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

Canada

CANADIAN HUMAN RIGHTS TRIBUNAL

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

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

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

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

Message from the Chairperson

The number of complaints referred by the Canadian Human Rights Commission for inquiry by the Tribunal decreased slightly in 2005 from the record highs we experienced in 2003 and 2004.

I remarked last year that one of the significant challenges facing the Tribunal was the number of parties appearing before the Tribunal without legal representation. These complainants are often people of modest means who are unable to afford legal representation. To address this difficulty, the Tribunal implemented a new system of case management in 2005.

At a very early stage in the inquiry process, a teleconference is conducted by a member of the Tribunal with all the parties and/or their counsel. During the teleconference, the member explains the Tribunal's pre-hearing and hearing processes, and what is required from the parties. The member also sets time frames agreed upon by the parties for document and witness disclosure and hearing dates. In addition to explaining the Tribunal's hearing process, case management ensures that complaints are heard and decided within a timely period.

In 2006, the Tribunal will continue to make adjustments to its new case management process. We will also adjust our automated case management system, called the Tribunal Toolkit, which was installed last year to enhance information retrieval efficiency and data integrity. As well, we will complete a revision to the Tribunal's publication '*What Happens Next - Guide to the Tribunal Process*', which is designed to help unrepresented parties better understand the Tribunal process.

Finally, in 2005, the Tribunal saw the appointment of a new vice-chair, a new full-time member and four new part-time members. These new members bring an increased level of diversity to the Tribunal.

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

J. Grant Sinclair

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Canadian Human Rights Tribunal/Annual Report 2005

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The Year in Review

HOW ARE WE DOING?

The Tribunal had a very productive year in 2005. The Tribunal opened 130 and 139 case files in 2003 and 2004, respectively, based on the number of complaints referred by the Canadian Human Rights Commission. This equated to a 200 per cent increase over the Tribunal's previous seven-year average of 44.7 case files opened per year. In 2005, the Tribunal opened 99 new case files. In addition, the Tribunal rendered 11 decisions and 37 rulings in 2005, introduced a new case management approach into the inquiry process and implemented new case management technology.

The Tribunal's mission is to better ensure that Canadians have equal access to the opportunities that exist in our society through fair and equitable adjudication of the human rights cases brought before it. Pursuit of that goal requires that the determination of human rights disputes be made by the Tribunal in a timely, well-reasoned manner that is consistent with the law.

In 2005, the Tribunal continued its focus on these objectives in a climate of record high caseload, where issues continue to be increasingly complex and many parties before the Tribunal are without expert legal assistance. To address these challenges, the Tribunal launched a new case management process. At key stages throughout the pre-hearing process, a tribunal member conducts conference calls with the parties in order to ensure the inquiry process unfolds in an efficient manner and without undue delay. The member helps the parties to understand what they need to do to prepare for the hearing and sets timelines to ensure those obligations are met. Early intervention by an experienced tribunal member also helps the parties to focus on the real issues that need to be addressed to either support or defend against the discrimination complaint. This early intervention by the tribunal member also helps to resolve key preliminary issues that might otherwise result in delays and inefficiencies at the time of hearing.

Anecdotal evidence from the first year of the Tribunal's new case management model suggests that a greater level of efficiency in the inquiry process is now being achieved and that parties are arriving at hearings better informed and prepared. The Tribunal has therefore begun to revise its information publications to reflect this new approach and plans are in place to re-publish our *What Happens Next?* guide in early 2006.

The dramatic increase in cases opened by the Tribunal over the past three years has meant, as well, that the Tribunal is experiencing a volume of document traffic never seen before in its history. With no increase in resources to deal with this challenge, the Tribunal has looked to new technologies to ensure efficiencies are maintained and, wherever possible, improved in processing the heavy flow of documents that form the record upon which tribunal members must adjudicate. In 2005, the Tribunal installed a new case management software to automate document recording and retrieval. By creating a platform for reducing manual document handling, improving information and data retrieval, and assuring record security and integrity, this state of the art technology will open new doors for the Tribunal to serve the parties more effectively.

Tribunal Membership

In late 2004, the Minister appointed the Tribunal's vice-chairperson as chairperson. In 2005, the position of vice-chairperson was filled by the appointment of one of the Tribunal's full-time members. The Minister also made five new appointments in 2005 to bring the Tribunal's complement to a total of four full-time members (including the chairperson and vice-chairperson) and six part-time members, representing various geographical locations across Canada (see Appendix 3).

The Tribunal has taken advantage of case management and scheduling efficiencies begun in 2003 in managing and scheduling cases as a direct result of the continuity of having it's vice-chairperson become chairperson and a full-time member promoted to the position of vice-chairperson. Their established expertise with the Tribunal system, with its inquiry process and with mediations has served to avert the loss of efficiency that likely would have followed the learning curve phenomenon of novitiates to the roles of Tribunal chairperson and vice-chairperson. This continuity has been especially helpful in meeting the continued challenge in 2005 of the Tribunal's heaviest-ever workload. It has been particularly helpful, as well, in assisting new appointees to transition into their new roles and responsibilities as part-time members of the Tribunal.

