchanging documents and had agreed to the issues to be determined, the evidence to be put forward and the witnesses to be called. Setting the hearing dates at the end of the pre-hearing stage allows the parties to deal with issues that do not have to be part of the hearing itself, resulting in a decrease in the number of Tribunal hearing days, from 242 in 2004 to 169 in 2005. In 2006 Tribunal hearing days rose to 195. The Tribunal also sat a further 59 days for mediations in 2006, compared with 50 days in 2005 and 57 days in 2004. Tribunal members conducted 229 case management conference calls with the parties or their representatives in 2006, a 41-per cent increase over the 162 conference calls they conducted in 2005.

At date of publication, 100 case files remain active, compared with 147 at the same time last year. Although this figure is high in historical terms, it does not constitute a backlog of cases awaiting processing. Rather, it reflects the growing complexity of Tribunal cases and the unusually high volume of complaint referrals since 2003.

Litigation has changed significantly over the past 25 years, especially in recent years, not just at the Tribunal, but in all areas of civil litigation. When the Tribunal began holding hearings under the *Canadian Human Rights Act* in 1979, the style of advocacy was markedly different. In those days a panel would be appointed to hear a complaint and the inquiry would commence promptly after minimal pre-hearing procedures. The inquiry itself would be brief (often lasting less than a week) and all issues would be dealt with during the hearing on the merits.

Today's hearings are far more adversarial, and the hearing process is punctuated with procedural motions and preliminary objections. For example, in 2004 the Tribunal rendered 24 formal rulings on motions, compared with 16 decisions on the merits of complaints. Although the number of formal rulings grew to 37 in 2005, the number of decisions dropped to 11. In 2006, the number of rulings climbed again, to 44, and the Tribunal rendered 13 decisions on the merits. Meanwhile, there has also been a growing need for Tribunal members to provide verbal directions and instructions during the inquiry process.

As noted in previous annual reports, the Tribunal attempts to minimize the impact of these disruptions in several ways. The Tribunal has developed Rules of Procedure that set out clear expectations for disclosure and the Tribunal's new case management system, in place since 2005, helps parties identify and resolve disclosure disputes early on and offers guidance on how to streamline the presentation of their case at hearing.

Timeliness of the Hearing Process

Since January 1998, the Tribunal has been committed to reducing to 12 months, in at least 80 per cent of cases, the time between the date of referral and the completion of the case. Cases completed include those that have been settled, whether through mediation or otherwise, discontinued, or heard and decided by a Tribunal member.

When the Tribunal's caseload increased, so did the average time to complete a case. Case files opened in 2002 were completed in an average of 208 days; this rose to 238 days in 2004. About 77 per cent of 2004 case referrals were completed in less than 12 months, and 86 per cent were completed by the end of 2006. As the number of new cases began to drop, the average number of days to complete a case also dropped, to 195 in 2005, with 81 per cent completed in less than 12 months from the time of referral. To date, the Tribunal has closed 70 per cent of its 2005 cases. For cases opened in 2006, the average time to completion was 110 days, but 68 per cent of those cases remained open at year's end.

Most cases are settled without the need for a hearing. However, cases that require a full hearing and decision take longer than those that don't; the average time to close such a case in 2001 was 384 days, with six cases requiring more than one year to finalize. By 2002 the average duration of cases requiring a full hearing and decision had dropped to 272 days, and no case took more than a year to complete. In 2003 the average rose to 425 days, with more than half such cases requiring longer than a year to complete. Of the cases that proceeded beyond the one-year target in 2003, delays were mostly in response to requests from the parties or were the subject of Federal Court proceedings. In 2004 the average time to close a case requiring a hearing and decision rose to 486 days. In 2005 it dropped again to 427 days, and most such cases exceeded the one-year target. Statistics on files opened in 2006 were not available at time of publication.

Since 2002 it has been taking longer for a Tribunal case to make its way to hearing. In 2002 the average duration between referral to the Tribunal and the first day of hearing was 168. By 2003 that figure had increased to 232 days, and in 2004 the figure rose to 279. Cases opened in 2005 took an average of 305 days to proceed to hearing. In 2006 the average time lapse between referral and the start of hearing dropped to 274 days, but many of the files opened in 2006 remain pending.

The increase in time to reach a full hearing and decision is a function of the Tribunal's greater efforts at the pre-hearing stage. The Tribunal process must be fair and efficient, without being seen as a rush to complete the adjudicative process. In particular, case management conferences with the parties take time (see Case Management later in this section). Another significant factor contributing to the longer duration of cases overall is the labour-intensive nature of well-reasoned decisions, especially as complaints grow increasingly complex (see Timeliness of Rendering Decisions and Tribunal Settlements and Mediations later in this section). As the Tribunal's case management process becomes more efficient and human rights jurisprudence evolves, the Tribunal hopes to shorten completion times for cases requiring a full hearing and decision.

As mentioned above, the pre-hearing phase of cases is becoming increasingly litigious. The Tribunal nevertheless continued in 2006 to be able to meet the dates for hearing that are of earliest convenience to the parties and has also adopted a case management model, discussed later in this report, as a means for helping to ensure the effectiveness of the adjudication process is not diminished.

Timeliness of Rendering Decisions

Since 1998 the Tribunal has sought to reduce the time it takes to render a decision once the hearing is completed. Its objective has been to issue a decision no later than four months from the last day of hearing in at least 90 per cent of cases.

In 2006 it took an average of 199 days to render a Tribunal decision, and only 4 of the year's 13 decisions met the four-month target. In fact, it has been taking the Tribunal longer and longer to render it decisions. In 2003, for example, decisions took an average of 84 days from the final day of hearing. In 2004 that number grew to 121 days. Although this was only slightly longer than the four-month target, half the year's decisions surpassed the Tribunal's target. In 2005 the parties waited longer for Tribunal decisions — 191 days on average — with less than half of all decisions rendered within four months. The 200-per cent increase in new cases received by the Tribunal in 2003 and 2004 has continued to influence the Tribunal's workload in 2006 despite the decline in case referrals since that time (see Table 1). In addition, the greater complexity of cases, the vigorous advocacy now being seen at inquiries and the significant amount of time spent by Tribunal members participating in case conferences with the parties (i.e., case management) to resolve pre-hearing issues has also added significantly to Tribunal workloads. Nevertheless, the Tribunal remains committed to striving for the earliest possible disposition of cases. We also expect that active case management, by helping the parties determine with greater precision which issues must be decided by the Tribunal at hearing, will yield major process improvements by reducing the number of issues to be decided.

Tribunal Settlements and Mediations

Of the case files that were opened in 2003 and 2004 and that went to mediation by a Tribunal member, settlements were reached in about 64 per cent of cases. In 2005 the Tribunal's mediation success rate rose to 87 per cent (29 cases out of 33). So far 59 per cent of cases referred for mediation in 2006 have reached settlement, but

TABLE 2 Average Days to Complete Cases, 1997 to 2006

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006*
From date of referral from the Canadian Human Rights Commission										
To mediate a case	–	–	–	–	–	–	124	120	100	94
To settle a case	152	245	232	230	202	150	211	196	86	74
To first day of hearing	93	280	73	213	293	168	232	279	305	274
For decision to be released from end of hearing	75	103	128	164	84	89	84	121	191	199
Average processing time to close case	260	252	272	272	244	208	236	238	195	110

* Note: There are still many open files from 2006; this will change the averages for that year.

several files opened late in the year are still in the early stages of inquiry, and the settlement rate for cases opened in 2006 is expected to improve as these cases conclude.

Anecdotal evidence suggests that the continuity of experienced Tribunal members is contributing greatly to the success of our mediation process. As noted, however, as human rights law evolves, the issues that arise at mediation discussions become increasingly complex. Moreover, certain types of complaints, such as those alleging the communication of hate messages and those alleging unequal wages between men and women for work of equal value, are especially adversarial and complex and are not prone to settlement. The Tribunal received 17 such case files in 2005 and 4 more in 2006. While the Tribunal continues to strive for a high rate of settlement, it is becoming evident that settlements may not be as readily attainable as in the past.

See Table 2 for more information about the average number of days to complete cases from 1997 through 2006.

Case Management

The tenor of hearings before the Tribunal continues to be increasingly adversarial, and the hearing process is increasingly likely to be interrupted by motions and objections. Although the Tribunal developed pre-hearing disclosure procedures to ensure fair and orderly hearings, these procedures did not address the high incidence of missed deadlines, requests for adjournment and strong disagreements between the parties about the issues being litigated. Hearings on the merits were also longer and more complex than in the past, and parties were sometimes uncertain, or untrained, on how to focus on the issues requiring adjudication by the Tribunal. The result was longer hearings with higher costs to the parties, the Tribunal and the public.

To respond to these issues, the Tribunal introduced an active case management process in 2005. By conducting case conferences with the parties at strategic points throughout the pre-hearing stage of the inquiry, the Tribunal plays a key role in guiding the parties toward a more predictable, streamlined and fair approach to the conduct of cases. In turn, the Tribunal is better able to ensure a more effective and efficient hearing on the merits — one that is more consistent with the expeditious process contemplated by the CHRA.

While the Tribunal is always conscious that care must be taken to avoid coercion when imposing constraints, especially deadlines, on the parties, it nevertheless considers that a more proactive case management approach will benefit the parties through a more balanced and efficient use of the resources at their disposal. Moreover, procedural issues left unresolved at the pre-hearing stage can greatly hinder the parties' ability to present their cases at hearing and can even cause serious delays. The Tribunal has therefore begun to examine a more interventionist approach to case management, one that will help the parties adhere more closely to their commitments. As noted in the Workload Issues section earlier in this report, the Tribunal conducted 41 per cent more case management conference calls in 2006 than in the previous year. It is anticipated that this increased attention to case management, which is considerably less costly than days at hearing, will ultimately result in greater efficiency and improved results.

Keeping Parties and the Public Informed

In 2002 the Tribunal published *What Happens Next?*, a guide that explains the entire inquiry process in non-legal language. This was followed in 2004 with a publication clarifying the Tribunal's role, explaining how it conducts its business, and comparing these to the mandate and services offered by the Canadian Human Rights Commission. *What Happens Next?* was updated in 2004 to explain the mediation process used by the Tribunal. In 2006 the Tribunal completed and published a new edition of the guide, incorporating the Tribunal's new case management process.

