Canadian Human Rights Tribunal

Annual Report 1999

Canada

Canadian Human Rights Tribunal

THE CANADIAN HUMAN RIGHTS TRIBUNAL IS A QUASI-JUDICIAL BODY THAT HEARS 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 PURPOSE OF THE ACT IS TO PROTECT INDIVIDUALS FROM DISCRIMINATION AND TO PROMOTE EQUALITY OF OPPORTUNITY.

The Tribunal has a statutory mandate to apply the CHRA based on the evidence presented and on current case law. Created by Parliament in 1977, the Tribunal is the only entity that may legally decide whether a person has contravened the statute.

The Act applies to federal government departments and agencies, Crown corporations, chartered banks, airlines, telecommunications and broadcasting organizations, shipping and inter-provincial trucking companies. Complaints may relate to discrimination in employment or in the provision of goods, services, facilities and accommodation that are customarily available to the general public. The CHRA prohibits discrimination on the basis of race, national or ethnic origin, colour, religion, age, sex, marital status, family status, sexual orientation, disability or 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 employers with more than 100 employees. Employment Equity Review Tribunals are assembled as needed from the pool of adjudicators that make up the Canadian Human Rights Tribunal. The first Employment Equity Review Tribunals will likely be appointed in 2000.

Canadian Human Rights
TRIBUNAL

March 31, 2000

The Honourable Gilbert Parent, Speaker
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Mr. Speaker:

I have the honour to present to you the 1999 Annual Report of the Canadian Human Rights Tribunal in accordance with subsection 61(3) of the *Canadian Human Rights Act*.

Yours sincerely,

Anne L. Mactavish
Chairperson

Canadian Human Rights
TRIBUNAL

March 31, 2000

The Honourable Gildas L. Molgat, Speaker
The Senate
Ottawa, Ontario
K1A 0A4

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Minister of Public Works and Government Services Canada

Cat. no. HR61-1999
ISBN 0-662-64858-7
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Message from the Chairperson

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

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

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

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

Honourable Gérard La Forest, to examine this issue and to provide us with the benefits of their wisdom on the subject.

In the last year, a significant number of cases were settled prior to a hearing — many as a result of mediation, others by the parties on their own. Many of these cases had been scheduled for several weeks of hearings and were settled shortly before the hearing was to commence. As a result, we have reviewed our case scheduling procedures to ensure that we maximize the time of full-time Tribunal members.

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

Anne L. Mactavish

The Tribunal after Bill S-5

A year of transition

In May 1998, Parliament passed a bill amending the *Canadian Human Rights Act* (CHRA) to strengthen the independence of the Canadian Human Rights Tribunal, enhance its expertise and improve its efficiency. Bill S-5, which took effect on June 30, 1998, mandated changes to the structure and function of the Tribunal that would create a smaller, more highly qualified and permanent body to adjudicate federal human rights cases.

Before the amendments, the Tribunal had been an *ad hoc* body made up of about 50 part-time adjudicators. Its members served relatively short terms and heard relatively few cases. However, the growing complexity of human rights cases was demanding greater expertise from adjudicators, as well as more experience conducting technical and highly sophisticated hearings.

The adoption of Bill S-5 authorized the creation of a smaller, standing Canadian Human Rights Tribunal with up to 13 members and a full-time Chairperson and Vice-Chairperson. The bill stipulated that all members of the new Tribunal were to have expertise in and sensitivity to human rights issues, and that the Chairperson and Vice-Chairperson were to be long-standing members of a Canadian bar.

Much was expected to change as a result of Bill S-5, including processes for handling information, planning cases and managing hearings, and the envisaged transformations were expected to take about three years to implement. As it happened, however, several factors conspired to lighten the Tribunal's caseload in 1999, accelerating the developments that have transformed the Tribunal into a more efficient, rigorous and cohesive body.

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When a ruling by the Federal Court of Canada in March 1998 found the Tribunal incapable of providing a fair and impartial hearing, new hearings were suspended until Parliament could amend the CHRA. In the interim, the Canadian Human Rights Commission (CHRC) also stopped referring cases to the Tribunal. The Commission also chose the latter part of 1998 and much of 1999 to clear major backlogs in its own caseload. Despite the high volume of cases processed by the Commission during this period, most of the backlog were routine cases

unlikely to warrant further inquiry by the Tribunal. Finally, since mediated settlements take less time than hearings, the growing popularity of mediation also helped lighten the Tribunal's caseload in 1999.

This lighter caseload enabled the Tribunal to turn its attention to the organization's internal needs in the wake of the restructuring. The Tribunal took this opportunity to organize in-depth training sessions for its members, draft new rules of procedure and streamline its case planning and management process.

Where case planning was previously shared among the members of the Tribunal, it is now conducted almost exclusively by the Chairperson and Vice-Chairperson. As the Tribunal's senior members have become increasingly conversant with preliminary issues and motions, delays are fewer and decisions more expeditious. Moreover, the Tribunal's improved capacity to identify legal issues and potential remedies at the outset means that problems are recognized and resolved early on. Since the parties are being given more consistent direction, there are fewer surprises at hearings and hearings proceed in a more organized and orderly fashion. The increased obligation with respect to pre-hearing disclosure has also resulted in more focussed evidence being presented at the hearings, making cases easier to adjudicate.

Because the Tribunal has become so much smaller, members from across the country travel more extensively, including to Ottawa, and interaction among members has increased dramatically. In addition to informal gatherings, Tribunal members now come together two or three times a year to discuss new developments in the law, study recent decisions, share procedural problems and propose solutions. This increased professional contact has enabled the Tribunal to coalesce into a more cohesive body.

The completion of the Tribunal's restructuring coincided with an increase in the number of cases being referred from the CHRC by the end of 1999. The organizational development activities undertaken in 1999 are expected to bear fruit in 2000, as a more highly qualified, organized and tightly knit Tribunal administers cases more expeditiously and generates more consistent decisions.

A more rigorous Tribunal

In 1999 the Tribunal refined its Rules of Procedure, provided intensive training to its members and developed new mediation procedures in an effort to reduce delays and improve the quality of human rights adjudication. In his September 1998 report, the Auditor General of Canada had noted that stakeholders had expressed concerns about the length of Tribunal hearings and the inefficiency of procedures. The Auditor General also observed that although the Tribunal's approach to mediation was generally satisfactory, there were no formal standards or policies to govern how and when mediation should proceed.

Rules of Procedure

Consequently, late in 1998, the Chairperson developed and circulated preliminary Draft Rules of Procedure intended to govern inquiries under the CHRA. Counsel who appear frequently before the Tribunal were asked to comment on the usefulness of these rules. From their feedback, the Tribunal sought to streamline these rules in a way that better responded to its very diverse caseload. The revised draft took a less rigid approach, codifying procedure as little as possible, and leaving the establishment of case management time lines to the discretion of the presiding members.

The revised Draft Rules were made public in the spring, and members began using them in cases immediately thereafter. The aim of these rules is to ensure that:

- all parties have ample opportunity to be heard;
- arguments and evidence are disclosed and presented in a timely and efficient manner; and
- all proceedings before the panel are conducted as informally and expeditiously as possible.

Because the Tribunal heard so few cases in 1999, it is too early to assess whether the new Draft Rules respond adequately to the concerns raised by counsel, but Tribunal members find them working well. Further consultations will be held with stakeholders to obtain their feedback on the Rules of Procedure.

