

Competition Tribunal

**1998-99
Estimates**

A Report on Plans and Priorities

John Manley
Minister of Industry

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Section I Minister's Message

A new global economy based on knowledge and innovation is rapidly emerging. Canada has the opportunity to position itself as a world leader in this knowledge-based economy, and the Industry Portfolio plays a key role in the government's strategy to seize this opportunity. Bringing together thirteen departments and agencies responsible for science and technology, regional development, marketplace services and micro-economic policy, the Industry Portfolio is a powerful toolkit to help Canada make a smooth transition to the economy of the 21st Century.

Since the creation of the Industry Portfolio, my priority has been to ensure that the Portfolio focusses on helping Canadian businesses to fulfill their potential to innovate, grow and create jobs. Portfolio members work together and with other partners to narrow Canada's gaps in the areas of innovation, trade, investment, human resources and community economic development, helping to create jobs and wealth in all sectors of the economy and in all regions. In so doing, we are helping Canadian businesses to position themselves at the forefront of the knowledge-based economy.

The Portfolio members' Reports on Plans and Priorities collectively illustrate how the Portfolio is meeting the challenges of the knowledge-based economy through our focus on: promoting innovation through science and technology; encouraging trade and investment; helping small and medium-sized enterprises to grow; promoting economic growth in Canadian communities; improving the coordination of Portfolio communications; realizing the potential of the Portfolio's people; and measuring the Portfolio's performance. The Portfolio is strongly committed to achieving these objectives and has a strong sense of accountability to Canadians for their delivery. We are also committed to measuring the success of our performance and to reporting on our accomplishments in future performance reports.

Working together, we will make a difference to the economic and social fabric of Canada and ensure our success in the global knowledge-based economy.

The Industry Portfolio is ...

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

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

The Honourable John Manley

Management Representation Statement

**MANAGEMENT REPRESENTATION
REPORT ON PLANS AND PRIORITIES 1998-99**

I submit, for tabling in Parliament, the 1998-99 Report on Plans and Priorities (RPP)
for the Registry of the Competition Tribunal.

To the best of my knowledge, the information:

- Accurately portrays the department's mandate, plans, priorities, strategies and expected key results of the organization.
- Is consistent with the disclosure principles contained in the *Guidelines for Preparing a Report on Plans and Priorities*.
- Is comprehensive and accurate.
- Is based on sound underlying departmental information and management systems.
- I am satisfied as to the quality assurance processes and procedures used for the RPP's production.

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

Name: _____

Date: _____

Section II Departmental Overview

Mandate, Roles and Responsibilities

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

Expansion of the Tribunal’s mandate has been under active consideration since June 1995. Bill C-20, *An Act to amend the Competition Act and to make consequential and related amendments to other Acts*, proposes to extend the Tribunal’s jurisdiction to misleading advertising and deceptive marketing practices (see page 10).

The mandate of the Tribunal is strictly adjudicative; it has no function other than that associated with the hearing of applications and issuance of orders. It exercises its adjudicative function at arm’s length from government and its departments. The Director of Investigation and Research, an independent office under the *Competition Act*, who heads the Competition Bureau in Industry Canada, is responsible for the administration and enforcement of the Act. With the minor exception of specialization agreements, only the Director of Investigation and Research can bring applications before the Tribunal. Private parties may apply for the registration of a specialization agreement; to date no such applications have been received.

The *Competition Tribunal Act* also provides for a Registry to provide the administrative infrastructure for the Tribunal to hold its hearings anywhere in Canada as is necessary or desirable for the proper conduct of the Tribunal’s business.

Objectives

- The Tribunal’s objective is to provide a court of record to hear and determine all applications under Part VIII of the *Competition Act* as informally and expeditiously as circumstances and considerations of fairness permit.

- The Registry's objective is to provide efficient, effective registry, research and administrative assistance to the Tribunal for the timely and expeditious conduct of pre-hearing procedures and hearings and issue of decisions.

Organization Composition

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

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

The Registry provides registry, research and administrative support services to the Tribunal. The Registry has been designated a department for the purposes of the *Financial Administration Act*, the Minister of Industry as the appropriate minister, and the Registrar as the deputy head. The organizational structure is illustrated in section IV, table 5.

Operating Context

Although the Tribunal does not receive advance notice of applications, it must be ready to respond in a timely manner to ensure expeditious proceedings in matters that invariably involve significant financial stakes and an impact on private enterprise and industry. As a rule, applications involve multiple litigants represented by counsel, fast-track scheduling and active management by the Tribunal of the progress of pre-hearing procedures towards a hearing date set by order at an early stage. Once the hearing date has been established, the Tribunal does not allow postponement except in the most unusual circumstances.