Both *What Happens Next?* and the Tribunal's Mediation Procedures guide are available on the Tribunal website at http://www.chrt-tcdp.gc.ca/pdf/Procedures%20Bil%20Jan27-06.pdf.

The Tribunal continues to receive very few complaints about its services. Some concern has been expressed, however, about the availability of complete information on past Tribunal decisions. The Tribunal's website was redesigned in 2003 to better comply with the Common Look and Feel standards developed as part of the Government On-Line initiative. Further enhancements to improve access to decisions and rulings have included a more powerful search engine, a decision classification system, and the on-line publication of decisions and rulings on the date they are released (see http://www.chrt-tcdp.gc.ca/tribunal rules_e.asp). In 2005 the Tribunal undertook another review of the decision and rulings data source on its website, completing the project in 2006 and identifying further service enhancements. Early in 2007, the Tribunal plans to replace its paper distribution of decisions and rulings with an Internet-based notification and access system. This will save both time and paper, and will offer a more efficient service to the Tribunal's clients and the Canadian public in general.

Cases

Tribunal Decisions Rendered

Date of decision
25/01/2006

Member
M. Doucet

Employment
Human Resources Development Canada

Complaint substantiated

Mellon v. Human Resources Development Canada 2006 CHRT 3 – Judicial review pending

The complainant, an employee of Human Resources Development Canada, suffered from anxiety provoked by work-related stress and sought accommodation in the form of less stressful duties. When her contract came up for renewal, the department decided to terminate her employment. The complainant filed a human rights complaint alleging that her employer had engaged in a discriminatory practice on the ground of disability. Although she had failed to present her employer with a medical diagnosis of her disability, the Tribunal found that this alone did not disentitle her from the protection of the *Canadian Human Rights Act* (CHRA). The respondent was aware or should have been aware that the complainant suffered from anxiety provoked by work-related stress. The Tribunal concluded that the complainant's manager should have been able to gather from conversations with the complainant, as well as from her own observations, that the complainant's health was compromised. The written notes of her supervisor and manager clearly indicated that the complainant was seeking accommodation. The Tribunal also concluded that the respondent failed to accommodate the complainant, finding that the respondent's limited attempts to place the complainant in another office did not meet the test of accommodation up to the point of undue hardship.

It was clear that the ultimate decision not to renew the complainant's contract was influenced by her disability. The complainant's health or disability was manifestly present in the respondent's mind when it decided not to continue to employ her. The Tribunal found that the complainant had been the victim of discrimination based on disability within the meaning of s. 7 of the CHRA.

Sangha v. Mackenzie Valley Land and Water Board 2006 CHRT 9 – Judicial review pending

The complainant alleged that the respondent discriminated against him on the grounds of race, national or ethnic origin, colour, religion and age by refusing to hire him for a Regulatory Officer position with the Board and that this refusal was contrary to s. 7 of the CHRA.

The evidence indicated that the complainant was a visible minority immigrant who possessed the basic qualifications for the job. But the complainant was also overqualified for the job and the respondent argued that this was the reason he had not been hired. The Tribunal found that when an employer adopts a blanket rule against the hiring of overqualified candidates, this has a disproportionately adverse effect on overqualified immigrant candidates. Native-born candidates who are rejected on the basis of overqualification have the option of seeking work more suited to their résumés. However, this option is largely closed to immigrants; they have already been excluded from suitable jobs and can reasonably expect this exclusion to continue into the future. Thus, a general policy or practice against the hiring of overqualified candidates affects them differently from others to whom it may also apply. The Tribunal therefore found that the complaint of discrimination under s. 7 of the Act was substantiated. The Tribunal issued an order obliging the respondent to stop using any policy or practice that would automatically exclude a short-listed visible minority candidate because of overqualification. No remedy was granted for instatement and lost wages however, because on the evidence, the candidates who were chosen for the position were more qualified than the complainant. In deciding a remedy, the Tribunal must ask itself what would have been the result of the selection process "but for the discrimination." It is possible to be denied a job for both discriminatory and non-discriminatory reasons.

Date of decision
06/02/2006

Member
G. Sinclair

Employment
Mackenzie Valley Land and Water Board

Complaint substantiated

Warman v. Kulbashian, Richardson, Tri-City Skins.com, Canadian Ethnic Cleansing Team and Affordable Space.com 2006 CHRT 11 – Judicial review pending

The complainant alleged that the respondents contravened s. 13 of the CHRA by communicating messages over the Internet that exposed to hatred or contempt individuals who are non-Christian, non-Caucasian or of other national or ethnic origins.

Evidence was tendered of material on websites that revealed a racist agenda and incited hatred. The Tribunal was satisfied that s. 13 had been contravened. The material found on the websites undermined the principle that all people are equal.

Date of decision
10/03/2006

Member
A. Hadjis

Hatred message

Complaint substantiated

Black persons and people of the Jewish faith were particularly laid open to ridicule, ill feelings or hostility, creating conditions for hatred or contempt against them to flourish. All the respondents communicated the hate messages or caused them to be communicated.

The Tribunal accepted evidence indicating that Mr. Richardson, as well as Mr. Kulbashian and Affordable Space.com, were involved in various ways in the communication of these hate messages. The Tribunal also found that the Canadian Ethnic Cleansing Team, as a group of persons acting in concert, was responsible for conveying some of these messages. The complaint against the respondent Tri-City Skins.com was not substantiated. In particular, it was not clear from the evidence that this respondent was anything more than the name of a website. It was not a "person or group of persons acting in concert" within the meaning of s. 13.

The Tribunal issued a cease and desist order against all other respondents and an order for special compensation against Mr. Kulbashian because he specifically identified the complainant in one of his messages. The Tribunal issued a penalty against all the respondents who had been found to have engaged in discrimination.

Date of decision
13/04/2006

Member
K. Jensen

Hatred message

Complaint substantiated

Warman v. Winnicki 2006 CHRT 20

The complainant filed two complaints against the respondent — the first alleging that the respondent communicated hate messages contrary to s. 13(1) of the CHRA, the second alleging that the respondent had retaliated or threatened retaliation contrary to s. 14.1 of the Act. The Tribunal heard both complaints together.

Evidence was led from three sources: one Internet guestbook and two websites in which it was alleged that the respondent exposed people of the Jewish faith to hatred or contempt. The evidence demonstrated that the respondent, who went by three different names, was the person who communicated all the impugned messages over the Internet. The respondent admitted responsibility for communicating the messages.

The Tribunal found that the messages portrayed members of the target groups as sub-human filth, worthy only of contempt and hatred; the messages conveyed the idea that members of the targeted groups were dangerous, evil and a menace to white Canadians. They expressed virulent hatred toward members of the targeted groups in abusive and threatening terms and exhorted others to adopt the same view. They also sought to justify, motivate and legitimize violent action against members of the targeted groups. The result is that the targeted groups are highly vulnerable to hatred, contempt and even violence because of the messages. The Tribunal

concluded that the impugned messages were likely to expose people of the Jewish faith, non-Caucasian races and persons of African origin to hatred or contempt.

Despite the fact that the complainant is not Jewish, some of the messages directly targeted him; he was portrayed as a "vile, acidic Jew," "suspected Jew," "Mr. Vermin" or simply a "Jew" and the allegation was made that, like other Jews (according to the respondent), the complainant is extorting money from white Canadians and suppressing free speech. Mr. Warman's picture was posted near the heading "My Enemies," with a Star of David on his head to suggest a target.

The Tribunal found this conduct to also be retaliation for the complainant's filing of a complaint. The Tribunal issued a cease and desist order against the respondent, prohibiting him from retaliating against the complainant for having filed a human rights complaint. Also, the respondent was ordered to give the complainant compensation for pain and suffering under s. 53(2)(e) of the Act and special compensation, pursuant to s. 53(3) of the Act.

On the first complaint the Tribunal issued a cease and desist order against the respondent, prohibiting him from communicating material likely to expose persons to hatred or contempt, but did not order compensation under s. 53(3) for the same messages since this would have constituted double recovery.

Audet v. Canadian National Railway 2006 CHRT 25

Date of decision
16/05/2006

Member
A. Hadjis

Employment
Canadian National Railway

Complaint substantiated

Mr. Audet was working as a brakeman at the Capreol, Ontario, terminal of the Canadian National Railway Company (CN) when he suffered a single convulsive seizure. He was soon diagnosed with complex-partial epilepsy. Although CN never formally dismissed Mr. Audet, it pulled him from service as a brakeman or conductor immediately after learning of his seizure and did not offer him any other suitable position or duties in the meantime, although it offered to reinstate him if he remained seizure-free for five years. Mr. Audet contended that CN thereby discriminated against him on the basis of his disability, in breach of s. 7 of the CHRA.

The Tribunal found that CN had effectively refused to continue to employ Mr. Audet on the basis of his disability. The question then arose whether CN had taken steps to accommodate him to the point of undue hardship. The Tribunal found that CN's workplace standard that barred Mr. Audet from returning to a safety-critical position until he had been seizure-free for five years was adopted by CN for a purpose rationally connected to the performance of the job. It also found that CN had adopted the standard in the good faith belief that it was

necessary for the fulfillment of the purpose. But the Tribunal ruled that the employer had failed to establish that accommodating Mr. Audet's needs would have imposed undue hardship upon it.

Almost four months after filing his human rights complaint, Mr. Audet received for the first time a letter from CN regarding accommodation. CN's Risk Management Officer contacted Mr. Audet requesting that he attend an interview and complete a test for a bilingual dispatch position. Mr. Audet was eager to attend the interview and participate in the testing. His test results were very poor, however, and he was therefore not offered any training or job. CN eventually made three other accommodation proposals to Mr. Audet, which were unsuitable for one reason or another.

