

Canadian Human Rights Tribunal

2003 2004 Estimates

Part III Report on Plans and Priorities

Minister of Justice

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Section 1: Messages

1.1 Chairperson s Message

For a second year, the Canadian Human Rights Commission referred a great many more cases to the Tribunal for hearing than it had in the past. There was also a continuation in the rate of settlement from last year. Last-minute settlements continue to pose significant challenges for the Tribunal as it endeavours to ensure that resources are allocated efficiently and cost-effectively. The appointment of two additional full-time members has proven to be of invaluable assistance in this regard.

It appears unlikely that we will see any move in the near future to implement the recommendations of the *Canadian Human Rights Act* Review Panel. The Tribunal has nevertheless initiated an examination of how to significantly expedite the complaints process.

The question of the Tribunal s independence and impartiality remains an ongoing concern. The Federal Court of Appeal s finding that the Tribunal enjoys sufficient independence from both the government and the Canadian Human Rights Commission to allow it to provide Canadians with fair and impartial hearings was appealed to the Supreme Court of Canada and heard in January 2003. We hope that 2003 will bring a final resolution to the independence issue.

The ultimate outcome of Bell Canada s challenge is unknown. Until the Supreme Court settles this issue definitively, the Tribunal will continue to operate in an atmosphere of uncertainty – uncertainty that serves only to undermine the Tribunal s credibility and does nothing to enhance public confidence in the institution.

I have said repeatedly that Canadians are entitled to have their human rights cases heard by an independent and impartial Tribunal. The only way to resolve the concerns with respect to the institutional independence and impartiality of the Tribunal quickly, and with certainty, is through legislative action.

Anne L. Mactavish

1.2 Management Representation

MANAGEMENT REPRESENTATION STATEMENT

I submit, for tabling in Parliament, the 2003-2004 Report on Plans and Priorities (RPP) for the Canadian Human Rights Tribunal.

This document has been prepared based on the reporting principles and disclosure requirements contained in the *Guide to the preparation of the 2003-2004 Report on Plans and Priorities*:

- " It accurately portrays the organization's plans and priorities.
- " The planned spending information in this document is consistent with the directions provided in the Minister of Finance's Budget and by TBS.
- " It is comprehensive and accurate.
- " It is based on sound underlying departmental information and management systems.

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

Name: _____

Date: February 24, 2003

Tribunal is to decipher the positions of the parties and establish fair and appropriate rules to resolve the dispute.

The Tribunal may only inquire into complaints referred to it by the Canadian Human Rights Commission, usually after a full investigation by the Commission. The Commission resolves most cases without the Tribunal's intervention. Cases referred to the Tribunal generally involve complicated legal issues, new human rights issues, unexplored areas of discrimination, or multifaceted evidentiary complaints that we must hear under oath, especially in cases with conflicting evidence, where issues of credibility are central.

The Tribunal is not an advocate for the CHRA; that is the role of the Commission. The Tribunal has a statutory mandate to apply the Act based solely on the evidence presented and on current case law. If there is no evidence to support the allegation, then the Tribunal must dismiss the complaint.

The Tribunal considers matters concerning employment or the provision of goods, services, facilities or accommodation. The CHRA makes it an offence for anyone to discriminate against any individual or group on the grounds of:

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

The Tribunal's jurisdiction covers matters that come within the legislative authority of the Parliament of Canada, including those concerning federal government departments and agencies, as well as banks, airlines and other federally regulated employers and providers of goods, services, facilities and accommodation.

In 1996, with the proclamation of the EEA, Parliament expanded the Tribunal's responsibilities. In addition to acting as the Canadian Human Rights Tribunal, the Tribunal also serves as the Employment Equity Review Tribunal (EERT). In employment equity matters, the EEA applies to federal government personnel employed by Treasury Board and federally regulated private sector employers with more than 100 employees.

Since 2000, the EERT has received seven applications for a hearing: five applications from employers and two from the Canadian Human Rights Commission. To date, no hearings have been held because, in all seven instances, the parties were successful in resolving the issue without one.

While the Tribunal is authorized to issue rules of procedure for the operation of the new EERT, we have delayed issuing formal rules until a few hearings have concluded to provide us with a better understanding of the process, the needs of the parties and how the Tribunal should operate. In the interim, the Tribunal has issued a *Guide to the Operations of the Employment Equity Review Tribunal* (available at <http://www.chrt-tcdp.gc.ca/about/download/equity-e.asp>) to help the parties prepare for their hearing. To date, this introductory guide appears to meet the immediate needs of the parties. Feedback on this document and the Tribunal's other public documents is strongly encouraged.