Under the CHRA, Rules of Procedure must be published in the *Canada Gazette*. Prior to publication, however, they require the approval of the Regulations Section of the federal Department of Justice. Justice Canada has reviewed the Draft Rules and proposed formal and technical revisions designed to make the rules conform to standard drafting conventions. The Tribunal is currently studying these comments to ensure that the substance of the Draft Rules is preserved through the final round of revisions.

We expect that the Tribunal's Rules of Procedure will appear in the *Canada Gazette* in 2000 and will receive final regulatory approval within 18 months. In the meantime, Tribunals are applying the Draft Rules.

Procedures for mediation

The Auditor General's concerns about the Tribunal's lack of a formal mediation process were answered by the Procedures for Mediation that the Tribunal produced in 1999. The procedures describe the criteria used by the Tribunal to decide whether a case is suitable for mediation. They outline the mediation process and detail the rights and obligations of the parties.

In keeping with its focus on improving access to information about the Tribunal's services, the Tribunal also published a brochure explaining its mediation services, including how the process works and which cases are considered appropriate for mediated settlements.

Training for members

To strengthen the expertise of its Tribunal members, the organization launched a comprehensive three-week members' training program early in 1999. The course featured sessions on substantive human rights law, rules of evidence, and mediation theory and practice. A full week was devoted to mediation training, including sessions dealing with power imbalances between the parties, ethical issues for mediators and a discussion of the criteria for determining whether a case was a suitable candidate for alternative dispute resolution. As well as reviewing the provisions and regulations of the CHRA and the *Employment Equity Act,* Tribunal members discussed statutory interpretation of human rights law, remedial powers of the Tribunal, judicial review and cross-cultural issues. The sessions also provided opportunities for Tribunal members to hone their hearings management and decision writing skills. Not only did the training sessions raise the level of expertise of the Tribunal, but they also provided members with a better understanding of the unique role that adjudication panels play in ensuring that parties to a dispute receive a consistent and impartial hearing.

A more accessible Tribunal

In an effort to raise Canadians' awareness about human rights adjudication and the role of the Tribunal, the Tribunal redesigned its Web site in 1999, expanding the number of documents available and installing a search engine that allows users to search the Tribunal's decisions database by case name or keyword. The site includes general information about the Tribunal, provides access to public documents such as the Tribunal's Draft Rules of Procedure and contains a page of answers to frequently asked questions. The site explains the federal human rights adjudication process, lists active cases and includes a schedule of upcoming hearings. Visitors will also find links to other human rights resources, including the Web pages of the CHRC and Amnesty International. Public interest in the revamped site has been considerable, and public inquiries to the Tribunal have increased dramatically.

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The Mediation Debate

Since the launch of the Tribunal's alternative dispute resolution project in 1996, more and more parties have opted to settle their differences through mediation. A survey of participants, conducted in 1998–99, found parties generally pleased with both the process and the outcome of mediated settlements. In general, if the complaint is settled, its resolution is faster, less expensive, more harmonious and, usually, more satisfactory to the individual parties than a solution imposed by a Tribunal panel. However, the question arises as to whether resolving a human rights complaint without a full public hearing is always in the public interest. A mediated settlement resolves a specific complaint by an individual or group. The activity complained of may, however, affect more than the original complainants; indeed, it may be widespread in society at large. Since the mediation process is confidential and the parties can opt to keep the settlement confidential too, settling a case through mediation may prevent the dissemination of information that might have encouraged other complainants to come forward.

Cases referred to the Tribunal are, by definition, rarely clear cut. They often involve long-standing systemic practices or conflicting interpretations of the statute and legal precedents. Cases frequently involve new human rights issues or unexplored areas of discrimination. Allowing such cases to

Table 1

Tribunal Mediations 1996 to 1999

	1996	1997	1998	1999	Totals
Cases referred to the Tribunal	15	23	22	37	97
Cases referred to mediation	12	19	7	21	59
Complaints settled	6	16	6	7	35
Complaints not settled	6	2	1	3	12
Complaints pending	0	1	0	11	12

be settled off the public record may prevent systemic discrimination from being detected, let alone rectified. Moreover, society is denied the opportunity to engage in the kind of public dialogue that is likely to increase awareness, understanding and respect for human rights. Because mediated settlements are usually confidential, the social discourse that might accompany the media coverage of a public hearing is not possible, and public education may suffer as a result.

The Tribunal has begun to take a closer look at the criteria it uses to select cases for mediation to ensure that opportunities for social discourse are not lost in the interests of expediency. The Tribunal is also reviewing its mediation process and studying the consequences of mediating cases referred to it by the Commission. Although mediation has many advantages, including savings to the taxpayer, these may come at too high a cost. One solution may be to require full public disclosure of all mediated settlements.

Canadian Human Rights Act Review Panel

Canada has changed considerably in the two decades since the CHRA was enacted. Our society's understanding of human rights has deepened and concepts relating to discrimination have become more expansive, nuanced and complex. Since its inception, the CHRA has been amended to cover hate propaganda, sexual harassment and discrimination based on disability, sexual orientation and family or marital status. Repeated challenges to the jurisdiction of the Tribunal and the legitimacy of the human rights investigation and adjudication process have precipitated further amendments. However, Canadians continue to voice concerns about delays and inefficiencies in federal human rights adjudication. In 1998 the Auditor General of Canada concluded that the approach of the CHRC and the Human Rights Tribunal Panel (as it was then called) had evolved into something "cumbersome, time-consuming and expensive." Therefore, in 1999, the Minister of Justice proposed a system-wide review of the CHRA. Under the leadership of the Honourable Gérard La Forest, the *Canadian Human Rights Act* Review Panel is examining the Act with an eye to modernizing human rights adjudication in Canada. The Panel is reviewing everything from substance to process, analyzing submissions from many segments of Canadian society, including business, labour, government and equality advocacy groups. It is even considering alternatives to the current complaints-based system, such as regulatory compliance.

The Panel is reviewing everything from substance to process, analyzing submissions from many segments of Canadian society, including business, labour, government and equality advocacy groups.

The recommendations of the Panel are expected to have a significant impact on the functioning of the Tribunal. New grounds of discrimination may be added to the CHRA, and many submissions have suggested that at least some types of complainants should be able to leapfrog the Commission's inquiry phase and proceed directly to the Tribunal. The Tribunal Chairperson has also asked the Panel to review the Tribunal's mediation process, to suggest how selection criteria might be improved and to offer guidance on whether the publication of mediated settlements should be made compulsory, rather than optional.

Cases

Tribunal decisions rendered

Mills v. *VIA Rail* T.D. 01/99

Date referred: 20/10/1994[1]

Decision date: 17/05/1999

Number of hearing days: 121

The Complainant, John Mills, who had injured his back, was found to be unfit for work by his employer, VIA Rail, and was eventually fired for failing to maintain an absenteeism record within the average range for his occupation. Mr. Mills alleged that his termination constituted discrimination within the meaning of the CHRA.

The Tribunal found that there had been both direct and indirect discrimination against Mr. Mills by VIA Rail. It held that when VIA declared the Complainant "unfit", it directly discriminated against him on the basis of disability or perceived disability. Further, VIA failed to establish that Mr. Mills had not met a *bona fide* occupational requirement (BFOR), since the doctor who declared Mr. Mills unfit was never asked to determine whether there was an essential task or duty of the job that Mr. Mills would be incapable of carrying out. The Tribunal found that the employer's doctor failed to assess the Complainant's ability to perform various lifting and safety requirements that were sufficiently connected to the work. It also found that VIA had acted recklessly when it failed to test the Complainant's abilities before dismissing him and that VIA had declared Mr. Mills unfit for work without determining whether his absenteeism was affecting the company's ability to deliver its service. The Tribunal also noted that although VIA had declared the Complainant unfit, it later re-engaged him as a chef without any intervening treatment or testing.