TABLE 1 New Case Files Opened, 1996 to 2006

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006 (projected)	Totals
Human Rights Tribunals/Panels	15	23	22	37	70	83	55	130	139	99	80	753
Employment Equity Review Tribunals	0	0	0	0	4	4	0	0	2	0	0	10
Totals	15	23	22	37	74	87	55	130	141	99	80	763

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

The Tribunal's Results in 2005

Since January 1998, the Tribunal has been committed to reducing the time to complete a case to 12 months. As vigorous advocacy and the increasing complexity of cases render the inquiry process more time-consuming and expensive, the Tribunal is faced, more than ever before, with the challenge of finding ways and means to enhance efficiencies.

Workload Issues

In 2003 and 2004, 130 and 139 case files, respectively, were opened by the Tribunal, based on complaints referred by the Canadian Human Rights Commission for inquiry. This equates to a 200 per cent increase over the Tribunal's previous seven-year average of 44.7 case files opened per year. Although the number of case files opened by the Tribunal decreased to 99 in 2005, that volume, in addition to the number of case files which remain open from the high number of complaints referred the previous two years, continued to impose a heavy burden on the Tribunal's resources in 2005. Based on projections from the Commission, the Tribunal expects between 70 and 80 new case files will be opened in 2006 (see Table 1).

The Tribunal sat for 296 days in 2003, including 46 days at mediations. This represented a 75 per cent increase in the number of hearing days as compared to 2002. In 2004, the Tribunal sat 298 days, including 57 days of mediation. Beginning in 2005, the Tribunal replaced the practice of fixing hearing dates at the outset of the inquiry process with the more practical approach of fixing hearing dates only after the parties have completed the exchange of documents and determined the issues, evidence and witnesses to either support or defend their cases. Consequently, the number of days the tribunal members sat decreased to 215 days in 2005, including 47 days at mediations. Members also conducted 162 case management conference calls with the parties and/or their representatives.

At date of publication, 147 case files remained actively open. While high, this number does not represent a backlog. Rather, it reflects the complexity of the cases and the unusually high volume of complaint referrals since 2003. When the Tribunal first began holding hearings under the CHRA in 1979, the style of advocacy was markedly different from what it is today. Generally speaking, a panel was appointed to hear a complaint and the inquiry commenced promptly after minimal pre-hearing procedures. The inquiry itself was quite brief (often under a week) and all issues were dealt with at some point during the hearing on the merits.

Much has changed over the past 25 years, most especially so in very recent years, both in terms of litigation before the Tribunal and civil litigation generally. Most observers agree that the tone of hearings has become more adversarial and the hearing process itself fragmented by numerous motions and objections. For example, in 2004, the Tribunal rendered 24 formal rulings on motions, compared to 16 decisions on the merits of complaints. This does not take into account numerous directions and rulings made without written reasons. In 2005, the Tribunal rendered 37 rulings and 11 decisions.

As noted in our last annual report, the Tribunal has attempted to minimize the impact of these disruptions

in a number of ways: (1) where circumstances warrant, tribunal members defer the disposition of motions to the hearing on the merits; (2) where they are heard on a preliminary basis, most motions are only dealt with in writing; (3) the CHRT Rules of Procedure set out clear expectations for disclosure; and (4) the Tribunal's case management system, which was formally implemented in 2005, helps parties identify and resolve disclosure disputes before they fester, and guides them toward a more streamlined and efficient presentation of their case at hearing.

Timeliness of the Hearing Process

Since January 1998, the Tribunal has been committed to reducing the time to complete a case to 12 months, from the date of referral to the release of the decision, in 80 per cent of cases. Cases completed include those that have been either settled, through mediation or otherwise, discontinued or heard and decided by a tribunal member.

The average number of days to complete case files that were opened in 2002 and 2003 was 208 and 235, respectively. The average time to complete case files that were opened in 2004 decreased to 179 days, with over 75 per cent now closed. At time of publication, the average time to complete case files that were opened in 2005 is 86 days, although a significant number of cases remain open.

Most cases are settled without the need for a hearing. For cases requiring a full hearing and decision, the average time to close a case in 2001 was 384 days, with six cases requiring more than one year to finalize. In 2002, the average was reduced to 272 days, none of which exceeded the one-year time frame. In 2003, the average rose to 425 days, with over half requiring more than one year to complete. Of the cases that proceeded beyond the one-year target in 2003, delays incurred were mostly in response to requests from the parties or were the subject of Federal Court proceedings. In 2004, the average time to close a case was reduced again to 371 days, although more than half exceeded the one-year time fame. Statistics on finalizing files that were opened in 2005 are not available at time of publication.

In 2002, the average number of days from referral to first day of hearing was 169. Of the case files opened in 2003 and 2004, that figure rose to 232 and 279 days, respectively. Case files opened in 2005 took an average of 227 days to get to hearing, however many files are still open.