Section 3: Planning Overview and Strategic Plan

3.1 What's New

Pay Equity Cases

In 2002, there were some notable changes to the Tribunal's three major pay equity cases – *Public Service Alliance of Canada (PSAC) v. Canada Post Corporation*, *Public Service Alliance of Canada (PSAC) v. the Government of the Northwest Territories*, and *Canadian Telephone Employees Association (CTEA) et al. v. Bell Canada*. Each case has contributed significantly to the Tribunal's caseload, consuming much time and resources. The Federal Court decision in November 2000 temporarily halted the hearings in the *Canada Post* and *Bell Canada* cases. Both resumed after the Federal Court of Appeal set aside that decision in May 2001.

PSAC v. Canada Post Corporation is the Tribunal's longest-running case, in hearings since 1993. The presentation of evidence was completed in July 2002 and the 26 hearing days in 2002 brought the 10-year total to 400 days. Oral submissions, the next phase of the case, are expected to begin in the spring of 2003, followed by the final decision, likely by the end of the fiscal year.

Hearings resumed in *CTEA et al. v. Bell Canada* in September 2001. However, one of the complainants, the Canadian Telephone Employees Association, settled its complaint with Bell Canada and withdrew it on October 22, 2002. The complaints of Femmes-Action and the Communications, Energy and Paperworkers Union of Canada remained, and further hearing days have been scheduled for 2003. Depending on the Supreme Court's decision in Bell Canada's appeal, heard in January 2003, hearings could proceed for a further two to three years. There were 46 hearing days in 2002, for a total of 123.

PSAC v. Government of the Northwest Territories had three days of hearings in 2002. The parties reached a settlement in June after lengthy negotiations. The Tribunal issued a consent order confirming the settlement on June 25, 2002, and adjourned the hearing. The total number of hearing days for this case was 106. No further proceedings are expected.

3.2 Major Challenges and Risks

Issues of concern facing the Tribunal in 2003–2004 include:

1. Supreme Court decision on the Tribunal's independence
2. Amendments to the CHRA
3. Workload issues
4. Disability cases
5. Tribunal management

1. Supreme Court Decision on the Tribunal's Institutional Independence

In May 2001 the Federal Court of Appeal reversed a Trial Division decision that ruled in November 2000 that two sections of the CHRA compromised the Tribunal's institutional independence and impartiality. In response to an application for judicial review of an interim decision of the Tribunal, the Federal Court had ruled that the Tribunal was precluded from making an independent judgement in any class of cases in which interpretive guidelines issued by the Canadian Human Rights Commission bound it. In the opinion of the Trial Division justice, Madam Justice Tremblay-Lamer, the fact that the Commission has the power to issue such guidelines gives it a special status that no other party appearing before the Tribunal enjoys, enabling it to put improper pressure on the Tribunal as to the outcome of the decision in a class of cases. She found that the Commission's power to issue binding guidelines interpreting the CHRA fettered the Tribunal's decision-making power.

In addition, Madam Justice Tremblay-Lamer found that a second provision of the CHRA compromised the institutional independence of the Tribunal. Under subsection 48.2(2), the Tribunal Chairperson has the power to extend the term of appointment of a Tribunal member whose term expires during the course of a hearing over which he or she is presiding. The principle of institutional independence requires that a tribunal be structured to ensure that the members are independent, said Justice Tremblay-Lamer.

The Federal Court of Appeal did not agree with these findings. It concluded that the independence of the Tribunal was not in question and that the Tribunal could continue to fully function under the existing provisions of the CHRA.

The Federal Court of Appeal set aside the decision of Madam Justice Tremblay-Lamer, noting that the Tribunal did not wield punitive powers, that no constitutional challenge had been made to the statute and that any guidelines passed by the Commission were subject to Parliamentary scrutiny. The Court also noted that the 1998 amendments to the CHRA reduced the Commission's guideline-issuing power, limiting it to guidelines binding on the Tribunal in a class of cases, rather than in a particular case. In the Court's view, the modified legislation is less likely to give rise to a reasonable apprehension of institutional bias.