The Tribunal also found that, even if VIA's discrimination was indirect, the company had failed to accommodate Mr. Mills to the point of undue hardship. Little effort had been made in transferring Mr. Mills to a position where he would not be required to physically exert himself; the "spareboard" system, whereby a pool of employees are on call to fill in for other absent ones, would have been ideal in facilitating the

[1] *Although the CHRC referred this complaint to the Tribunal in 1994, and the Tribunal ruled in favour of the Complainant in 1996, a Federal Court ruling in 1997 quashed that decision and referred the case back to the Tribunal for consideration by a new panel. Appointed in August 1997, the second panel resigned in June 1998, after a Federal Court ruling mandated changes to the Tribunal's structure. A third and final Tribunal panel was assigned under the new legislation to hear the case in July 1998.*

Complainant's accommodation. The Tribunal determined that VIA could have allowed Mr. Mills and his co-workers to redistribute their collective workload so that Mr. Mills could avoid performing the heaviest lifting jobs. Alternatively, it could simply have allowed him to divide heavy loads in two.

After later re-engaging the Complainant, the Respondent insisted that, as a condition of continued employment, Mr. Mills keep his medical absenteeism within the average for his work group. Here again its conduct was discriminatory. No BFOR could be established since no objective meaningful standard of medical absenteeism existed and VIA was evidently able to tolerate absenteeism above the average. VIA formed the erroneous impression that Mr. Mills's condition was recurring and degenerative when there was no evidence of this; in fact, his condition was improving with age. Alternatively, if the conditions of continued employment were indirect discrimination, the employer had made no real accommodation attempt and there was no evidence of hardship.

Bernard v. *Waycobah Board of Education* T.D. 02/99

Date referred: 30/03/1998

Decision date: 11/06/1999

Number of hearing days: 4

The Complainant worked as a secretary for a school on a First Nations reserve. She gave a presentation to students on native spirituality during a heritage program. In the context of the presentation she made personal comments to some of the assembled students to which they took objection. After the presentation, parents in the community began pressuring the school to take action against the Complainant, failing which they would remove their children from the school. Ultimately, the school board fired the Complainant shortly after the incident without asking her for an explanation, and argued before the Tribunal that it did so to answer the parental concerns.

The Tribunal found that, in fact, the Board had fired the Complainant because it perceived that she was mentally ill. While the concerns of parents may have played a role in motivating the termination, these concerns were themselves based on a prejudiced view of the Complainant as being mentally disabled. On the Complainant's record of employment, "illness" was given as the reason for the termination. Furthermore, the Board tried to have the Complainant closely monitored after the student presentation, for the stated reason of ensuring her "health and safety." The Board's insistence at the hearing that the dismissal was motivated by public outcry from the community *per se*,

as opposed to perceived disability, resulted in the Board making no attempt to lead evidence of a BFOR of mental health. The Tribunal found that even if public reaction played a role in the Board's decision, it was in essence a call to discriminate on the prohibited ground of perceived mentalillness. The Tribunal ordered that the Complainant be reimbursed for lost wages and that she be paid the equivalent of wages until the Respondent was able to re-instate her into a comparable position. Also ordered was an apology and special compensation in view of the Complainant's hurt feelings and the Respondent's recklessness.

At the time of the Tribunal hearing, the school board no longer existed, and the school system was now being directly run by the Band Council. However, during its existence, and at all times relevant to the Complaint, the school board had been closely connected to the Band Council, with a large overlap in management. Given the foregoing, the Chief and Band Council were held to be the Respondent employer for the purposes of execution of the remedial measures ordered.

Nijjar v. *Canada 3000 Airlines* T.D. 03/99

Date referred: 09/10/1999

Decision date: 09/07/1999

Number of hearing days: 11

The Respondent, an airline, refused to allow a Sikh man to board an aircraft carrying a kirpan (ceremonial dagger) on the ground that it constituted an item that had a greater potential for injury than the eating utensils used on board the aircraft. The Complainant alleged discrimination on the ground of religious belief.

The Tribunal found that the rule regarding dangerous objects was rationally connected to the Respondent's legitimate business concerns. It also found that while the Complainant was certainly upset about being denied access to the aircraft, his testimony failed to establish that wearing a less potentially dangerous kirpan (i.e., one that was no more dangerous than an eating utensil) would have offended his religious beliefs. His religion required him to wear a kirpan, but his choice of shape or size of kirpan was motivated by personal preference, not religion. Hence no *prima facie* case had been made. It was conceivable that other Sikhs might have felt that the size and shape of their kirpans were dictated by their religion. However, s. 5 of the CHRA does not deal with discriminatory policies in general; rather, it deals with whether a given individual has been denied a service on discriminatory grounds.

The Tribunal also considered arguments on accommodation. The Complainant and the CHRC had argued that, in the case of kirpans, the Respondent could have relaxed its rule and deferred to the commonly applied standard whereby objects with blades that are less than four inches long are allowed on an aircraft. In rejecting this argument, the Tribunal noted that aircraft present a unique environment in which strangers are obliged to share a confined space without access to emergency services or police. Given the number of variables that determine the offensive capability of a bladed object, permitting all kirpans that are less than four inches in length would not be a rational way of ensuring the safety of travellers. In the current matter, the risk of applying the 4-inch rule would be borne by Sikhs as well as all other passengers, and the risk would include potentially fatal outcomes. In this regard, violent incidents involving kirpans, while rare, have occurred, and it is notable that other passengers could conceivably gain possession of the kirpan. Ultimately, making the proposed exception to the Respondent's policy presented a sufficient risk to constitute undue hardship.

Conte v. *Rogers Cablesystems* T.D. 04/99

Date referred: 25/05/1998

Decision date: 10/11/1999

Number of hearing days: 10

Rita Conte worked as a consultant in Rogers Cablesystems' customer call centre. Her primary duties were to talk on the telephone and respond to customer inquiries. While working, Ms. Conte started losing her voice and she began missing work for extended periods. Eventually Rogers terminated her employment because her vocal cords were injured and because she had had a similar injury before. According to the Respondent, the ability to speak on the phone was an essential part of the job and Ms. Conte was simply incapable of performing this function.

The Tribunal found that the job standards adopted by Rogers (talking for 95% of the shift) were rationally connected to the legitimate business purpose of providing professional, informative and timely customer service. The standards were also imposed honestly, and not for any ulterior motive.

However, the Tribunal was of the view that Rogers had not satisfied its duty to accommodate Ms. Conte. Before deciding to terminate her, Rogers was obligated at the very least to engage in an examination of Ms. Conte's current medical condition, her prognosis for recovery and her capabilities for alternative work. Yet Rogers never sought information as

to whether Ms. Conte's debilitating condition was likely to improve, or when she might return to work; it assumed her disability was permanent. Moreover, Rogers never considered whether Ms. Conte could be assigned any alternative work in lieu of termination.

The Tribunal upheld the complaint and plans to reconvene in 2000 to hear evidence on what, if any, remedy should be granted to Ms. Conte to compensate her for her damages. In the interim, Rogers has sought judicial review of the Tribunal's decision on liability.