However, the Tribunal found that several viable options for accommodation (including training Mr. Audet for other work) were not explored by the respondent. The Tribunal also found CN disingenuous in suggesting that Mr. Audet and the United Transportation Union could have been more diligent in seeking accommodation: the evidence clearly indicated that Mr. Audet and his union representative, Mr. King, had been imploring CN to engage in the accommodation process since 2002, whereas CN had shown no reaction or initiative whatsoever until well after Mr. Audet had filed his human rights complaint. The Tribunal determined that CN discriminated against Mr. Audet by effectively refusing to continue to employ him on the basis of his disability without a valid justification under the Act, substantiating his complaint and awarding him compensation for pecuniary and non-pecuniary loss. The respondent was ordered to return him to service at the first reasonable opportunity.

Date of decision
06/06/2006

Member
P. Groarke

Services
National Capital Commission
Public Works and Government Services Canada

Complaint substantiated

Brown v. National Capital Commission and Public Works and Government Services Canada 2006 CHRT 26 – Judicial review pending

The complainant alleged that the National Capital Commission (NCC) discriminated against him by denying him "access to services by failing to accommodate [his] disability (wheelchair user), contrary to section 5 of the CHRA." The discrimination was alleged to be "ongoing." The service referred to in the complaint was the York Street steps, which were located at the intersection of York Street and Sussex Drive in Ottawa. Mr. Brown alleged that they were not accessible. Mr. Brown and the Canadian Human Rights Commission argued that persons who could not climb the steps had no way of going from Sussex Drive at the bottom of the stairs to Mackenzie Avenue at the top.

The Tribunal found that the NCC was legally obliged to provide accommodation to the point of undue hardship in the immediate vicinity of the steps. The elevator access that was offered for those who could not climb the steps was not sufficiently near the site to constitute acceptable accommodation; it required disabled persons to make a detour that others did not. Moreover, the duty to accommodate included an obligation to participate in a meaningful dialogue with the parties requiring accommodation — to make inquiries and consult with the other parties including the complainant — and to continue consulting, until all reasonable accommodation alternatives were exhausted. The Tribunal also found that there was a reciprocal duty on the part of the complainant to participate in such consultations in good faith and to accept a reasonable offer of accommodation. It is impossible to know where a collaborative, open-ended round of consultations might have led since it never came to pass.

The Tribunal found that the NCC had a duty to make the York Street steps accessible, up to the point set out in the Act, including an obligation to investigate the possibility of using an adjacent building as a venue for an elevator. The adjacent building was owned by Public Works and Government Services Canada (PWGSC), a department that along with the NCC had an obligation to cooperate in the investigation as well as participate in the consultations, since both federal government organizations were emanations of the Crown. The Tribunal found that both respondents failed in their obligations.

Given the legal mandate of the NCC, the Tribunal also found that in determining undue hardship, in this case the duty to accommodate should be informed by the need to respect architectural and aesthetic values at a particular site. The parties were ordered to engage in a new process of consultation and accommodation in accordance with the decision.

Warman v. Harrison 2006 CHRT 30

Mr. Warman's complaint alleged that Mr. Harrison was "discriminating against persons or groups of persons on the basis of religion, race, colour, and national or ethnic origin by repeatedly communicating messages through a website that would likely expose Italians, Mexicans, Puerto Ricans, Haitians, francophones, Blacks, First Nations persons, East Asians, non-whites and Jews to hatred and contempt contrary to section 13(1) of the *Canadian Human Rights Act*."

Date of decision
15/08/2006

Member
M. Doucet

Hatred message

Complaint substantiated

Mr. Harrison attended the opening of the hearing. He had requested that he be represented by his common-law wife, Ms. Holmes. Less than 90 minutes into the hearing and during Mr. Warman's testimony, Mr. Harrison began yelling at the witness, which forced the Tribunal to order an adjournment. Mr. Harrison then stormed out of the hearing room while still yelling obscenities at Mr. Warman. When the hearing resumed, neither Mr. Harrison nor Ms. Holmes were present. The Tribunal then adjourned the hearing and ordered that a letter be served on Mr. Harrison informing him that the hearing would resume on that date and, should he not be present, the Tribunal would proceed in his absence. The Tribunal was informed by Ms. Holmes via telephone that Mr. Harrison would not participate in the hearing. The Tribunal was satisfied that Mr. Harrison and his representative, Ms. Holmes, had notice that the hearing would resume and that they chose not to participate.

Mr. Harrison did not testify, nor did he call anyone else as a witness. The Tribunal found that Mr. Harrison was the author of certain messages posted on the "Freedomsite" and of those posted in the "Yoderanium" forum. A *prima facie* case was made out by the complainant that Mr. Harrison posted these messages and, under the circumstances of this case, it was appropriate for the Tribunal to draw an adverse inference from the respondent's decision not to offer a reply. In the Tribunal's view, there could be no doubt that the messages contained in the postings were likely to expose persons who are of non-Christian, non-Caucasian or non-English origin to hatred or contempt. These persons were laid open to ridicule, ill feelings, hostility and violence creating conditions for hatred or contempt against them to flourish.

The author's extreme ill will and malevolence toward these groups pervaded these postings. Their contents dehumanized members of these groups by suggesting that they lacked any redeeming qualities. Messages incited readers to violence, even homicide. The supposed humour in the messages blatantly treated people with disdain and deemed them inferior. The Tribunal concluded that the messages were likely to expose a person or persons to hatred or contempt by reason of the fact that they were identifiable on the basis of a prohibited ground of discrimination. The messages were as vile as one could imagine and not only discriminatory but threatening to the victims they targeted. The Tribunal concluded that the complaint was substantiated and issued a cease and desist order against the respondent, who was also ordered to pay a $1,000 penalty.

Hoyt v. Canadian National Railway 2006 CHRT 33 – Judicial review discontinued

Date of decision
18/08/2006

Member
J. Lloyd

Employment
Canadian National Railway

Complaint substantiated

Ms. Hoyt became pregnant while she was employed with the Canadian National Railway Company (CN) and began experiencing some pain and discomfort on the job. She was examined by her doctor who subsequently wrote a letter to CN explaining that for the duration of her pregnancy she would require some modifications to her job. Specifically, the doctor directed that she avoid hazards, avoid particularly strenuous activities and work regular hours. In response to this notification, CN sent Ms. Hoyt home on an unpaid leave of absence and then made three accommodation proposals. The first one directly contravened at least one of the medical restrictions expressed by her doctor. The second also failed to accommodate Ms. Hoyt since it raised concerns relating to safety and seniority. The third proposal failed to provide her with even minor temporary accommodation of her childcare needs.

Ms. Hoyt complained to the Canadian Human Rights Commission, alleging that CN had failed to accommodate her pregnancy and also failed to accommodate her parental obligations. She contended that CN thereby discriminated against her on the basis of her sex and her family status, in breach of s. 7 of the CHRA.

The Tribunal found that none of CN's proposals accommodated Ms. Hoyt's requirements. Moreover, it found that the union did not interfere with CN's accommodation efforts. A union's duty to facilitate accommodation arises only when its involvement is required to make accommodation policy and no other reasonable alternative resolution of the matter has been found or could reasonably have been found.

CN did not prove its inability to accommodate Ms. Hoyt's pregnancy and childcare needs without suffering undue hardship. There was also evidence that Ms. Hoyt was treated differently and adversely compared with other employees who were not pregnant. CN's failure to afford reasonable accommodation to Ms. Hoyt between mid-February and late May, 2002, particularly when other employees were accommodated seamlessly, was sufficient evidence to substantiate a case of discrimination.

The Tribunal found that Ms. Hoyt suffered discrimination on the basis of her sex and her family status in breach of s. 7 of the Act and that CN had not established that its failure to accommodate Ms. Hoyt was justified based on a *bona fide* occupational requirement.

Date of decision
18/08/2006

Member
P. Groarke

Employment
Oneida Nation of the Thames

One complaint substantiated; one complaint dismissed

Schuyler v. Oneida Nation of the Thames 2006 CHRT 34

Karen Schuyler is a member of the Oneida Nation of the Thames in southern Ontario; she worked in a senior administrative position in the Band Administration before she was diagnosed with cancer and hospitalized. After Ms. Schuyler left the hospital, she advised the Band that she wanted to return to a part-time position. This did not work out, and she filed a complaint with the Canadian Human Rights Commission, alleging that the Band had failed to accommodate her.

When Ms. Schuyler eventually returned to work, her relationship with the Band Council continued to deteriorate. She believed the Council was angry that she had filed the first complaint and that it was retaliating against her. After a rather arduous series of events, she was dismissed. This led to a second complaint. The first issue was whether the respondent discriminated against Ms. Schuyler by failing to accommodate her. This case was easily substantiated; the Band did not really want her back and made this clear to her in a variety of ways. An employer who sincerely wanted to accommodate her would have gone much further in trying to work out some solution that was satisfactory to both sides. The Tribunal realized that it was a difficult situation for both sides: Ms. Schuyler was suspicious and adversarial and wanted things her way. The Tribunal was nevertheless satisfied that the Band had failed in its duty to accommodate her.

The respondent was obliged to take the complainant's circumstances and condition into account in searching for an appropriate form of accommodation. An employer who adopts an adversarial approach to a person who has gone through a major medical or psychological crisis and sends a clear message that the person is not welcome back is probably in breach of its duty to accommodate. By failing to negotiate in good faith, the respondent discriminated against the complainant under the CHRA.

The second issue was whether the respondent retaliated against the complainant for filing the initial complaint. In this regard, the question was whether the Band's actions against Ms. Schuyler, including her eventual termination, constituted retaliation. There was no real evidence of retaliation, apart from Ms. Schuyler's own testimony. Although it was difficult for an outsider to understand either the breadth or the intensity of the conflict between Ms. Schuyler and the Band Council, the Tribunal accepted the evidence that the Council felt she had overstepped her bounds. Its decision to direct Ms. Schuyler not to attend the meetings of Council was a reflection of their increasingly hostile relationship. They simply couldn't work together. The assertion that the Council's decision to dismiss her was a response to her filing the human rights complaint was not credible. There were too many other sources of conflict between the parties, including administrative, electoral and political issues. The Tribunal therefore dismissed the complaint of retaliation, but awarded the complainant damages for the first complaint.

Bernatchez v. Conseil des Montagnais de la Romaine 2006 CHRT 37

The complainant taught at a school run by the respondent. Full-time permanent teachers worked only 200 days a year but were paid throughout the summer months as well at a daily rate that was discounted to spread their salary over a 12-month period (260 days). However, part-time or contractual employees were paid a non-discounted daily rate calculated as 1/200th of their annual salary.