With respect to the power of the Chairperson to extend the term of any member of the Tribunal whose appointment had expired during an inquiry until that inquiry had concluded, the Court found that this power was not fatal to the institutional independence of the Tribunal. It found that the position of Chairperson was sufficiently insulated from the government, noting that the Chairperson cannot be capriciously removed from office because of decisions made in the administration and operation of the Tribunal. Additionally, if the Chairperson were to abuse power in extending or refusing to extend the appointment of a Tribunal member for reasons wholly extraneous to the proper

administration of the Tribunal, such a decision would be subject to review pursuant to section 18.1 of the *Federal Court Act*. Finally, the Court reiterated that the Tribunal's powers are remedial, not punitive, and thus the requirements of fairness are less stringent.

In 2002, the Supreme Court of Canada granted Bell Canada leave to appeal the decision of the Federal Court of Appeal. The Court heard Bell's appeal on January 24, 2003. It is unlikely that there will be a final decision from the Court for at least nine months. Until the issue is definitively resolved by the Supreme Court, the Tribunal will continue to operate in an atmosphere of uncertainty. This uncertainty undermines the credibility of the Tribunal and does nothing to enhance public confidence in the institution. This uncertainty also continues to prompt an endless stream of jurisdictional challenges from respondents wishing to preserve their right to appeal future decisions of the Tribunal should the Supreme Court reverse the Court of Appeal's judgement.

The Tribunal is of the view that legislative action is the only way to definitively and expeditiously resolve concerns about the institutional independence and impartiality of the Tribunal.

2. Amendments to the CHRA

In June 2000, the *Canadian Human Rights Act* Review Panel delivered its report entitled *Promoting Equality: A New Vision*. Chaired by former Supreme Court Justice the Honourable Gérard La Forest, the Panel made several recommendations intended to bring the legislation into step with contemporary concepts of human rights and equality and to modernize Canada's process for resolving human rights disputes. In particular, the Panel recommended substantial changes aimed at allowing greater access by Canadians to an adjudicative process in the resolution of human rights disputes. The Panel recommended that the Act enable claimants to bring their cases directly to the Tribunal with public legal assistance. In the proposed system, the Canadian Human Rights Commission would cease to investigate complaints, eliminating potential institutional conflicts between the Commission's role as decision maker and advocate. Both the initial screening of claimants and the investigation phase, currently conducted by the Commission, would instead be undertaken by the Tribunal, and the Commission would cease to be a gatekeeper between complainants and the Tribunal.

The impact of such a profound change in process could be significant for the Tribunal. It would increase the Tribunal's caseload from its current 60 to 80 new cases a year to as many as 600 cases a year. Such a dramatic increase in workload would necessitate a larger Tribunal, one with more members and a greater research and administrative capacity. The Tribunal would also have to develop new methods of operation, including a new system of case management. Much work has been done over the last year to prepare for the implementation of the recommendations of the *Canadian Human Rights Act* Review Panel. In May 2002, the Minister of Justice indicated that he planned to have amendments to the CHRA introduced in the fall of 2002. This has not happened. The

Tribunal is prepared to move forward with a new system whenever amendments are brought forward and receive the approval of Parliament.

3. Workload Issues

As shown in Table 3.1, 55 cases were referred to the Tribunal in 2002, down moderately from the 87 new cases referred in 2001. By contrast, between 1996 and 1999, there were less than two-fifths as many new referrals annually – only 25 new cases per year on average.

The Commission has informed us that 2003 is likely to see a return to 2001 referral levels, with perhaps more than 100 new cases arriving at the Tribunal for adjudication. If this happens, the Tribunal will be hard pressed to meet its performance targets. In the first two weeks of January 2003, 11 new cases were referred. The Tribunal has developed contingency strategies to handle some of the additional work, but we hesitate to seek additional resources from Treasury Board. There are two important reasons for our hesitation: 1) The Commission had predicted 100 new cases for 2002, but only 55 cases materialized; and 2), the current high rate of case settlement means that fewer resources, especially financial, are needed by the Tribunal to maintain its level of service. It would therefore be premature to request additional resources at this time.

If the Commission's predictions prove accurate, we feel confident that we will be able to handle some of the additional workload with current resources, but we are also prepared to submit a justifiable and well-reasoned request for additional resources, including the appointment of new members, should current resources prove insufficient to meet the needs of our clients.

In summary, the Tribunal's fate rests with the Supreme Court and the Department of Justice. The Supreme Court has agreed to decide whether the Tribunal is fair and impartial based on the wording of two sections of the CHRA. The Department of Justice will determine whether the CHRA should be amended as recommended in the La Forest Panel report.