Pay equity update

The Tribunal's hearing commitments have shifted significantly since the Tribunal began hearing its first pay equity cases in 1991. These cases are demanding an increasingly disproportionate share of hearing days. Pay equity cases that proceed to a full hearing consume an average of 175 hearing days each. In 1999 the Tribunal's caseload included three pay equity complaints that together accounted for about 50 percent of its hearing schedule.

Public Service Alliance of Canada (PSAC) v. *Canada Post* is the Tribunal's longest-running case. It has been in hearings since 1993 for a total of 330 days. In 1999, the Complainants rested their case, and the Respondents began presenting.

Date referred: 30/03/1992

Number of hearing days in 1999: 47

Number of hearing days to date: 330

Hearings began anew in 1999 in the case of *Canadian Telephone Employees' Association (CTEA), Communications Energy and Paperworkers Union of Canada and Femmes-Action* v. *Bell Canada.* Although the Federal Court had granted the Respondent's application challenging the adequacy of the Commission's investigation into the complaint and

Date referred: 04/06/1996[2]

Number of hearing days in 1999: 15

Number of hearing days to date: 15

[2] *This case was originally referred to the Tribunal by the CHRC in June 1996. However, the Respondent challenged the validity of that referral and later also the impartiality of the Tribunal. These two challenges held up the Tribunal proceedings for nearly two years. In March 1998, the Federal Court upheld both challenges, quashing the original referral and, in a separate ruling, prohibiting the Tribunal panel from proceeding until structural changes to the Tribunal had removed the potential for institutional bias. Amendments to the CHRA in June 1998 arguably resolved the problems identified by the Court. But the case could not proceed even with a new Tribunal panel because the referral itself had been ruled invalid. In November 1998, the Federal Court of Appeal overturned the Trial Division ruling that had quashed the referral. A new Tribunal panel was appointed to hear the case early in 1999.*

had quashed the referral of the case to the Tribunal, the Federal Court of Appeal reversed the lower court's ruling in November 1998 and referred the case back to the Tribunal.

Public Service Alliance of Canada (PSAC) v. *Government of the Northwest Territories* began hearings on preliminary motions in 1998. Since the case's referral to the Tribunal in 1997, many motions have been brought by the parties on preliminary procedural and jurisdictional matters, and there have been several requests for judicial review of the Tribunal's rulings on those motions. The hearings continued through 1999, however, pending Federal Court rulings on these motions, and more hearing days are scheduled for 2000. The bulk of the case will be heard in Ottawa, but witnesses who reside in the North may be able to give evidence in Yellowknife or Iqaluit. The hearing will be concluded in the North.

Date referred: 29/05/1997

Number of hearing days in 1999: 29

Number of hearing days to date: 32

Judicial review

In 1999 the Federal Court issued nine rulings reviewing earlier Tribunal decisions that had been referred to the Court for judicial review. Six of these decisions upheld the Tribunal's original ruling.

Chopra v. *Health and Welfare* (Isaac/Desjardins/Linden) Jan 12, 1999

Date of original Tribunal decision: 08/03/1996

Date of Federal Court ruling: 12/01/1999

Background

The Complainant in this case had alleged that the Respondent department had discriminated against him in employment due to his race, colour, and national or ethnic origin by denying him opportunities for career advancement. During the Tribunal hearing, which was held in 1995, the Tribunal prohibited the CHRC from adducing circumstantial evidence in an attempt to show that visible minorities were not represented according to their availability at certain levels in the then Department of National Health and Welfare. In its final decision, dated March 8, 1996, the Tribunal dismissed the complaint for lack of evidence.

The Commission and the Complainant sought judicial review of the Tribunal's decision on the ground that the circumstantial evidence had been improperly excluded. In April 1998 the Federal Court Trial Division set aside the Tribunal's decision. The Court stated that the

Commission should have been allowed to adduce general evidence of a systemic nature as circumstantial evidence to infer that racial discrimination probably occurred in the case before the Tribunal. According to the Court, such evidence can be very valuable for fact finding in a human rights context. The Respondent department appealed the Trial Division decision to the Court of Appeal.

Update

In January of 1999, the Court of Appeal dismissed the appeal. While the Court of Appeal did not endorse the reasons of the Trial Division Judge in their entirety, it was of the view, nevertheless, that the Judge had made no error of fact, law or principle in his conclusion that would justify intervention by the Court of Appeal.

The Federal Court sent the case back to the Tribunal for reconsideration, and directed that the disputed statistical evidence be allowed in the record. A new Tribunal decision, based on a supplemented record, is expected in 2000.

Zündel v. *Citron* (Reed) Mar 23, 1999

Date of original Tribunal decision:
22/04/1998

Date of Federal Court ruling:
23/03/1999

Background

In 1997, the Tribunal began inquiring into a complaint against Ernst Zündel, which alleged that he had telephonically communicated messages likely to expose Jewish persons to hatred or contempt.

On March 23, 1998, after 11 hearing days had elapsed in the case, the Federal Court Trial Division brought down its decision in *CTEA et al.* v. *Bell Canada.* The *Bell Canada* decision prohibited another panel of the Tribunal from proceeding with a complaint because the *CHRA* (as it read prior to the amendments of June 30, 1998) raised a reasonable apprehension of institutional bias. In particular, the old Act did not provide members with the requisite security of tenure and financial security.

Mr. Zündel soon thereafter challenged the institutional impartiality of the panel hearing his case, using the *Bell Canada* decision as his authority for doing so. On April 22, 1998, the Tribunal dismissed Mr. Zündel's motion for a stay, on the ground that he had waived his right to challenge the Tribunal for bias. In the Tribunal's view, Mr. Zündel would have been aware of the statutory scheme at the outset of the hearing; he therefore

should have objected promptly, as Bell Canada had done in the other case. Mr. Zündel's failure to make a timely objection meant that 13 hearing days had elapsed with substantial amounts of evidence being put into the record. In dismissing Mr. Zündel's motion, the Tribunal said that the circumstances in this case were sufficiently different from those in *Bell Canada* to distinguish the former from the latter. Mr. Zündel sought judicial review of the Tribunal's ruling.

Update

On March 23, 1999, the Federal Court Trial Division upheld the Tribunal's ruling, agreeing that Mr. Zündel had waived any right he had to object to the institutional partiality of the Tribunal. At the outset of the hearing he had been aware of all material facts giving rise to his objection and yet had not raised the issue until 10 months later when the *Bell Canada* decision was released. Mr. Zündel has appealed this decision to the Federal Court of Appeal.

Zündel v. *Citron et al.* (Campbell) Apr 13, 1999

Date of original Tribunal decision:
18/06/1998

Date of Federal Court ruling:
13/04/1999

Background

In 1998, while doing research, counsel for the Respondent, Ernst Zündel, discovered a press release issued 10 years earlier by the Ontario Human Rights Commission (OHRC) in which the OHRC Chairperson applauded the Respondent's 1988 criminal conviction for publishing false news about the holocaust. One of the members of the OHRC in 1988 was subsequently appointed to the Tribunal that was to hear the human rights complaint against the Respondent 10 years later. Part of the material at issue in the CHRC's 1996 human rights complaint had previously formed the basis of the criminal conviction. The Respondent brought a motion alleging an apprehension of bias against the member, which the Tribunal denied on June 18, 1998. In the Tribunal's view, the OHRC Chairperson, when he made the statement in question, had been arguably acting within his statutory mandate. His behaviour could not cast doubt 10 years later on his impartiality as a Tribunal member. The Tribunal further found that Mr. Zündel should have raised this issue at the beginning of the Tribunal hearing; his failure to do so constituted a waiver.