The complainant, a full-time teacher, took maternity leave followed by parental leave. While on maternity leave, the complainant received top-up benefits from her employer. These were calculated at the lower, full-time employee rate, but she wanted them to be adjusted to the higher rate. She also wanted to be paid an additional amount in lieu of sick days that were deemed to have accumulated during her maternity leave. When the respondent refused to accede to her request, she alleged that this constituted discrimination within the meaning of s. 7 of the CHRA.

In dismissing the complaint, the Tribunal noted that the complainant was essentially on leave without pay and could not therefore compare her situation to that of regular employees who were not pregnant and who were not on leave without pay. These employees were receiving salary in exchange for work. The complainant was not. Although a working employee could expect to be reimbursed for the pay held back by the discounted daily rate if he or she left the employ of the respondent before the end of the year, the complainant's situation was not comparable. Similarly, the refusal to pay the complainant an amount in lieu of accumulated and unused sick leave benefits was also not discriminatory. The complainant could not compare herself to an employee who was performing work and thereby earning benefits.

Date of decision
29/08/2006

Member
K. Cahill

Employment
Conseil des Montagnais de la Romaine

Complaint dismissed

Buffett v. Canadian Forces 2006 CHRT 39 – Judicial review pending

The complainant alleged that the Canadian Forces (CF) denied him an employment benefit by refusing to grant him funding for a reproductive medical procedure (*in vitro* fertilization). He claimed that this refusal constituted adverse differential treatment based on his disability (male factor infertility), his sex and his family status, in breach of s. 7 of the CHRA. He also alleged that the CF's funding policy regarding reproductive medical procedures was discriminatory, contrary to s. 10 of the Act.

Date of decision
15/09/2006

Member
A. Hadjis

Employment
Canadian Forces

Complaint substantiated

The Tribunal found that Mr. Buffett's complaint was substantiated. The CF's health care policy provides a publicly funded service to infertile female members that also involves the participation of their male partners even when these partners are not CF members. On the other hand, the CF will not provide this benefit to a male member with infertility problems on the grounds that the procedure involving his female partner is much more medically complex. Yet both situations require the participation of a male and female partner. On its face, the CF policy was discriminatory. Nor did the evidence establish that the CF would have incurred undue hardship by accommodating Mr. Buffett and other male CF members with male factor infertility. The Tribunal found that the cost of accommodation, as estimated by the respondent, was exaggerated and that the CF did not lead any evidence with respect to its funding or budgets during the period when Mr. Buffett was refused coverage for the treatment. It was therefore impossible to reliably assess the impact, at the time, of any additional costs arising from an expanded range of health coverage. The complaint was substantiated and the respondent was ordered to fund the treatment, subject to the complainant's doctor's recommendations.

Date of decision
26/10/2006

Member
K. Jensen

Hatred message

Complaint substantiated

Warman v. Kouba 2006 CHRT 50

This complaint was about whether Mr. Kouba using the pseudonyms "proud18" and "WhiteEuroCanadian" communicated hate messages over the Internet, contrary to s. 13(1) of the CHRA.

The author of the impugned messages relayed what he called "true stories" and news reports to justify the unfounded and racist generalization that most crime in Canada was committed by Aboriginal people. His messages vilified Aboriginal Canadians, Blacks and Jews, characterizing these targeted groups as "sexual predators" and inciting fear that children, women and vulnerable people would fall victim to the criminal and violent sexual impulses of the targeted groups. These messages made it highly likely that members of the targeted groups would be exposed to deep feelings of hatred. The messages also provided readers with scapegoats for the world's problems by offering an outlet for strong negative emotions generated by these problems. Tapping into these emotions and diverting them toward the targeted groups, the messages fostered and legitimized hatred toward members of the targeted groups. All the groups targeted by the material in the present case were characterized as dangerous or violent by nature. All the impugned messages characterized the targeted groups in resoundingly negative terms and did not suggest, in any way, that the members might possess any

redeeming qualities. The messages in this case fostered the attitude that members of the targeted groups were so devoid of any redeeming characteristics that extreme hatred or contempt toward them was entirely justified.

Furthermore, the impugned messages argued that it was hopeless to expect civilized, law-abiding or productive behaviour from the targeted groups and ridiculed any reader who might harbour even a partially open mind toward members of the groups. The messages conveyed the idea that Black and Aboriginal people were so loathsome that white Canadians could not and should not associate with them. Some of the messages associated members of the targeted groups with waste, sub-human life forms and depravity. By denying the humanity of the targeted group members, the messages created the conditions for contempt to flourish.

Moreover, the level of vitriol, vulgarity and incendiary language contributed to the Tribunal's finding that the messages in the case were likely to expose members of the targeted groups to hatred or contempt. The tone created by such language and messages was one of profound disdain and disregard for the worth of the members of the targeted groups. The trivialization and celebration in the postings of past tragedy that afflicted the targeted groups created a climate of derision and contempt that made it likely that members of the targeted groups would be exposed to these emotions.

Some of the posted messages invited readers to communicate their negative experiences with Aboriginal people. The goal was to persuade readers "to take action." Although the author did not specify what was meant by taking action, the posting suggested that it might not be peaceful. The Tribunal found that the impugned messages regarding Aboriginal Canadians and Jewish people attempted to generate feelings of outrage at the idea of being robbed and duped by a sinister group of people. In this way, the messages created the conditions for hatred of members of these groups to flourish.

It was clear that the material presented during the inquiry into this matter from both of the impugned websites was likely to expose members of the targeted groups to hatred or contempt. Uncontroverted evidence presented by the complainant and the Commission on this issue during the hearing established that the respondent had communicated the hate messages presented in the inquiry. The evidence adduced by the Commission consisted of testimony from a member of the Edmonton Police Force, a Witness Statement Form that was authored and signed by the respondent, and evidence provided by the complainant.

The Tribunal concluded that the Commission had adduced credible evidence that supported its allegation that the respondent had communicated the impugned hate messages over the Internet. The respondent failed to provide a defence to the case made out by the Commission. The Tribunal found the complaint to be substantiated and ordered that the respondent cease the communication of messages like the ones that were the subject of the complaint. The Tribunal also ordered the respondent to pay a penalty of $7,500.

Date of decision
01/12/2006

Member
J. Lloyd

Hatred message

Complaint substantiated

Warman v. Western Canada for Us and Bahr 2006 CHRT 52

The complainant alleged that the respondents had committed a discriminatory practice by communicating messages over the Internet that would likely expose persons to hatred and contempt on a prohibited ground. The Tribunal agreed, observing that the impugned pages portrayed Jews as immoral people bent on global domination, and advocated for their genocide. It portrayed Black persons as primitive, childish and ignorant. Postings targeting Aboriginal Canadians portrayed them as non-contributing persons, who abused alcohol, gambled excessively, and were promiscuous, poor, illiterate and violent. Two postings about homosexuals advocated their extermination (along with the mentally disabled) and denied that they were human beings.

The Tribunal examined evidence from a police investigator who was able to confirm the individual respondent's identity as the manager of the impugned website and the author of some of the postings. The police investigator had arrived at his conclusion largely by comparing information transmitted by the author with information obtained from interviewing the respondent in person and seizing his computers. Other postings under a pseudonym known to be the respondent's revealed that he was instrumental in creating the website that hosted the impugned literature and that he had control of it. They also revealed his authorship of two of the impugned postings. The respondent's explanation that other persons were stealing his identity online and impersonating him was not credible. Moreover, the collective respondent, through its association with the website, was also found to have communicated the impugned material. The Tribunal ordered the respondents to cease the discriminatory practice and to pay a penalty.

Review of Tribunal Decisions by the Federal Court

Chopra v. Canada (Health Canada) 2006 FC 9 Phelan J. [upheld]

Although the Tribunal had ruled the complaint substantiated, in awarding a remedy it refused to order that the complainant be instated in certain positions he requested. Nor did the Tribunal grant the entire claim for lost wages or non-pecuniary damages. The complainant sought judicial review.

The Federal Court upheld the Tribunal's decision. It found that the Tribunal was entitled to reduce by two thirds an award of lost wages, to account for the fact that the complainant would most likely have shared an acting position with two other candidates on a rotational basis. This assumption was grounded in the evidence.

Furthermore, the Tribunal was entitled to reduce by two thirds the complainant's claim for lost wages relating to his failure to obtain an indeterminate position because it was uncertain whether the complainant would have been given the job even in the absence of discrimination. The Tribunal was also entitled to find that the compensation period would end after six years because, given the complainant's failure to mitigate his damages, any longer period of loss stemming from the discrimination was not reasonably foreseeable.

The Tribunal did not err in refusing to instate the complainant in a senior management position. The evidence showed that the complainant did not have a serious possibility of success in obtaining such a position as he lacked the necessary qualifications. Similarly, the Tribunal properly dismissed the complainant's claim for loss of other senior positions on the grounds that these eventualities were too remote or speculative; the Tribunal was entitled to doubt the complainant's evidence on his future career path. It was also entitled to take into account his lack of success in applying for senior management positions in situations where discrimination was not a factor.

On the issue of non-pecuniary damages, the Court held that the Tribunal properly refused to give retrospective effect to CHRA amendments that increased the maximum amounts payable for such damages. Moreover, it did not err in refusing to award interest on these damages as they would have surpassed the applicable cap. **[Appeal pending]**

Brooks v. Canada (Fisheries and Oceans) 2006 FC 500 Blais J. [set aside in part]

The Tribunal had found the complaint to be substantiated and had ordered the respondent to pay a certain sum of money to compensate the complainant for his legal expenses. The respondent sought judicial review of the remedial order, challenging both the Tribunal's jurisdiction to make the order and its assessment of the amount of compensation.

The Federal Court concluded that the Tribunal had jurisdiction to issue an order for compensation of legal expenses. It decided to follow a recent authority that had reviewed the jurisprudence in detail and had concluded that the Tribunal had implied jurisdiction to award compensation for costs of counsel or any legal costs incurred in the course of filing a complaint for discrimination: these constituted "expenses incurred by the victim as a result of the discriminatory practice," within the meaning of the CHRA.