The risks involved in the above three issues are clear: should the Supreme Court rule that either one or both of the sections of the CHRA creates a Tribunal that is *not* impartial or independent, we would be unable to continue to hold hearings or render decisions. The CHRA would be unenforceable. Should the Minister of Justice decide to amend the CHRA in line with the La Forest Panel's recommendations, the Tribunal would be so significantly altered as to constitute a wholly new adjudicative body. If workloads continue to increase, service levels could be affected and more alternatives to existing operations may be needed.

These are interesting times, posing interesting challenges for the Tribunal. Although we have no control over the outcome, we will carry out whatever the results may dictate. The

updating its competency profiles for the three most senior positions. In addition, we continue to make the appropriate representations to the Minister's office in respect of the Governor in Council positions. The Registrar's position will be filled through the normal staffing procedures for the public service. The Tribunal is very committed to ensuring the continuance of the Tribunal's management to protect the integrity and functionality of its mandate.

Section 4: Plans and Priorities by Strategic Outcome

4.1 Summary

The Tribunal's priorities are largely dictated by its straightforward and singular mission:

To provide Canadians with an improved quality of life and an assurance of equal access to the opportunities that exist in our society through the fair-minded and equitable interpretation and enforcement of the *Canadian Human Rights Act* and the *Employment Equity Act*

We will therefore continue to do what we do well: to provide Canadians with a fair and efficient public hearing process through the adjudication of human rights disputes. Tribunal members will provide well-reasoned decisions and, where appropriate, order suitable remedies for those who have suffered from discrimination. The Tribunal's decisions will also provide guidance and direction to employers and service providers on the development of policies and practices that are consistent with respect for human rights.

In addition to its usual business, the Tribunal plans to pursue the following goals:

1. begin hearings within six months of receiving a case referral in 80 percent of cases, and render a final decision within four months of the close of the hearing in 95 percent of cases;
2. undertake initiatives identified in the Tribunal's Modern Comptrollership Capacity Assessment and Action Plan;
3. respond to the results of the survey conducted in 2002 on the quality of services provided to clients;
4. in recognizing our unique mandate we will review and possibly develop and implement a communications strategy to better inform the public of our mandate and purpose; and
5. continue to work, if requested, with the Department of Justice on potential amendments to the CHRA in response to the La Forest report.

4.2 Details

- 1. Begin hearings within six months of receiving a case referral in 80 percent of cases, and render a final decision within four months of the close of the hearing in 95 percent of cases**

Final decisions and interim rulings on human rights issues are the primary outputs of this organization.

The Tribunal's decisions must be (and must be seen to be) independent and impartial, offering a fair process to all parties. Tribunal members base their decisions solely on the merits of individual complaints, the applicable legal principles and the evidence presented at the hearing.

Decisions of the Tribunal give concrete meaning to the CHRA. The Act sets out the parameters that federally regulated employers and service providers must follow related to human rights issues. Decisions are not intended to be punitive but rather remedial, with the purpose of ending discriminatory practices that could adversely affect all Canadians.

In 2002, the Tribunal rendered 12 final judgements and 23 interim rulings (available at www.chrt-tcdp.gc.ca/tribunal/index_e.asp).

In 2002 the Tribunal failed to meet its objective of releasing its decisions within four months of the close of the hearing. The average for the 12 decisions released in 2002 was 4.90 months, which is moderately longer than in 2001. Our full-time members averaged 4.04 months to render their decisions. With full-time members now assigned to most cases, we should be able to meet our stated goal of four months. In fact, we are now of the view that our four-month time frame may be too generous. We are encouraging all members to write their judgements in three months. A client satisfaction survey completed in the fall of 2002 has strengthened our resolve to speed up decision writing; the Tribunal's clients feel that we take too long to issue decisions. Addressing this shortcoming will be a top priority in 2003.

The average time lapse between a case referral and the start of the hearing in 2002 was just over six months. In December 2002, we met with several counsel who regularly appear before the Tribunal to discuss our operating procedures. Counsel was of the view that moving cases forward through the system any more quickly may prove to be a disservice to the parties. It was their view, as counsel, that they required a minimum of four months on average to fully prepare their cases. Consequently, they requested the Tribunal not amend its procedures to schedule hearings any sooner than is currently the practice.

2. Undertake initiatives identified in the Tribunal's Modern Comptrollership Capacity Assessment and Action Plan

In 2002, the Tribunal made the commitment to adhere to modern comptrollership principles. A capacity assessment was conducted in June and an action plan was developed. The assessment is available at www.chrt-tcdp.gc.ca. The capacity assessment provided the Tribunal with an analysis of its strengths and identified areas requiring special attention. The action plan set out the necessary steps for improving management practices and identified three priority areas for action over the next two years:

" development of service standards for each unit/section of the organization;

- " development of a risk management framework; and
- " development of a training and human resources plan for the Tribunal's operations.