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

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

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

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

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

Competition Tribunal

Financial Spending Plan

(thousands of dollars)	Forecast Spending 1997-98*	Planned Spending 1998-99	Planned Spending 1999-00	Planned Spending 2000-01
Gross Program Spending:	1,197	1,253	1,253	1,253
Less: Revenue Credited to the Vote	-	-	-	-
Net Program Spending	1,197	1,253	1,253	1,253
Plus: Cost of Services Provided by other Departments	405	405	405	405
Net Cost of the Agency	1,602	1,658	1,658	1,658

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

Section III

Plans, Priorities and Strategies

Summary of Key Plans, Priorities and Strategies

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

The Competition Tribunal and its Registry	
plan to provide Canadians with:	strategies to be demonstrated by:
<p>A court of record to hear and determine as informally and expeditiously as circumstances and considerations of fairness permit:</p> <ul style="list-style-type: none"> • all applications under Part VIII of the <i>Competition Act</i> and • when Bill C-20 comes into force, applications under Part VII.I of the <i>Competition Act</i>. 	<ul style="list-style-type: none"> • Review and, if necessary, amendment of rules of practice and procedure to effect timely disposition of applications. • Active case management of pre-hearing procedures to avoid unwarranted delay. • An efficient administrative infra-structure that effectively exploits economies of shared support services with other agencies.

Details by Business Line

Objective

The objective of the Competition Tribunal program is to provide a court of record to hear and determine all civil reviewable matters set out under Part VIII of the *Competition Act* as informally and expeditiously as circumstances and considerations of fairness permit. This is done through one business line, the Competition Tribunal, and one service line, the Registry of the Competition Tribunal.

Planned Spending

(thousands of dollars)	Forecast Spending 1997-98	Planned Spending 1998-99	Planned Spending 1999-00	Planned Spending 2000-01
Competition Tribunal	1,197	1,253	1,253	1,253
Program Expenditures	1,197	1,253	1,253	1,253

Resource Plans

Human Resources: The Registry's reduced human resource base of 12 employees constitutes the absolute minimum required to provide efficient support in a specialized law and economics milieu to the four judicial members, up to eight lay members, panels, litigants, counsel, media and the public. To provide efficient support services to the Tribunal for hearings outside Ottawa while maintaining a core team for headquarters operations, cost-effective arrangements, such as short-term secondments from the Federal Court regional registries, will be pursued. The proposed expansion of the Tribunal's jurisdiction to include misleading advertising and deceptive marketing practices will require additional human resources.

Financial Resources: As a single program agency supporting a quasi-judicial tribunal, the Registry disposes of very limited discretionary resources. Since the Registry is precluded from eliminating any activities, the strategy to manage within resource limits during the planning cycle will focus on building on cost-effective initiatives, particularly advances in court and information technologies, such as hearing of motions by conference call, and sharing of common services with other departments and agencies.

External Factors Influencing the Business Line

Enforcement: The number of applications brought before the Tribunal depends on the enforcement policy adopted by the Director of Investigation and Research. The Director of Investigation and Research pursues a compliance approach seeking to resolve matters by agreement rather than recourse to the Tribunal or courts. The enforcement capabilities of the Competition Bureau are strained as a result of changes in the business and enforcement environment and budget reductions. While mergers and abuse of dominant position are enforcement priorities, case screening criteria are used to identify enforcement priorities in terms of economic impact and general deterrence value.

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

Legislative Interpretation: During the first decade since its establishment in 1986, court challenges regarding the enforceability of key provisions of the *Competition Act* and *Competition Tribunal Act* have impacted on the nature and extent of the Tribunal's workload. Early legal challenges were only settled in 1992 when the Supreme Court of Canada upheld the constitutionality of the Tribunal, the merger provisions of the *Competition Act*, and the power of the Tribunal to enforce its decisions through contempt orders. In 1997, the Supreme Court set a high standard for overruling the Tribunal's decisions on questions

such as “market definition”; since the Tribunal is composed of legal, economic and commercial expertise, its findings on questions of “mixed fact and law” can only be reversed if unreasonable or clearly wrong.