Moreover, the Court found that the legal costs eligible for compensation also included the costs of ongoing legal representation, i.e., the cost of litigation before the Tribunal. The Court found, however, that the Tribunal had erred in calculating the amount of compensation that should be payable. The Court noted that under the rules of the Federal Courts, an award of legal costs should take into account any written offer to settle made by any of the parties earlier. In the case before it, the Tribunal had refused to take into consideration two offers from the respondent to settle. One offer was not considered by the Tribunal because it contained no admission of liability; the other offer was not considered by the Tribunal because

the offer did not indicate that its rejection by the complainant might reduce his future entitlement to compensation for legal costs, if he won the case. The Court found that nothing in the rules imposed such conditions on offers to settle; thus, the Tribunal erred by failing to take these offers into account. **[Appeal pending]**

Filgueira v. Garfield Container Transport Inc. 2006 FC 785 Hughes J. [upheld]

During the hearing, an issue arose as to whether the complainant (whose first language was Spanish) was entitled to language interpretation services during the hearing. The Tribunal ordered the provision of limited interpretation services. At the close of the complainant's evidence, the respondent brought a motion for a non-suit, which the Tribunal granted, summarily dismissing the complaint. The complainant sought judicial review in regard to these issues.

The Federal Court upheld the Tribunal's decisions, ruling that the Tribunal had the jurisdiction to entertain the motion for non-suit. Under the CHRA, parties have a right to present evidence, but no party has an obligation to present evidence. In particular, a respondent cannot be forced to tender evidence (nor can a complainant expect to rely on evidence from the respondent). Thus a respondent at the outset of its case can ask the Tribunal to make a decision based solely on the evidence of the complainant. Furthermore, it was open to the Tribunal to grant the respondent the option of leading evidence should the non-suit motion be dismissed. This is a question of procedure, not law, and the Tribunal should be allowed reasonable latitude in matters of procedure, given that there is no breach of natural justice at issue.

The fact that some of the evidence adduced through the complainant may have been irrelevant to the case does not mean that the non-suit decision was wrong. Furthermore, despite a statement in its reasons that might suggest otherwise, the Tribunal concluded that the complainant's evidence was not appreciable, and was so minimal as to have no effect in law. In so doing, it applied the proper test for a non-suit — the no *prima facie* evidence test in law.

The Court also held that the Tribunal was not obliged to provide the complainant with language interpretation at the Tribunal's expense throughout the proceedings. Nothing in the Act required this, and the language at issue was not an official language of Canada. The complainant was represented at the hearing by individuals who spoke both English and Spanish. The Tribunal provided interpretation for him when he was giving his evidence. He was not prevented from providing his own interpreter, and there was no evidence that he was financially unable to do so.

As for the constitutional entitlement to language interpretation of proceedings, this is not absolute, even in a criminal law context. It was within the Tribunal's discretion to determine whether the legislative objective of the CHRA could be achieved in the absence of providing language interpretation to the extent requested. The Tribunal's determination was fair and reasonable in the circumstances.

Kasongo v. Farm Credit Canada 2006 FC 1067 Beaudry J. [upheld]

The complainant alleged that the respondent had discriminated against him on the grounds of race, family status and national or ethnic origin when it refused to hire him for four different positions. The Tribunal dismissed the complaint, and the complainant sought judicial review.

The Federal Court upheld the Tribunal's decision. In regard to the first position for which the complainant was not hired, the Tribunal properly found that the complainant bore responsibility for the difficulties encountered in forwarding his résumé. Furthermore, the Tribunal appropriately recognized that the mere

presence of subjective considerations in a hiring process is not proof of discrimination. The evidence clearly showed that the complainant did not possess the requisite qualifications for the second position. As for the third and fourth positions, the Tribunal relied on evidence demonstrating that the complainant did not have the necessary experience or qualifications. The Tribunal's reasons were detailed, justified and supported by the evidence.

Moreover, the Tribunal did not breach natural justice in its dealings with the complainant. It explained to him how the process worked, and while it intervened frequently during the hearing, the interventions were intended to clarify for the complainant matters of law and procedure. The Tribunal sought to help the complainant avoid prejudicial situations during the hearing. It tried to make the hearing fair for both parties. Finally, the complainant's assertion that the Tribunal had been biased against him was groundless; the complainant was merely critical of the Tribunal for not agreeing with his case.

Brooks v. Canada (Fisheries and Oceans) 2006 FC 1244 Kelen J. [upheld; set aside]

The complainant alleged that he had been discriminated against on the basis of race in connection with a job competition run by the respondent. The Tribunal found this allegation to be substantiated, but before proceeding to the remedy stage, it advised the parties that the evidence did not establish that the complainant would have won the competition in the absence of any discriminatory practice. The complainant sought review of the finding that he would not have won the competition even in the absence of discrimination, and the respondent sought review of the finding that the competition was tainted by discrimination.

The Federal Court agreed with the Tribunal that the competition was discriminatory. The Tribunal was entitled to consider circumstantial evidence. After finding that the competition was manifestly unfair, the Tribunal considered whether there was a discriminatory component in the wrongdoing. The Tribunal relied on credible evidence from another visible minority candidate in the competition. The Tribunal also noted that the respondent itself had expressed concern about racism within its ranks. It was open for the Tribunal to conclude that a competition corrupted by favouritism could be discriminatory as well. Finally, the CHRA permitted the Tribunal to take into account "mere impressions" of witnesses.

However, the Federal Court found that the Tribunal had erred in concluding that the complainant would not have won the competition, even in the absence of discrimination. The threshold of probability used by the Tribunal was too onerous, in the court's view. The Tribunal needed only to satisfy itself that there was a "serious possibility" that the complainant might have won the competition, rather than requiring "probable evidence" that the complainant would have won. The Tribunal's failure to apply the proper legal analysis deprived the complainant of the opportunity to present the case for his entitlement to reinstatement and back-pay. This aspect of the Tribunal's decision was set aside and referred back for redetermination by a different Tribunal member. **[Appeal pending]**

Tribunal Rulings on Motions, Objections and Preliminary Matters

The number of rulings issued by the Tribunal continued to climb in 2006. In addition to its 13 decisions on the merits of discrimination complaints, the Tribunal issued 44 rulings (with reasons) dealing with procedural, evidentiary, jurisdictional or remedial issues. The ratio of rulings to decisions on the merits was similar to that of 2005, when the Tribunal issued 37 rulings and 11 decisions on the merits.

Among the issues addressed in the 2006 rulings were applications by non-parties to participate in the inquiry, requests for further and better particulars, objections based on *res judicata*, disputes about the venue of the

inquiry and a request to adjourn the hearing pending the completion of a related criminal proceeding. Two rulings dealt with remedial questions, which go to the core of the Tribunal's mandate. Another ruling concerned the impartiality of the Tribunal and its jurisdiction to proceed.

A significant trend that emerged in 2006 was the growing incidence of disputes relating to proper disclosure. The Tribunal continues to develop its jurisprudence on:

- the precise type of information that parties are required to produce to ensure that they have given one another adequate notice of the case to meet;
- the degree of relevance that triggers an obligation to produce a document prior to the hearing; and
- the appropriate exemption and protection from disclosure of privileged documents.

Reviews of Tribunal Rulings by the Federal Court

P.S.A.C. Local 70396 v. Canadian Museum of Civilization Corporation 2006 FC 704 Russell J. [upheld]

The complainant alleged that the respondent's job evaluation plan was gender biased and therefore did not provide equal pay for work of equal value within the meaning of the CHRA. The respondent brought a motion for an order striking out any allegations in the complaint that referred to the equal pay provision of the Act. The basis for the motion was the fact that further information provided by the complainant after the complaint had been referred to the Tribunal had effectively taken the complaint beyond the scope of the Canadian Human Rights Commission's referral. The Tribunal dismissed the motion, and the respondent sought judicial review of this ruling.

The Federal Court, while holding that the judicial review application was not premature, dismissed it on its merits. It acknowledged that the respondent did not receive full particulars of the complaint until after it had been referred from the Commission to the Tribunal. However, this delayed elaboration was contemplated by the initial complaint; it should have been expected by the respondent and it did not have the effect of amending or transforming the complaint. The further information provided by the complainant was merely an extension, elaboration or clarification of the complaint.

The respondent was insisting on a degree of formality in the framing of the complaint that was not required by the CHRA or the jurisprudence. Moreover, the respondent did not challenge the complaint referral itself. It was not prejudiced by the complaint refinement process, which it had obviously tolerated and approved over the years. Now that it had received full particulars, it knew the case it had to meet.

Sherman v. Canada (Canada Customs and Revenue Agency) 2006 FC 715 Mactavish J. [upheld]

The complainant, who had been successful in earlier legal proceedings dealing with some of the same subject matter, sought an order that would compel the Tribunal to accept several findings from the earlier proceeding based on the principle of issue estoppel. The Tribunal refused to grant the order sought, and the complainant applied for judicial review of the Tribunal's ruling.

The Federal Court dismissed the judicial review application on the grounds of prematurity. The Court noted that in the absence of special circumstances, interlocutory rulings made by administrative tribunals should not be challenged until the tribunal has rendered its final decision.

The Court was not convinced that special circumstances existed in the current case: the fact that the complainant faced a lengthy hearing was not determinative; there was no evidence that she would face hardship during the hearing beyond that faced by any other litigant; although a stay of the Tribunal's proceedings had been issued —

which might ordinarily indicate the presence of irreparable harm — this was done with the consent of all parties. Moreover, to substantiate an allegation that a full hearing would cause her irreparable harm, the complainant had to show more harm than the mere waste of public money. Finally, the Court noted that the ruling that the complainant sought to review was not about jurisdiction, but was merely an evidentiary ruling of the sort often made by administrative tribunals.

Parent v. Canada (Canadian Forces) 2006 FC 1313 Blanchard J. [upheld]

The complainant brought a motion before the Tribunal for an order amending the complaint to include an allegation that his disability played a role in the respondent's decision to release him. The Tribunal granted the motion, and the respondent sought judicial review of the Tribunal's ruling.