The action plan stipulates resource requirements, estimated costs and target timelines for the achievement of each of the priorities identified. Monitoring measures have been put in place to ensure the successful implementation of the action plan. Other elements were identified and are also part of the action plan, but the above-noted priorities are the ones we consider the most immediate.

The Tribunal is also actively involved in a project led by the Small Agencies Administrators' Network for the development of performance measurement standards and evaluation models designed specifically for small agencies. The project, which received Treasury Board financial support in the fall of 2002, is currently under way. The project will generate program evaluation models that are both appropriate to the different types of small agency roles and functions and meet the performance evaluation requirements of Treasury Board's Modern Comptrollership Initiative.

3. Respond to the results of the survey conducted in 2002 on the quality of services provided to clients

A client satisfaction survey administered during the fall of 2002 yielded some encouraging news. Results will be available on the Tribunal's Web site in 2003. The final report analyzing survey results was completed at the beginning of January 2003 and shows an overall client satisfaction level of 73 percent. This finding places the Tribunal among the most responsive private and public sector service providers, based on the survey Citizens First 2000.

The Tribunal will be analyzing the results of the survey and plans to develop a strategy to identify priorities and respond to clients' concerns. The Tribunal is committed to responding to all weaknesses identified in the survey. However, a review of clients' comments revealed that many of their concerns indicate some confusion about the respective functions and roles of the Canadian Human Rights Commission and the Tribunal. We are reviewing these comments very closely with a view to understanding which concerns pertain to the Tribunal and these will be addressed. The Tribunal Registry's foremost objective is to meet the needs of its clients. Service is key to doing our job. We are very pleased with the results of the survey, which demonstrate a general satisfaction with the Tribunal's service. The survey has also provided some clear direction about what we must do better and we intend to respond.

The next phase of the Service Improvement Initiative will be to set service standards based on our clients' priorities and expectations, as well as setting targets to achieve the required level of satisfaction. One of the priorities for action in the capacity assessment (undertaken as part of the Modern Comptrollership Initiative) is to develop service standards for each unit and section of the organization to better respond to our clients

needs. We have therefore decided to integrate new service standards with the overall modernization of our management practices.

4. Review and consider developing and implementing a communications strategy to fully inform the public of our mandate and purpose

The results of the client satisfaction survey, together with recent media reports, brought home the continuing public confusion over the roles of the Commission and the Tribunal. The Tribunal therefore plans to review and consider the appropriateness of developing and implementing in 2003-2004 a communications strategy to better inform the public, the media and, to some extent, the courts, on who we are, what we do, how we do it and what can be expected of us. We will report on this initiative in our next Performance Report.

5. Continue to work, as required, with the Department of Justice on possible amendments to the CHRA in response to the La Forest report

If and when the Department of Justice decides to submit amendments to Parliament on the CHRA, the Tribunal is prepared to work with the department on the development of operational procedures concerning the hearing process.

Section 5: Organization

5.1 Organization and Accountability

The Canadian Human Rights Tribunal consists of two sections: the members of the Tribunal (the adjudicators) and the Registry. The Tribunal currently consists of eleven members appointed by the Governor in Council: the Chairperson and Vice-Chairperson, who by statute must be full-time members, two additional full-time members and seven part-time members. Members' backgrounds vary, but most have legal training and all must have experience, expertise, interest in and sensitivity to human rights issues. The Registry provides full administrative support services to the members and is responsible for planning and organizing the hearing process.