Mr. Zündel sought judicial review of the Tribunal's ruling in the Federal Court Trial Division.

Update

On April 13, 1999, the Court granted Mr. Zündel's application for judicial review. The Court found that the 1988 OHRC press release was highly inappropriate, in that an institution with adjudicative responsibilities has no legitimate purpose engaging in such public condemnation. One could reasonably conclude that the statement of the OHRC Chair revealed a strong actual bias against Mr. Zündel on the part of the OHRC members. Despite the 10-year time lapse, the making of the statement in 1988 raised a reasonable apprehension of bias in respect of the former OHRC member who was currently sitting on the Tribunal panel hearing the Zündel case. Had the Tribunal member distanced herself from the statement in 1988, its present effect would have been mitigated.

No waiver could be implied in respect of the Respondent's bias objection, given that he did not discover the 1988 press release until 10 years after the fact. The Court prohibited the member in question from continuing to sit on the Tribunal case. It allowed the remaining member to continue on the case alone, and noted that the Respondent had access to judicial review in respect of all interlocutory decisions made thus far. The Court set aside the Tribunal's determination of the bias issue. It also set aside two other interim rulings of the Tribunal that had been challenged by the Respondent, based solely on the participation of the impugned Tribunal member.

The Trial Division decision is being appealed to the Federal Court of Appeal.

Franke v. *Canadian Armed Forces* (Tremblay-Lamer) Apr 28, 1999

Date of original Tribunal decision: 15/05/1998

Date of Federal Court ruling: 28/04/1999

Background

On May 15, 1998, a Tribunal had, by a 2-1 majority, found that a complaint of sexual harassment by Kimberly Franke had not been substantiated, nor had the Complainant been subjected to differential treatment based on sex. The Tribunal majority based its decision in part on the fact that the conduct complained of was not perceived by the Complainant as harassment at the time when it occurred.

Moreover, the Tribunal found that the complaint had been filed in retaliation for unrelated disciplinary measures that had been imposed on the Complainant. The Tribunal did not find that the discipline had been imposed for discriminatory reasons. It dismissed the complaint.

The Commission sought judicial review of the Tribunal's decision.

Update

On April 28, 1999, the Federal Court Trial Division upheld the Tribunal's decision. In considering the appropriate standard of judicial review of this decision, Madam Justice Tremblay-Lamer noted that while tribunals must be correct on pure questions of law, a Tribunal's findings of fact may not be disturbed unless patently unreasonable. Furthermore, she found that where, as here, the Tribunal was faced with applying the legal test for sexual harassment to the facts proven before it, this was a question of mixed fact and law. Mixed questions of this kind merit review on the standard of *reasonableness simpliciter:* as long as the decision is supported by reasons that can be justified by the evidence, the Court should not intervene.

The Court held that the Tribunal majority applied the correct legal test for harassment. Given that comments had been made to the Complainant of a sexual nature, the majority sought to determine whether the comments were unwelcome at the time they were made; it then assessed whether the comments were persistent or grave enough to constitute harassment. The Court refused to interfere with the majority's finding that the conduct was not unwelcome as there was evidence to support this finding. Furthermore the Court held that the majority's finding as to whether the conduct rose to the level of harassment was reasonable and thus did not warrant intervention. Moreover, based on the evidence, the Tribunal was reasonably entitled to find that the disciplinary action to which the Complainant was subjected was not motivated by discriminatory differential treatment based on sex. All in all, findings of fact and credibility were not to be disturbed lightly and the Tribunal's conclusions were found to be reasonable.

Nijjar v. *Canada 3000* (Sharlow) May 10, 1999

Date of original Tribunal decision:
09/07/1999

Date of Federal Court ruling:
10/05/1999

Background

During the hearing before the Tribunal, the CHRC wished to cross-examine a Respondent expert witness on a statement the witness had made in another earlier trial. The Respondent objected to the Commission's introduction of the prior statement (which was inconsistent with the witness's testimony in the current hearing) because the Commission had not disclosed the earlier statement in advance to Respondent counsel.

On April 29, 1999, the Tribunal ruled that the Commission should have disclosed the statement in advance of using it at the hearing. Even if the document was privileged, this did not override the duty to disclose it if it was going to be used at the hearing. The special role of the Commission, analogous to that of the Crown in criminal proceedings, required that it observe a practice of continuing disclosure of all relevant material that came into its possession, including prior inconsistent statements of witnesses. In the case at hand, the non-disclosure of the prior inconsistent statement allowed the Respondent to commit itself, through examination-in-chief of its witness, to a position from which it could no longer retreat. In view of the foregoing, the Tribunal refused to allow the Commission to cross-examine on the prior statement.

After this ruling, the Commission applied to the Federal Court for a stay of the Tribunal hearing pending judicial review of the ruling.

Update

On May 10, 1999, the Federal Court Trial Division dismissed the application, finding that the Commission had failed to raise "a serious question to be tried." Instead, in the Court's view, the Commission judicial review focussed on "a relatively straightforward disagreement on a procedural question that is within the Tribunal's jurisdiction." If the Tribunal had erred in refusing to allow the use of the statement, it was as yet unclear whether this error would affect the Tribunal's final decision in the case.

Moreover, the Commission had failed to make out a case of "irreparable harm" since any final decision made by the Tribunal was subject to judicial review. Finally, given that the Tribunal hearings had been scheduled for months and were close to conclusion, the balance of convenience favoured denying the stay.

The Tribunal continued with its hearing and rendered its final decision on July 9, 1999 (see above). Neither the Commission, the Complainant nor the Respondent sought judicial review of the final decision.

Bell Canada (Marceau, Desjardins, Sexton) Jun 01, 1999

Date of Tribunal ruling: 04/06/1997

Date of Federal Court ruling: 01/06/1999

Background

During 1997, a panel of the Tribunal, constituted under the old Act, was hearing a pay equity complaint against Bell Canada. Bell objected to the Tribunal's jurisdiction on the grounds that the scheme of the Act, as it then read, raised a reasonable apprehension of institutional bias. On June 4, 1997, the Tribunal dismissed this objection.

Bell sought judicial review of the Tribunal's ruling in the Federal Court Trial Division. On March 23, 1998, the Court granted the application for judicial review, holding that the structure of the Act did not provide sufficient security of tenure and financial security for the members as to permit a fair hearing. It prohibited the case from proceeding until legislative changes had corrected these problems. The Complainants, Canadian Telephone Employees' Association and Communications Energy and Paperworkers Union of Canada and Femmes-Action appealed the Trial Division decision to the Court of Appeal.

Update

On June 1, 1999, the Court of Appeal adjourned the appeal *sine die*. The Court noted that, subsequent to the Trial Division decision, Parliament had passed amendments to the Act. Further, a second panel of the Tribunal had been assigned to the case. Finally, Bell had challenged the independence of the second panel on the ground that the problems identified by the Trial Division had not been cured by the legislative amendments.

In view of the above developments the Court thought it unwise to deal with the appeal. Making a finding on the Act as it read prior to the amendments would still leave the controversy surrounding the new Act unresolved. Given that the new Act was about to be litigated before the Trial Division, a decision from the Court of Appeal dealing with the old Act would not accelerate the resolution of the complaints. The Court remained willing to revive the appeal in the future at the request of some or all of the parties.