On judicial review, the Court upheld the Tribunal's ruling. It noted that the Tribunal had the discretion to amend a complaint to address the real issues between the parties as long as no injustice was caused by the amendment. It also noted that the facts that gave rise to the initial complaint, in particular the complainant's disability, were the same facts as those on which the amendment was based. In essence, the complainant alleged in the amendment that his disability — which had caused him to be removed from his position according to his original complaint — also caused him to be released from the Canadian Forces. In view of its commonalities with the original complaint, the amendment could not truly be regarded as a "new complaint."

Moreover, in the Court's view, the respondent had suffered no prejudice due to the amendment of the complaint; nothing in the evidence suggested that the respondent was unable to prepare for or answer the additional allegations. Notably, the complainant's release from the Canadian Forces had been mentioned in the Commission's investigation report.

Further, given the close factual nexus between the original and the amended complaint, it was not open to the respondent to argue that it had been deprived of the procedural benefits of the Commission's investigatory and screening process in regard to the amendment.

Finally, the Tribunal's rules of procedure did not require the complainant to file an affidavit in support of his motion to amend the complaint. His new allegations would be subject to proof before the Tribunal at the hearing.

Dreaver et al. v. Pankiw 2006 FC 1544 Lemieux J. [upheld]

The complainants alleged that the respondent had engaged in a discriminatory practice when he, as a Member of Parliament, distributed a householder to his constituents containing discriminatory comments about Aboriginal peoples. The Speaker of the House of Commons challenged the Tribunal's jurisdiction to hear the complaint on statutory and constitutional grounds. The Tribunal dismissed the Speaker's objection, and the respondent sought judicial review of the Tribunal's ruling.

The Federal Court upheld the Tribunal's ruling. It first addressed the question of whether the publication of the householder was shielded from CHRA review by the principle of parliamentary privilege. After reviewing the authorities, it concluded that the respondent had been unable to demonstrate past recognition of the existence of an immunity in regard to householders.

The Court then examined the question of whether such immunity could be justified by the doctrine of necessity (i.e., the immunity was necessary to enable a Canadian legislator to vigorously do his or her job). It noted that judicial review of householders would not interfere with Parliament's sovereignty as a legislative and deliberative assembly. Further, neither the British nor the Canadian Houses of Commons regarded absolute immunity over communications with constituents as being necessary for the performance of legislative duties. In addition,

the *Parliament of Canada Act* contained no provision specifically insulating Parliament from the application of the CHRA. Finally, it could not be concluded that the House of Commons had ever asserted jurisdiction over householders and provided a remedy to a private individual who had been aggrieved by what was printed.

The Court also addressed the argument that CHRA review of householders would offend the doctrine of the separation of powers, as well as the principle of free political speech. It rejected these arguments largely for the same reasons that it rejected the immunity argument. But it also acknowledged the relevance of certain contextual factors, for example, the impact that acceding to this argument would have on the complainants, and the quasi-constitutional status of the CHRA. Finally, the Court noted that freedom of speech, as protected by the *Canadian Charter of Rights and Freedoms*, or as enshrined elsewhere in the Constitution, was not absolute, and had recognized limits.

The Court also noted that the application of the CHRA was not ousted by the jurisdiction of the House of Commons Board of Internal Economy. The role of the Board in relation to householders was quite distinct and did not overlap with the issues relevant to CHRA review. **[Appeal pending]**

Review of a Tribunal Ruling by the Supreme Court of Canada

C.U.P.E. (Airline Division) v. Canadian Airlines International Ltd. and Air Canada **2006 SCC 1 (McLachlin, C.J., and LeBel, Abella, Bastarache, Binnie, Fish and Charron, JJ.) [set aside]**

The complainant union alleged that the respondent had discriminated against the pre-dominantly female flight attendants by paying them less than the predominantly male mechanics and pilots, even though they were performing work of equal value. The sole issue referred before the Tribunal was whether the flight attendants were employed in the same establishment as the mechanics and pilots. The Tribunal ruled that, for the purposes of wage comparisons, they were not employed in the same establishment. The complainant sought judicial review, and the Tribunal's ruling was later overturned by the Federal Court of Appeal.

The Supreme Court agreed with the Federal Court of Appeal that the Tribunal's ruling should be quashed.

At issue was the proper interpretation to be given to a Commission guideline stipulating that: "employees of an establishment include, notwithstanding any collective agreement applicable to any employees of the establishment, all employees of the employer subject to a common personnel and wage policy, whether or not such policy is administered centrally."

The respondent argued that the flight attendants were in a different establishment from the mechanics and pilots, since all three groups of employees belonged to three distinct bargaining units covered by three distinct collective agreements. The differences in the agreements demonstrated that the three groups were not subject to a "common personnel and wage policy" within the meaning of the guideline.

The Supreme Court rejected the respondent's argument. In the Court's view, the expression "common personnel and wage policy" connoted the existence of core objectives that were achieved by establishing the working conditions of employees, including those governed by collective agreements. The nature of the underlying bargaining policy and of its impact and constraint on the bargaining process was of more relevance than the actual terms of the individual collective agreements. If differences in the terms of collective agreements were determinative, "establishment" would be equated with "bargaining unit", thereby undermining the Act's objective of eradicating the systemic discrimination associated with occupational segregation and diminished bargaining strength.

The Court concluded, based on the analysis of the Federal Court of Appeal in this case, that the respondent's policy statements established a common set of general policies in respect of the management of its labour relations, informing the particular relations with flight attendants, mechanics and pilots. These statements reflected a common approach to collective bargaining, the administration of labour contracts and methods of communication with unions and employees. The respondent also took care to safeguard common negotiation strategies and concerns. The collective agreements differed, and the common policies may have been implemented in different ways, but the common policies remained in place.

Therefore, in the Court's view, the pilots, mechanics and flight attendants were employed in the same establishment for the purposes of the CHRA. The Court referred the complaint back to the Commission for further investigation in respect of the other aspects of the complaint.

Pay Equity Update

In 1999, the Government of Canada announced its intention to conduct a review of section 11 of the CHRA "with a view to ensuring clarity in the way pay equity is implemented in the modern workforce." In 2004 the Pay Equity Task Force published its final report, *Pay Equity: A New Approach to a Fundamental Right* (available at http://www.justice.gc.ca/en/payeqsal/index.html). The Tribunal awaits the Government's response to this report.

None of the pay equity cases referred to the Tribunal under s. 11 of the Act prior to 2004 remain outstanding. However, of the three cases referred in 2004 and the four referred in 2005, five were settled following mediation by a Tribunal member, one was resolved between the parties and one (referred in 2004) is scheduled for hearing in spring 2007.

Two additional pay equity cases were referred to the Tribunal in 2006 and are currently being managed by a Tribunal member.

Employment Equity

In 1996, the Tribunal's responsibilities were expanded to include the adjudication of complaints under the *Employment Equity Act*, which applies to all federal government departments and to federally regulated private sector employers with more than 100 employees. Employment equity review tribunals are created as needed from members of the Tribunal. Since the first appointment of such a tribunal in 2000, only seven other applications have been received. No new applications have been made since 2003. To date, there are no cases open and no hearings were held in 2006.

Update on Other Tribunal Matters

The Tribunal remains committed to making progress in all areas of the new government's Management Accountability Framework (MAF).

The Canadian Human Rights Tribunal has a single program mandate, conducting hearings, and is very small. It nevertheless is fully accountable for the delivery of its mandated results — specifically the rendering of decisions on whether discrimination has occurred under the *Canadian Human Rights Act* (CHRA). The Tribunal is also responsible for conducting hearings and rendering decisions in a manner that reflects due regard for efficiency, effectiveness, probity and public service values.

Management and Accountability

In 2005 the Tribunal completed the development of a results-based management accountability framework, comprising targets, indicators and risk management practices intended to assist the Tribunal in monitoring progress toward its goal of conducting hearings in an effective and efficient manner. The new framework also supports three other performance measurement areas of the MAF, namely stewardship, governance and strategic directions, and people and performance.

The Tribunal has achieved considerable progress and success in several key MAF areas. The Public Service Commission's 2005–2006 Annual Report recognized the Tribunal for its staffing management framework, singling out the Tribunal as a top performer in the areas of governance, policy, communication and control.

Following lengthy consultations with Tribunal staff, federal government central agencies, other tribunals and agencies, and employee unions, the Tribunal developed a human resources plan that is strategically linked to its business plan. The new plan is facilitating the modernization of human resources management at the Tribunal. Human resources management and staffing decisions are now made by Tribunal committees and are formally recorded. The changes are expected to promote accountability in such areas as learning, innovation and change management at the Tribunal, and to ensure that decisions affecting the Tribunal's critical human resources are focused on achieving the Tribunal's mandate and results for Canadians.

The Tribunal has also developed an integrated management framework and governance structure that links information management (IM) strategies to organizational outcomes. A designated senior officer has been made responsible for three of the Tribunal's five core IM services — Records, Architecture and Access/Privacy. The Tribunal has an IM policy, business rules for its Records, Documents and Information Management System, e-mail guidelines and an automated case management system. The Tribunal has also been recognized for meeting all of its legislated deadlines. In 2006 the Tribunal received a grade of 100 per cent for meeting its public accounts reporting deadlines, and our financial statements were accepted as having been prepared in full accordance with Treasury Board accounting standards and principles.