Key Plans and Strategies

- The Tribunal will hear and determine all applications under Part VIII of the *Competition Act* filed by the Director of Investigation and Research, an independent office under the *Competition Act*, or by private parties seeking registration of specialization agreements. The Tribunal will deal with proceedings as informally and expeditiously as circumstances and consideration of fairness permit.
- When Bill C-20, *An Act to amend the Competition Act and to make consequential and related amendments to other Acts*, comes into force, the Tribunal will also hear and dispose of applications brought by the Director of Investigation and Research under Part VII.I of the *Competition Act*, i.e., regarding misleading advertising and deceptive marketing practices. These applications will be heard and decided by a judicial member of the Tribunal sitting alone.
- The Tribunal will review and, if necessary, amend its rules of practice and procedure so that applications under Part VII.I of the *Competition Act* can be dealt with in a timely manner whether heard in Ottawa or elsewhere in Canada.

The Registry will provide an efficient administrative infrastructure to assist the Tribunal in carrying out its mandate and, in particular, will:

- Study proposed amendments to the *Competition Act* and develop an implementation plan to ensure procedural, resource and operational requirements are in place to enable the Tribunal to hear and decide misleading advertising and deceptive marketing applications expeditiously anywhere in Canada when legislation currently before Parliament comes into force. Since the proposed amendments would leave the Director of Investigation and Research a choice to bring applications to either the Tribunal, the Federal Court, Trial Division or a provincial superior court, the impact of the extension of the Tribunal’s jurisdiction on caseload and resources cannot be anticipated with certainty.
- Implement, effective April 1, 1998, memoranda of agreement with the Canadian International Trade Tribunal for information technology services and with the Office of the Commissioner for Federal Judicial Affairs for corporate services, as well as continue the arrangement with Public Works and Government Services Canada for the provision of a fax-on-demand service whereby the public can obtain copies of Tribunal documents at their own cost.

- Re-organize human resources in light of the Tribunal's expanded mandate and the alternative service delivery arrangement for the provision of corporate services.
- Implement changes to the Registry's information technology environment to improve the case management system and the distribution of documents. Medium and longer term recommendations of an information technology audit will be evaluated and implemented to ensure timely and cost effective upgrading of applications and systems.
- Follow up on the recommendations in the information technology audit regarding the inventory of the Registry's informatics holdings and, in consultation with the Treasury Board's Year 2000 project office, timely compliance will be put in place through procurement and re-programming.

Expected Results

The extent to which the performance of the program meets the mandate and objective to provide an expeditious adjudicative process for applications under Part VIII of the *Competition Act*, cannot readily be measured in quantifiable terms. The *Competition Tribunal Rules* set the framework for informal, expeditious proceedings consistent with the requirements of a fair and impartial hearing while still leaving the Tribunal flexibility to respond to the wide range of variables that affect expediency and fairness in a particular case. The Competition Tribunal's "very stringent case management procedures" have been favourably commented upon by the Canadian Bar Association, and have resulted in the timely processing of the highly complex cases brought before the Tribunal.

The Tribunal actively encourages recommendations for revision and improvement of the rules by users, the Director of Investigation and Research and the Canadian Bar Association's National Competition Law Section. A permanent Bar/Tribunal Liaison Committee was established in December 1997. The Committee will provide a regular forum at its twice yearly meetings for discussion of issues of common interest to the Bar and the Tribunal. During 1998 the Committee will explore the need for changes to the Tribunal's rules of practice and procedure in light of the proposed legislative amendments in the area of misleading advertising.

The Registry will maintain a high level of professionalism to provide efficient services to the Tribunal. Outsourcing corporate and informatics services through memoranda of agreement with two other agencies will realize savings in salaries while providing the Registry with access to broad-based expertise.

Sharing of hearing room facilities with other courts and agencies will result in savings and avoid the use of expensive commercial facilities when Tribunal pre-hearing conferences and hearings are held outside Ottawa.

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

The Registry' information technology environment will be Year 2000 compliant.

Section IV
Supplementary Information

Additional Financial Information

Industry

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

Vote	(thousands of dollars)	1998-99 Main Estimates	1997-98 Main Estimates
Competition Tribunal			
45	Program expenditures	1,132	1,160
(S)	Contributions to employee benefit plans	121	98
Total Agency		1,253	1,258

Table 2: Program Resources by Business Line for the Estimates Year

(thousands of dollars)	FTE	Budgetary	
		Operating *	Net Planned Spending
Competition Tribunal	12	1,132	1,132
Total	12	1,132	1,132

* Does not include contributions to employee benefit plans.