Payzant v. *McAleer, Vaccaro, CLN* (Marceau, Noël, Sexton) Jun 08, 1999

Date of original Tribunal decision: 27/01/1994

Date of Federal Court Trial Division ruling: 06/02/1996

Date of Federal Court Appeal Division ruling: 08/06/1999

Background

On January 27, 1994, the Tribunal rendered a decision in a complaint alleging that the Respondents Tony McAleer, Harry Vaccaro and Canadian Liberty Net had telephonically communicated material that would expose gays and lesbians to hatred or contempt. The Tribunal upheld the complaint and ordered the Respondents to cease the communications in question. The Respondents challenged this decision in the Federal Court Trial Division. On February 6, 1996, the Trial Division dismissed the application for review, holding in part that sexual orientation as a prohibited ground of discrimination was not unconstitutionally vague, as the Respondents had argued. It also held that the hate communications provision of the Act did not place an unconstitutional limit on freedom of expression. The Respondents appealed the Trial Division decision.

Update

On June 8, 1999, the Federal Court of Appeal dismissed the appeal. The Court was in substantial agreement with the decision of the Trial Division. It held that the Supreme Court has settled the question of whether the hate message provision of the Act was constitutional. It also rejected the vagueness argument: prohibiting discriminatory communications regarding sexual orientation could never extend so far as to prohibit speech condemning paedophilia.

PSAC v. *Treasury Board* (Evans) Oct 19, 1999

Date of original Tribunal decision:
29/07/1998

Date of Federal Court ruling:
19/10/1999

Background

On July 29, 1998, the Tribunal hearing the pay equity complaint against the Treasury Board issued a decision substantiating the complaint. The Tribunal found that a wage gap existed between the Complainant, female-dominated occupational groups, and male comparison groups doing work of equal value. The Treasury Board sought judicial review of this decision in the Federal Court Trial Division. It argued that the Tribunal had failed to (1) measure wage differences that were truly based on sex, (2) compare work of equal value, and (3) compare the Complainants to male occupational groups.

Update

On October 19, 1999, the Federal Court dismissed the application. The Court found that the Tribunal's methodology revealed no reviewable error. It identified and measured a wage differential that would take into account the fact that women are under-represented among employees who are performing more highly valued work, for which the remuneration increases more rapidly than the value of the work. Second, it rightly refused to confine its comparison to the wages of the *lowest* paid male employees. Third, the Tribunal rightly refused to base its comparison on occupational groups, since such groups are of a limited utility as a basis for setting salaries in general and for pay equity exercises in particular.

In their arguments before the Federal Court, counsel for the Respondent reminded the Court that, according to the Supreme Court of Canada, rulings of human rights tribunals on legal questions were not to be accorded a high degree of deference. However, in its decision the Court noted that the Tribunal had held more than 250 days of hearings, many of them resembling educational seminars. It also noted that the members of the Tribunal had studied volumes of documentary evidence and lived with this case for seven years. The Court concluded that it was "reasonable to infer … that the members of the Tribunal were likely to have a better grasp on the problems of operationalizing the principle of pay equity in the federal public service than a judge would probably be able to acquire in the course of even an eight-and-a-half-day hearing of an application for judicial review."

Goyette v. *Syndicat des employé(e)s de terminus Voyageur Colonial* (Pinard) Nov 05, 1999

Date of original Tribunal decision: 14/10/1997

Date of Federal Court ruling: 05/11/1999

Background

On October 14, 1997, a Tribunal upheld a complaint against the Union of Voyageur Terminal Employees by Mme. Lise Goyette. The Tribunal found that the Union, by negotiated departmental seniority clauses in the collective agreement, had created a situation of systemic discrimination whereby women were prevented from accumulating enough seniority to be promoted permanently from less advantageous female-dominated positions to the more desirable male-dominated positions. The Union sought judicial review in the Federal Court of Canada.

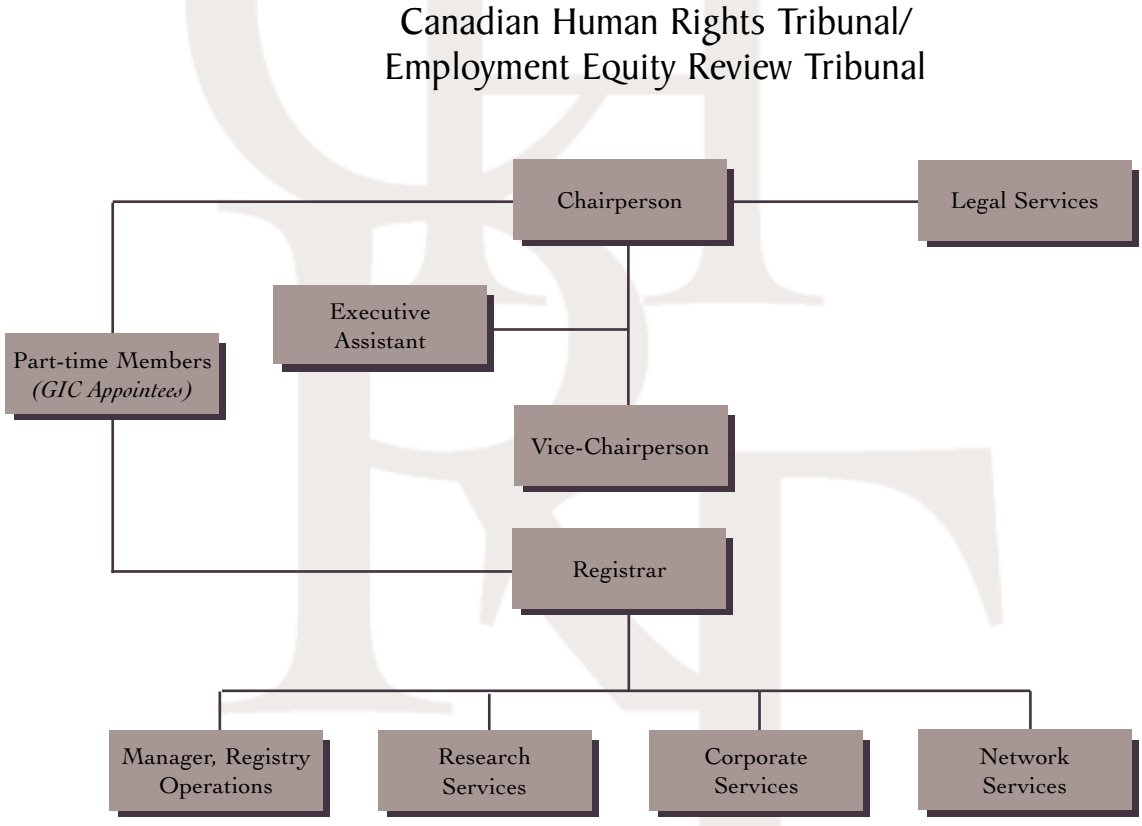
Update

On November 5, 1999, the Federal Court Trial Division upheld the Tribunal's decision. The Court found that there was evidence in the record to support the Tribunal's findings of fact. It also found that there was no legal impediment to holding a Union solely liable for an act of discrimination it had committed, without making findings against the employer. The Court further found that the Tribunal did not err by ordering the Union to repay the Complainant's lost wages, even though employers are usually responsible for paying an employee's wages.

The union has appealed the Trial Division decision to the Federal Court of Appeal.