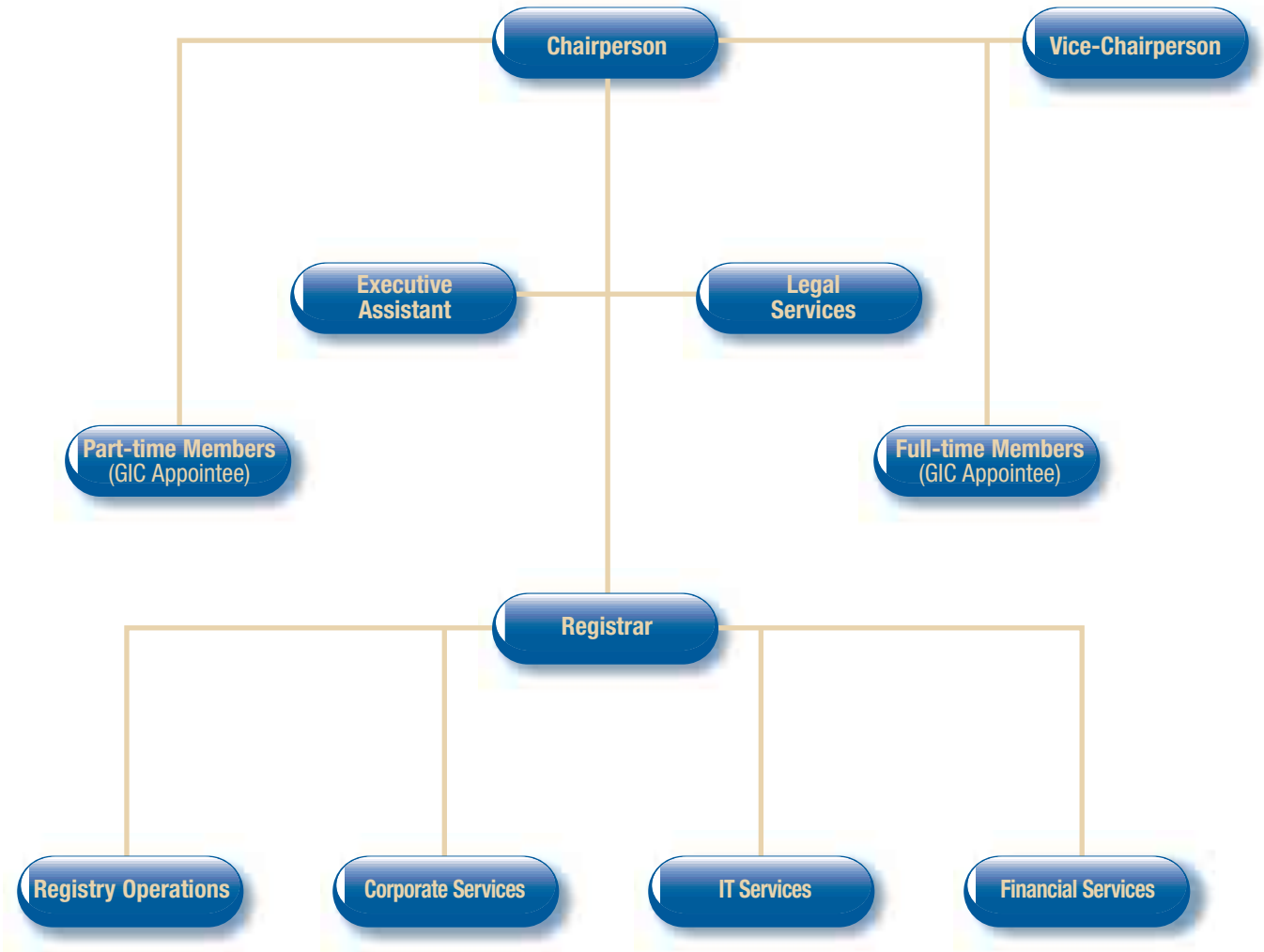
The Tribunal has fully complied with the government's Proactive Disclosure initiative and has consistently reported required information pertaining to its contracts data in a timely manner. Although the Tribunal does not currently have a process for conducting internal audits, we are working closely with representatives of the Office of the Comptroller General of Canada on the design and implementation of internal audit procedures. We have also developed an evaluation and risk management framework and, along with a select group of similar agencies, we are continuing to work with the Treasury Board Secretariat of Canada in developing a clustered, shared evaluation service model for small agencies.

Accountability for performance has been established through the Tribunal's Report to Parliament on Plans and Priorities, which articulates the corporate business plan, as well as through the performance accountability framework, which establishes individual performance expectations in relation to the Tribunal's mandate. Accountability is also strengthened through yearly sectoral reports to the central agencies in a number of areas, such as official languages, staffing, classification, employment equity and communications.

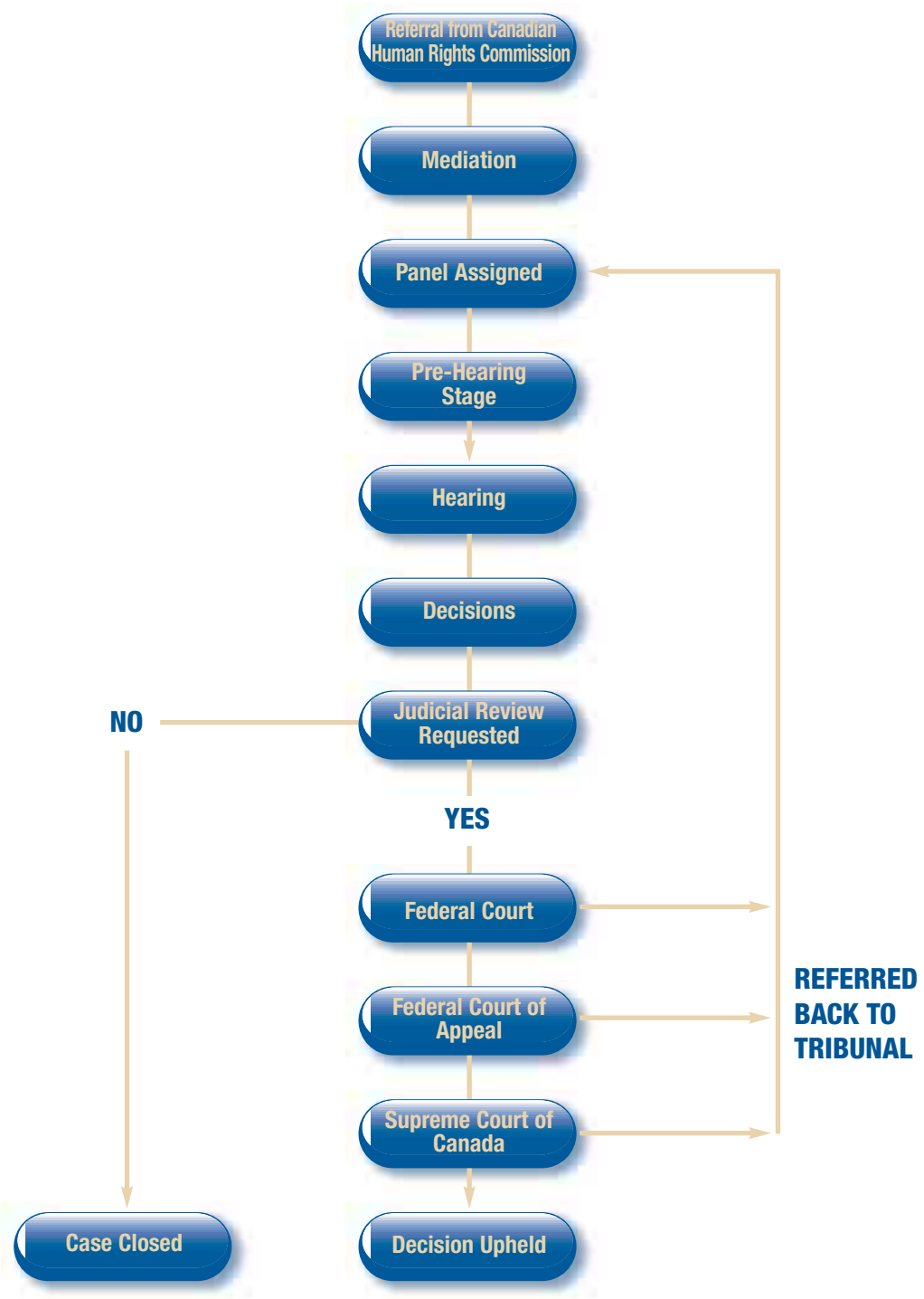
Results from the 2005 Public Service Employee Survey indicate that the Tribunal has achieved success as well in addressing our commitment to the professional, ethical and people values of the organization. In 2006 the Tribunal embarked on an initiative, with the assistance of expert management consultants, to find ways of strengthening leadership and reinforcing the organization's values, as well as those of the federal public service in general.

The Tribunal has achieved success in addressing our commitment to the professional, ethical and people values of the organization.

Appendix 1: Organization of the Tribunal



Appendix 2: Overview of the Hearing Process



Appendix 2: Overview of the Hearing Process

Referral by the Canadian Human Rights Commission

To refer a case to the Tribunal, the Chief Commissioner of the Canadian Human Rights Commission sends a letter to the Chairperson of the Tribunal asking the Chairperson to institute an inquiry into the complaint. The Tribunal receives only the complaint form and the addresses of the parties.

Within two weeks of the date of the request, a letter is sent to the parties offering the mediation services of the Tribunal. If mediation is declined, or occurs but fails to achieve settlement of the complaint, a case management conference call is convened within two weeks, where a Tribunal member begins discussion with the parties to schedule disclosure and hearing dates, and guides the parties in responding to any specific pre-hearing issues.

Hearings

The Chairperson assigns one or three members from the Tribunal to hear and decide a case. Additional case management conferences are held to help resolve preliminary issues that may relate to jurisdictional, procedural or evidentiary matters. Hearings are open to the public. During the hearing, all parties are given ample opportunity to present their case. This includes the presentation of evidence and legal arguments. In some cases, the Commission participates by leading evidence and presenting arguments before the Tribunal intending to prove that the respondent named in the complaint has contravened the Act. All witnesses are subject to cross-examination from the opposing side.

The average hearing lasts from five to ten days. Hearings are normally held in the city or town where the complaint originated. The panel sits in judgment, deciding the case impartially. After hearing the evidence and interpreting the law, the panel determines whether a discriminatory practice has occurred within the meaning of the Act. At the conclusion of the hearing process, the members of the panel normally reserve their decision and issue a written decision to the parties and the public within four months. If the panel concludes that a discriminatory practice has occurred, it issues an order to the respondent setting out the remedies.

Appeals

All parties have the right to seek judicial review of any Tribunal decision by the Federal Court. The Federal Court holds a hearing with the parties to hear legal arguments on the validity of the Tribunal's decision and its procedures. The Tribunal does not participate in the Federal Court's proceedings. The case is heard by a single judge who renders a judgment either upholding or setting aside the Tribunal's decision. If the decision is set aside, the judge may refer the case back to the Tribunal for reconsideration in light of the Court's findings of error.