Table 3: Departmental Summary of Standard Objects of Expenditure

(thousands of dollars)	Forecast Spending 1997-98	Planned Spending 1998-99	Planned Spending 1999-00	Planned Spending 2000-01
Personnel				
Salaries and Wages	568	578	578	578
Contributions to employee benefit plans	98	121	121	121
	666	699	699	699
Goods and Services				
Transportation and communications	119	100	100	100
Information	95	60	60	60
Professional and special services	246	294	294	294
Rentals	13	20	20	20
Purchased repair and maintenance	8	15	15	15
Utilities, materials and supplies	38	40	40	40
Minor capital	12	25	25	25
Total Operating	531	554	554	554
Total Expenditures	1,197	1,253	1,253	1,253

Table 4: Net Cost of Program for 1998-99

(thousands of dollars)	Competition Tribunal	Total
Gross Planned Spending	1, 253	1, 253
Plus: <i>Services Received without Charge</i>		
Accommodation provided by PWGSC	367	367
Contributions covering employees' share of insurance premiums and costs paid by TBS	38	38
Workman's compensation coverage provided by Human Resources Canada	-	-
Salary and associated costs of legal services provided by Justice Canada	-	-
Net Cost of Program	1,658	1,658
1997-98 Estimated Net Program Cost	1,731	1,731

Table 5: Organization Structure

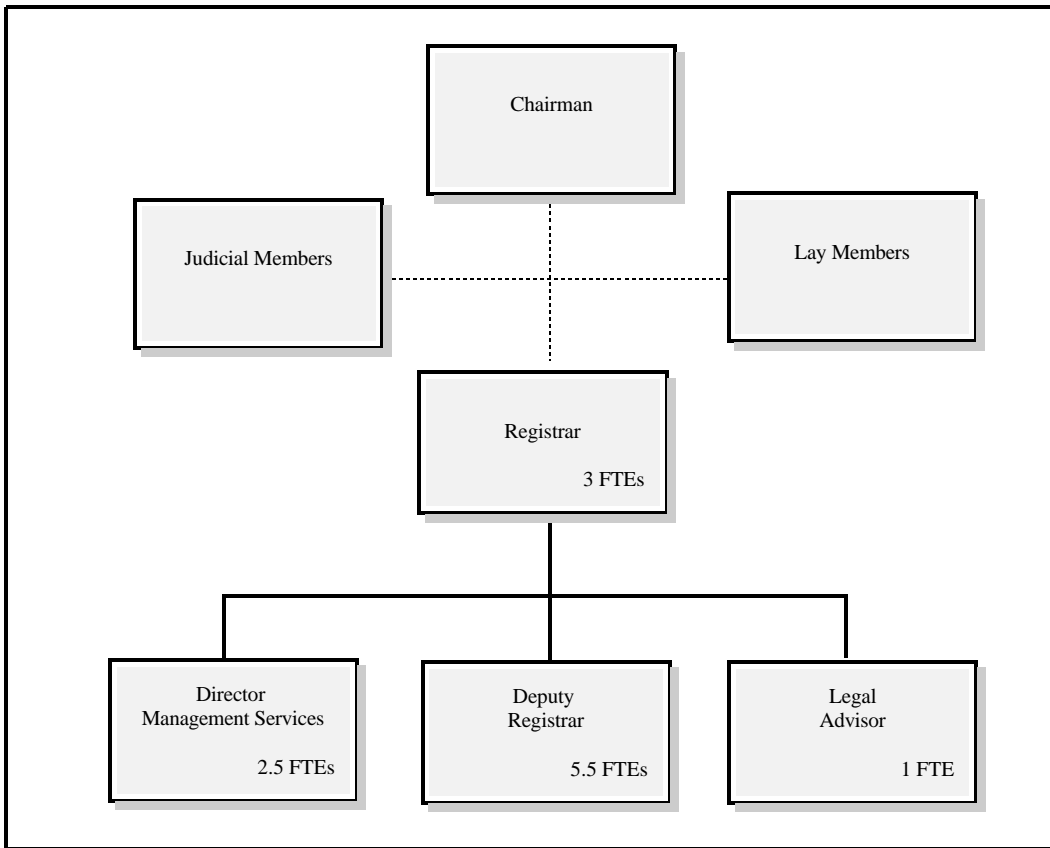


Table 6: Details of FTE Requirements

(thousands of dollars)	Forecast 1997-98	Planned 1998-99	Planned 1999-00	Planned 2000-01
Registry of the Competition Tribunal Salary Ranges				
<30,000	1	1	1	1
30,000 - 40,000	5	5	5	5
40,000 - 50,000	2	2	2	2
50,000 - 60,000	1	1	1	1
60,000 - 70,000	2	2	2	2
70,000 - 80,000	-	-	-	-
>80,000	1	1	1	1
Total	12	12	12	12

Note: The Competition Tribunal members are appointed by the Governor in Council and are not considered FTEs.

Other Information

Table 7: Enabling Legislation and Rules

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

Table 8: References

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