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

Figure 5.1: Tribunal Organization Chart

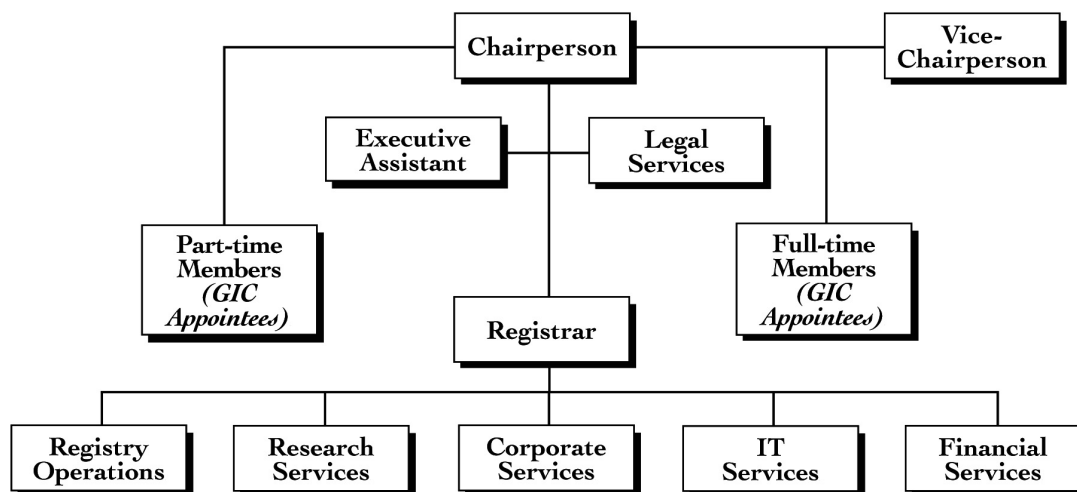
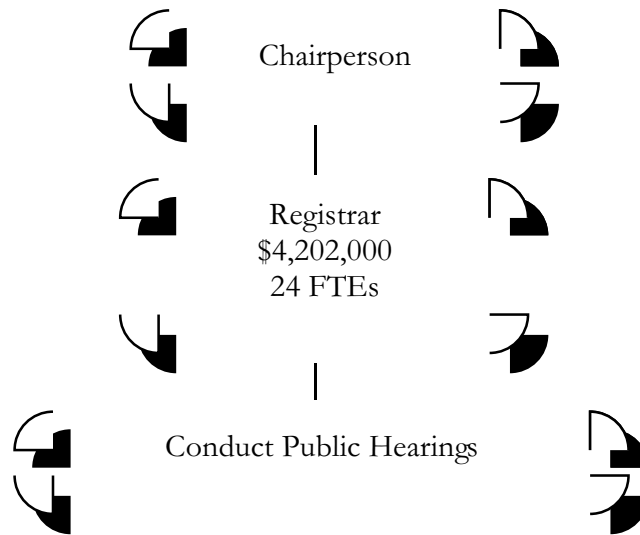


Figure 5.2: Accountability Chart



5.2 Planned Spending

Table 5.1: Planned Spending

(\$ millions)	Forecast Spending		Planned Spending		Planned Spending		Planned Spending	
	2002	2003*	2003	2004	2004	2005	2005	2006
Budgetary Main Estimates (gross)		3.6	4.2		4.2		4.2	
Non-budgetary Main Estimates (gross)								
Less: Respendable Revenue								
Total Main Estimates		3.6	4.2		4.2		4.2	
Adjustments		2.2						
Net Planned Spending		5.8	4.2		4.2		4.2	
Less: Non-respendable Revenue								
Plus: Cost of services received without charge		0.6	0.6		0.6		0.6	
Net Cost of Program		6.4	4.8		4.8		4.8	
Full-time Equivalents		24	24		24		24	

* The decrease in planned spending from 2002-2003 to 2003-2004 and beyond is attributable to the fact that planned spending has not yet been approved for pay equity cases.

Section 6: Annexes

6.1 Financial Information

Table 6.1: Net Cost of Program for the Estimates Year

(\$ millions)	Total
Net Planned Spending (Gross Budgetary and Non-budgetary Main Estimates plus Adjustments)	4.2
<i>Plus: Services Received without Charge</i>	
Accommodation provided by Public Works and Government Services Canada	0.5
Contributions covering employees share of insurance premiums and costs paid by Treasury Board Secretariat	0.1
Workers compensation coverage provided by Human Resources Development Canada	
Salary and associated expenditures of legal services provided by Justice Canada	
	0.6
<i>Less: Non-responsible revenue</i>	
2003 2004 Net Cost of Program	4.8

Calculations: Insurance Plans 7.6% of 1,634,000 = 124,184

6.2 Other Information

Contacts for Further Information and Web Site

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Legislation and Associated Regulations Administered

The Minister of Justice is responsible to Parliament for the following Act:
[Canadian Human Rights Act](#) (R.S. 1985, c. H-6, as amended)

The Minister of Labour is responsible to Parliament for the following Act:
[Employment Equity Act](#) (S.C. 1995, c. 44, as amended)

Statutory Annual Reports and Other Tribunal Reports

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

[Annual Report \(2001\)](#)

[Modern Comptrollership Capacity Assessment Final Report June 2002](#)

[Report on Plans and Priorities \(2002-2003 Estimates\)](#)

[Rules of Procedure](#)