Any of the parties has the right to request that the Federal Court of Appeal review the decision of the Federal Court judge. The parties, once again, present legal arguments, this time before three judges. The Court of Appeal reviews the Federal Court's decision, while also considering the original decision of the Tribunal.

Any of the parties can seek leave to appeal the Federal Court of Appeal's decision to the Supreme Court of Canada. If the Supreme Court deems the case to be of public importance, it may hear an appeal of the judgment. After hearing arguments, the Supreme Court issues a final judgment on the case.

Appendix 3: Canadian Human Rights Tribunal Members

Full-time Members

J. Grant Sinclair, Q.C.
Chairperson

A member of the former Human Rights Tribunal Panel from 1989 to 1997, J. Grant Sinclair was appointed Vice-Chairperson of the Canadian Human Rights Tribunal in 1998 and Chairperson in 2004. Mr. Sinclair has taught constitutional law, human rights and administrative law at Queen's University and Osgoode Hall, and has served as an advisor to the Human Rights Law Section of the federal Department of Justice on issues arising out of the *Canadian Charter of Rights and Freedoms*. He has acted on behalf of the Attorney General of Canada and other federal departments in numerous Charter cases, and has practised law for more than 20 years.

Athanasios D. Hadjis
Vice-Chairperson

Athanasios Hadjis obtained degrees in civil law and common law from McGill University in 1986, and was called to the Quebec Bar in 1987. Until he became a full-time member, he practised law in Montreal at the firm of Hadjis & Feng, specializing in civil, commercial, corporate and administrative law. A member of the Human Rights Tribunal Panel from 1995 to 1998, Mr. Hadjis was appointed in 1998 as a part-time member of the Canadian Human Rights Tribunal. He became a full-time member in 2002 and was appointed Vice-Chairperson of the Tribunal in 2005.

Paul Groarke

A member of the Tribunal since 1995, Dr. Paul Groarke became a full-time member in 2002. Since being admitted to the Alberta Bar in 1981, he has acted in a variety of criminal, civil and appellate matters. Currently on leave of absence from St. Thomas University in Fredericton, New Brunswick, Dr. Groarke is an Assistant Professor in the Department of Criminology and Criminal Justice. He has had a long-standing interest in human rights issues in the international arena and has authored numerous articles, publications and reports on a range of topics in his areas of expertise.

Karen Jensen

Karen Jensen was appointed a full-time member of the Tribunal in 2005. Ms. Jensen was called to the Ontario Bar in 1994 and holds a Bachelor of Arts from the University of Winnipeg, a Master's degree in Psychology from the University of Toronto and a Bachelor of Laws from the University of Western Ontario. After serving as a law clerk to former Justice Peter C. Cory of the Supreme Court of Canada, Ms. Jensen joined the firm of Raven, Cameron, Allen, Ballantyne & Yazbeck, LLP in Ottawa, where she practised labour and human rights law. She has also worked for the Canadian Human Rights Commission, the Canada Labour Relations Board, the Canadian International Trade Tribunal and the provincial government of Quebec. Ms. Jensen has published and presented papers on human rights issues in a number of fora and has won various academic awards and scholarships.

Part-time Members

Pierre Deschamps
Quebec

Pierre Deschamps graduated from McGill University with a BCL in 1975 after obtaining a Bachelor of Arts in Theology at the Université de Montréal in 1972. He is an Assistant Professor in the Faculty of Law at McGill University as well as an Assistant Lecturer at the Faculty of Continuing Education. Mr. Deschamps was appointed to a three-year term as a part-time member of the Tribunal in 1999, and reappointed to three-year terms in 2002 and 2005.

Michel Doucet
New Brunswick

Michel Doucet was appointed to the Tribunal as a part-time member in 2002 and reappointed to a five-year term in 2005. He obtained a degree in political science from the Université de Moncton and a law degree (Common Law Program) from the University of Ottawa. He acquired his LL.M. from Cambridge University in England. Mr. Doucet teaches at the Law School at the Université de Moncton and is an Associate with the Atlantic Canada law firm of Patterson Palmer.

Julie Lloyd
Alberta

Julie Lloyd was appointed in 2005 to a three-year term as a part-time member of the Tribunal. She received her LL.B. from the University of Alberta in 1991, and was called to the Alberta Bar in 1992. Ms. Lloyd carries on a general private practice in Edmonton, and her areas of practice include constitutional, administrative and human rights law. She teaches human rights as a sessional instructor at the University of Alberta Faculty of Law, has spoken widely to legal and non-legal audiences, and has written numerous articles for both lay and legal publications on human rights issues. Ms. Lloyd has received numerous awards, including the Queen's Golden Jubilee Award for volunteerism in 2003.

Kathleen Cahill
Quebec

Kathleen Cahill was appointed in 2005 to a three-year term as a part-time member of the Tribunal. She graduated in law from the University of Ottawa (Civil Law Program). Ms. Cahill was called to the Quebec Bar in 1986. She practises law in the private sector, principally in the fields of labour and administrative law. Ms. Cahill has appeared before various tribunals and has given conferences on topics relating to her work. She has served as an instructor in labour law at the Université de Montréal. From 1986 to 1988, Ms. Cahill practised law at the firm of Jutras & Associates, and then, from 1988 to 2000, with the law firm of Melançon, Marceau, Grenier & Sciortino.

Maureen Maloney
British Columbia

Maureen Maloney was appointed in 2005 to a two-year term as a part-time member of the Tribunal. She joined the Institute for Dispute Resolution at the University of Victoria in January 2000 and is currently the Director and the Lam Chair of Law and Public Policy. From 1993 to 2000, Professor Maloney served as Deputy Minister in the provincial government of British Columbia, including a term as Deputy Attorney General of the province of British Columbia from 1997 to 2000. Prior to her work with the provincial government, Professor Maloney served as Dean of Law at the University of Victoria. She has

published and lectured extensively in the areas of tax law, tax policy, women and the law, and aspects of the law on disadvantaged groups. Her current teaching and research interests are in the areas of dispute resolution, international human rights law, the administration of justice and restorative justice. She is a former board member of the Canadian Human Rights Foundation and the International Centre for Criminal Law Reform and Criminal Justice Policy, and has been a governor of the Law Foundation of British Columbia, president of the Canadian Council of Law Deans and co-chair of the Federal-Provincial-Territorial Deputies of Justice meetings. Professor Maloney also served as a board member of the Need Crisis Centre and an executive committee member of Lawyers for Social Responsibility. In addition, she has been involved in justice, dispute resolution and human rights projects in Brazil, South Africa, China, Cambodia, Indonesia, Thailand and Guatemala.

Matthew D. Garfield
Ontario

Matthew D. Garfield was appointed as a part-time member of the Tribunal in 2006 for a five-year term. Mr. Garfield is a chartered mediator and chartered arbitrator, specializing in human rights and workplace disputes. Since 2005 he has been the monitor for the implementation of the Orders of the Honourable Alvin Rosenberg, Q.C., in the Human Rights Tribunal of Ontario case of *Lepofsky v. Toronto Transit Commission*. From 2000 to 2004, Mr. Garfield was the Chair of the Human Rights Tribunal of Ontario. He joined the then Board of Inquiry (Human Rights) as Vice-Chair in 1998. Prior to his appointment to the Ontario Tribunal, Mr. Garfield practised law in Toronto. He graduated from Dalhousie Law School in 1988 and was a recipient of the class prize in constitutional law. He was called to the Nova Scotia Bar in 1989 and the Ontario Bar in 1992. He was also the Co-Chair of the 2001 Conference of Ontario Boards and Agencies.

Kerry-Lynne Findlay
British Columbia

Kerry-Lynne Findlay was appointed as a part-time member of the Tribunal in 2006 for a five-year term. Ms. Findlay graduated from the University of British Columbia with a B.A. in history in 1975 and an LL.B in 1978. She was called to the British Columbia Bar in 1979 and was appointed Queen's Counsel in 1999. Ms. Findlay is a partner of the Vancouver law firm of Watson Goepel Maledy, and practises civil and commercial litigation in a variety of areas, including family law and mediation, estate matters, employment law and Aboriginal land issues. Active in the Canadian Bar Association, Ms. Findlay served on the National Task Force on Court Reform in Canada, as National Chair of the Constitutional Law Section and as Chair of the National Women Lawyers Forum. In addition to her national profile, Ms. Findlay has served on several boards, including Science World, Chair of the Vancouver City Planning Commission and Honourary Counsel for the Chinese Benevolent Association of Canada, a century-old association that provides umbrella services and support for the Chinese-Canadian community. Ms. Findlay was named the 2001 YWCA Woman of Distinction in the category of Management, the Professions and Trades.

Appendix 4: The Tribunal Registry

The Registry of the Canadian Human Rights Tribunal provides administrative, organizational and operational support to the Tribunal, planning and arranging hearings, providing research assistance and acting as liaison between the parties and Tribunal members.

Registrar
Gregory M. Smith

Special Advisor to the Registrar
Bernard Fournier

Executive Assistant to Chairperson
Louise Campeau-Morrissette

Manager, Registry Operations
Gwen Zappa

Registry Officers
A/Nicole Bacon
Linda Barber
Diane Desormeaux
Carol Ann Hartung
Line Joyal
Katherine Julien
Holly Lemoine
Roch Levac

Mediation and Hearings Coordinators
Francine Desjardins-Gibson
Jacquelin Barrette/Natalie Jérôme

Counsel
Greg Miller

Chief, Financial Services
Doreen Dyet

Analyst, Financial Services
Nancy Hodgson-Grey

A/Chief, Corporate Services
Marilyn Burke

Human Resources Coordinator
Karen Hatherall

Senior Administrative Assistant
Thérèse Roy

Administrative Assistant
Jacquelin Barrette

Chief, Information Technology Services
Julia Sibbald

Information Support Specialist
Alain Richard

Appendix 5: How to Contact the Tribunal

Canadian Human Rights Tribunal

160 Elgin Street
11th Floor
Ottawa, Ontario
K1A 1J4
Tel: 613-995-1707
Fax: 613-995-3484
E-mail: registrar@chrt-tcdp.gc.ca
Website: www.chrt-tcdp.gc.ca