Appendix I

Organization Chart



Appendix 2

An Overview of the Hearings Process

The roles of the Canadian Human Rights Tribunal and the Canadian Human Rights Commission (CHRC) have parallels in the criminal justice system. Like the police, the Commission receives and investigates complaints. Some of these turn out to be unfounded. But when the Commission believes that further inquiry is warranted and an agreement cannot be reached through conciliation, it refers the case to the Tribunal, which acts as the judge. The Commission then takes on the role of Crown attorney and argues the case before the Tribunal on behalf of the public interest.

The Tribunal may only inquire into complaints referred to it by the Commission, usually after the Commission has conducted an investigation. The Commission resolves most cases without the Tribunal's intervention. On average, only six percent of complaints received by the Commission make their way to the Tribunal. These generally involve complicated legal issues, new human rights issues, unexplored areas of discrimination or multifaceted evidentiary disputes that must be heard under oath.

Referral by the CHRC

To refer a case to the Tribunal, the Chief Commissioner of the CHRC sends a letter to the Chairperson of the Tribunal asking the Chairperson to establish a panel to inquire into the complaint. The Tribunal receives only the complaint form and the addresses of the parties.

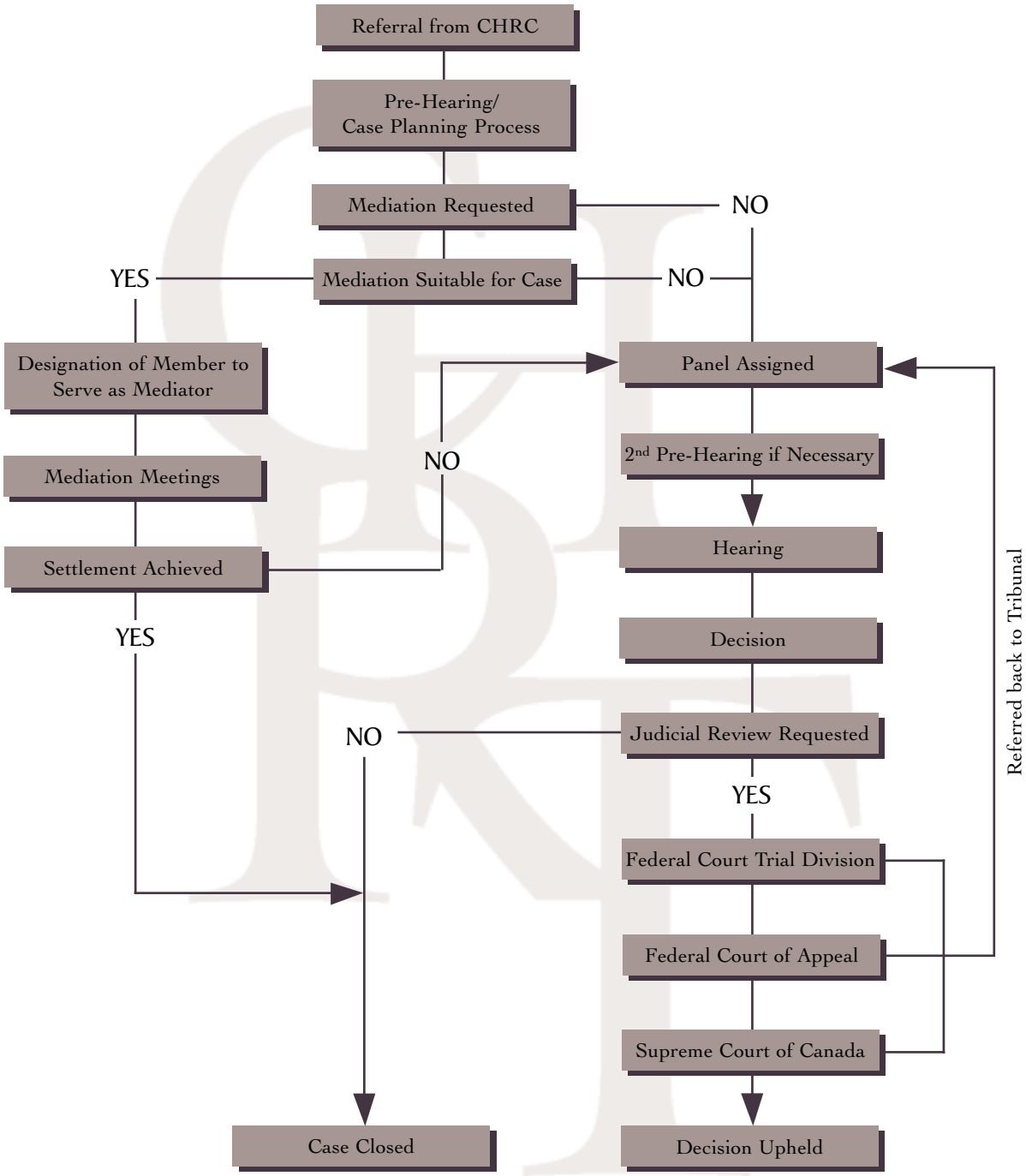
Within three to six weeks of the request, a member of the Tribunal (normally the Chairperson or Vice-Chairperson) will confer with the parties to plan the hearing and discuss administrative matters.

Mediation

If the Registry considers a case suited to mediation and the parties request it, the Chairperson designates a member of the Tribunal to serve as a mediator. This person will work with the parties to determine if it is possible to settle the complaint. The mediator meets with the parties in a face-to-face, open and cordial environment to determine whether common ground exists to reach a settlement. If a settlement is not achieved, the complaint proceeds to a full hearing. If a settlement is achieved, the Tribunal's involvement with the case is concluded. Even if the parties ask for mediation, the Tribunal schedules hearing dates to ensure that the case proceeds without delay should mediation not succeed. Mediation must take place in advance of the scheduled hearing dates.

Hearing

If mediation does not resolve the complaint, the matter proceeds to a hearing. The Chairperson assigns one or three members from the Tribunal as a panel to hear and decide the case. A person designated as a mediator on a case will not be appointed to the panel that ultimately hears and decides the merits of the complaint. If required, additional pre-hearings may be held to consider preliminary issues, which may relate to jurisdictional, procedural or evidentiary matters. Hearings are open to the public.



Note: The normal process may be varied to meet the needs of a particular case.

During the hearing, all parties are given ample opportunity to present their case. This includes the presentation of evidence and legal arguments. In the majority of cases, the Commission leads evidence and presents arguments before the Tribunal to prove that the Respondent named in the complaint has contravened the statute. All witnesses are subject to cross-examination from the opposing side. The average hearing lasts from 12 to 15 days. Hearings are normally held in the city or town where the complaint originated.

The panel sits in judgment, deciding the case impartially. Hearing the evidence and interpreting the law, the panel determines whether a discriminatory practice has occurred within the meaning of the CHRA. 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 three to 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 to the Trial Division of the Federal Court of Canada. The Trial Division holds a hearing with the parties to hear legal arguments on the correctness 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 rejecting the Tribunal's decision or referring the case back to the Tribunal for reconsideration based on 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 Trial Division judge. The parties once again present legal arguments, this time before three judges. The Court of Appeal reviews the Trial Division'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 national 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

Anne L. Mactavish

Chairperson

A member of the former Human Rights Tribunal Panel since 1992, Anne Mactavish was appointed acting President of the Panel in 1995 and President in 1996. During her years of legal practice in Ottawa, she specialized in civil litigation related to employment and commercial and health matters. A past president of the Carleton County Law Association, Ms. Mactavish has taught employment law at the University of Ottawa, as well as legal ethics and trial advocacy at the Bar Admission Course sponsored by the Law Society of Upper Canada.

Grant Sinclair, Q.C.

Vice-Chairperson

A member of the former Human Rights Tribunal Panel from 1989 to 1997, Grant Sinclair was appointed Vice-Chairperson of the Canadian Human Rights Tribunal in 1998. Mr. Sinclair has taught constitutional law, human rights and administrative law at Queen's University and Osgoode Hall, and 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.

Guy Chicoine, Q.C.

Saskatchewan

Guy Chicoine joined the former Human Rights Tribunal Panel in 1995 and was appointed in 1998 to a three-year term as a part-time member of the Canadian Human Rights Tribunal. Called to the Bar of Saskatchewan in 1980, Mr. Chicoine is a partner in the firm of Chicoine, Billesberger and Grimsrud, where he practises general law, with an emphasis on real estate law, commercial law, estate law, and matrimonial, civil and criminal litigation.

Shirish Chotalia

Alberta

Shirish Chotalia obtained an LL.B from the University of Alberta in 1986 and an LL.M from the same university in 1991. She was admitted to the Bar of Alberta in 1987 and practises constitutional law, human rights law and civil litigation with the firm Pundit & Chotalia in Edmonton, Alberta. A member of the Alberta Human Rights Commission from 1989 to 1993, Ms. Chotalia was appointed to the Tribunal as a part-time member in December 1998. She is also the author of the annual *Annotated Canadian Human Rights Act.*

Pierre Deschamps

Quebec

Pierre Deschamps graduated from McGill University with a BCL in 1975 after obtaining a Bachelor of Arts in theology at the University of Montréal in 1972. He is an assistant professor at the Faculty of Law of 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.

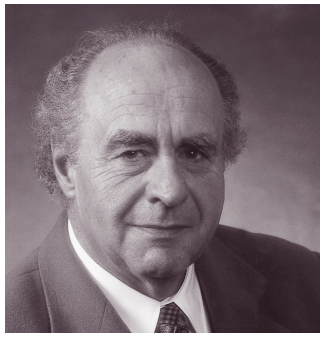
Reva Devins

Ontario

Reva Devins joined the former Human Rights Tribunal Panel in 1995 and was appointed in 1998 to a three-year term as a part-time member of the Canadian Human Rights Tribunal. Admitted to the Ontario Bar in 1985, she served as a Commissioner of the Ontario Human Rights Commission from 1987 to 1993 and as Acting Vice-Chair of the Commission in her final year of appointment.

Roger Doyon

Quebec



Roger Doyon served as a member of the former Human Rights Tribunal Panel from 1989 to 1997 and was appointed in 1998 to a three-year term as a part-time member of the Canadian Human Rights Tribunal. A partner in the law firm of Parent, Doyon & Rancourt, he specializes in civil liability law and the negotiation, conciliation and arbitration of labour disputes. Mr. Doyon also taught corporate law at the college level and in adult education programs from 1969 to 1995.

Sandra Goldstein

Ontario

Ms. Goldstein was appointed to a three-year term as a part-time member of the Tribunal in 1999. Educated in Toronto, she has a background in social sciences, philosophy and health sciences. Ms. Goldstein has sat on several education boards and committees, and negotiated 10 collective agreements with academic and administrative staff. Between 1992 and 1998, she served as Chief Conciliator at the CHRC, Pay and Employment Equity Directorate. She now runs a management consulting firm providing advice on human rights and pay and employment equity.

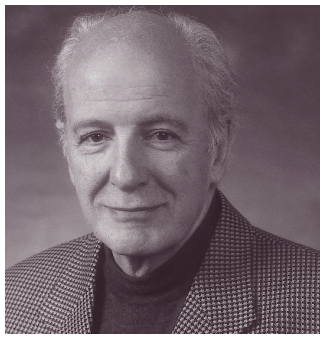
Athanasios Hadjis

Quebec

Athanasios Hadjis obtained degrees in civil law and common law from McGill University in 1986 and was called to the Quebec Bar in 1987. Since then, he has practised law in Montréal at the law firm of Hadjis & Feng, specializing in civil, commercial, corporate and administrative law. A member of the former Human Rights Tribunal Panel from 1995 to 1998, Mr. Hadjis was appointed in 1998 to a three-year term as a part-time member of the Canadian Human Rights Tribunal.

Claude Pensa, Q.C.

Ontario



Claude Pensa joined the former Human Rights Tribunal Panel in 1995 and was appointed to a three-year term as a part-time member of the Canadian Human Rights Tribunal in 1998. Called to the Ontario Bar in 1956 and appointed Queen's Counsel in 1976, Mr. Pensa is a senior partner in the London, Ontario, law firm of Harrison Pensa.

Eve Roberts, Q.C.

Newfoundland

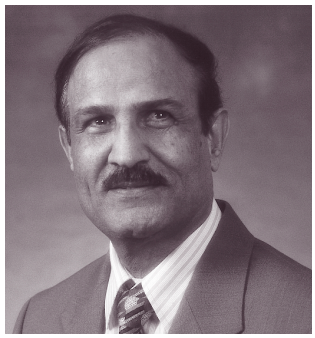
A member of the former Human Rights Tribunal Panel from 1995 to 1997, Eve Roberts was appointed to a three-year term as a part-time member of the Canadian Human Rights Tribunal in 1998. Mrs. Roberts was called to the Bar of Alberta in 1965 and to the Bar of Newfoundland in 1981. A partner in the St. John's, Newfoundland, law firm of Patterson Palmer Hunt Murphy until she retired in 1997, Mrs. Roberts also served as Chair of the Newfoundland and Labrador Human Rights Commission from 1989 to 1994.

Nicholas Sibbeston

Northwest Territories

Nicholas Sibbeston was a member of the Northwest Territories Legislative Assembly for four terms. Since his retirement from politics in 1991, he has worked as a justice specialist for the Government of the Northwest Territories, assisting Aboriginal communities in establishing their own justice systems. Mr. Sibbeston served as a member of the former Human Rights Tribunal Panel from 1996 to 1998 and was appointed in 1999 to a three-year term as a part-time member of the Canadian Human Rights Tribunal. Later that year he was appointed to the Senate and resigned from the Tribunal.

Mukhtyar Tomar



Nova Scotia

Mukhtyar Tomar joined the former Human Rights Tribunal Panel in 1995 and was appointed to a three-year term as a part-time member of the Canadian Human Rights Tribunal in 1998. Graduating with an LL.B and an M.A. in history from the University of Rajasthan in Jaipur, India, Mr. Tomar immigrated to Canada in 1968, where he taught junior high school in Dartmouth, Nova Scotia, for 19 years and served on the Nova Scotia Human Rights Commission until 1999.

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
Michael Glynn

Manager, Registry Operations
Gwen Zappa

Legal Advisor
Greg Miller

Executive Assistant
Monique Groulx

Registry Officers
Diane Desormeaux
Bernard Fournier
Holly Lemoine

Registry Officers — Equal Pay
Roch Levac
Carol Ann Middleton

Network and Systems Administrator
Julie Sibbald

Research Assistant — Equal Pay
Nicola Hamer

Hearings Assistant
Stéphanie Choquette

Data Entry Assistant
Nicole Bacon

Administrative Assistants
Cathy Deschambault
Thérèse Roy