As mentioned in the workload section above, the pre-hearing phase of cases is becoming increasingly litigious, in general. The Tribunal has adopted a case management model, discussed later in this report, to help combat this phenomenon. In addition, the Tribunal has, for the most part, been able to meet dates for hearing that are of earliest convenience to the parties.

Timeliness of Rendering Decisions

Since 1998, the Tribunal has also been committed to reducing the time for rendering decisions to four months, from the last day of hearing, in 90 per cent of cases.

In 2003, decisions took 84 days on average. In 2004, decisions took an average of 121 days. Although only slightly above the four-month target, and only marginally above the preceding seven-year average of 117 days, half of the decisions rendered in 2004 surpassed the Tribunal's target. In 2005, the time to render decisions rose significantly to an average of 191 days, with less than half within the Tribunal's four-month target.

It was noted in last year's report that the dramatic increase of 200 per cent in the number of complaints referred to the Tribunal in 2003 and 2004 was weighing heavily on the workload of tribunal members. Although the number of referrals decreased somewhat in 2005, this certainly remained a factor again last year. In addition, the greater complexity of cases, the vigorous advocacy now being seen at inquiries and the significant amount of time spent by tribunal members participating in case conferences with

the parties (i.e., case management) to resolve pre-hearing issues has impacted heavily on the members' workload. These factors notwithstanding, the Tribunal's goal of continuing to strive for the earliest possible disposition of cases remains a very important objective. We continue also to look toward active case management, discussed in the section below, as a means of helping the parties to better focus on, and thereby reduce, the issues to be decided by the Tribunal at hearing.

Tribunal Settlements and Mediations

The average rate at which cases before the Tribunal have settled since 1997 has been 70 per cent. Settlements reached in 2003 and 2004 were in the 64 per cent range. Of the case files opened in 2005, settlements were achieved at a rate of 25 per cent, however, many files opened in the latter part of last year are still in early stages.

As noted earlier in this report, with the evolution of the law on human rights, issues arising at settlement discussions are becoming increasingly complex. While we are, of course, striving to continue at a high rate of settlement, it is becoming more evident that settlements will not be attainable as readily as in the past.

Settlements reached by parties often occur within two weeks of the scheduled commencement of the hearing. With such little warning of a settlement, the time, effort and resources devoted to plan and organize hearings by Registry staff are still required. As a result, when a settlement is confirmed at the last minute, the Registry is still obliged to pay cancellation fees for professional services and facilities contracted to conduct the hearing.

With the reintroduction of Tribunal mediation services in 2003, settlement discussions now occur much earlier in the process and cases are settled well before the planned start of the hearing. This saves Tribunal staff many hours of work and directly results in financial savings.

Of 130 case files opened in 2003, 57 cases went to mediation conducted by a tribunal member. Of those cases, 73 per cent reached settlement. In 2004, 59 of the 139 case files opened that year were mediated by the

TABLE 2 Average Days to Complete Cases, 1997-2005

	1997	1998	1999	2000	2001	2002	2003	2004	2005
From date of referral from the Canadian Human Rights Commission									
To mediate a case	-	-	-	-	-	-	124	120	100
To settle a case	152	245	232	230	202	150	211	196	86
To first day of hearing	93	280	73	213	293	168	232	279	227
For decision to be released from end of hearing	75	103	128	164	84	89	117	129	-
Average processing time to close case	260	252	272	272	244	208	236	179	86

* Note: There are still many open files from 2005; this will change the averages for that year.

Tribunal, with settlements reached in 59 per cent of those cases. At date of publication, 32 of the 99 case files opened in 2005 went to mediation, of which 70% have settled.

Refer to Table 2 for more information about the average number of days to complete cases from 1997 through 2005.

Case Management

It was remarked in last year's report that the tone of hearings before the Tribunal has become more adversarial and the hearing process more frequently subjected to motions and objections. Although pre-hearing disclosure procedures were developed by the Tribunal to ensure fair and orderly hearings, they were frequently threatened by missed deadlines, adjournment requests and issues vehemently contested between the parties. Hearings on the merits were also longer and more complex than in the past, and parties were sometimes uncertain, or untrained, on how to focus on the issues that require adjudication by the Tribunal. The end result often manifested in additional hearing days, at unnecessary expense to the parties as well as to the Tribunal and the public in general.

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

While the Tribunal is always conscious that care must be taken when imposing constraints, particularly in time, so as not to have the ill-desired effect of exerting undue pressure on the parties involved, it nevertheless sees a more proactive case management approach as one that will benefit the parties through a more balanced and efficient utilization of the resources at their disposal. Although case management has only fully been in place for one year at the Tribunal, anecdotal evidence to date already suggests the intended objectives described above are being achieved.

Provision of Service / Awareness / Information to Parties and the Public

In 2002, the Tribunal published *What Happens Next?*, a guide that explains the entire inquiry process in non-legal language. This was followed in 2004 with a publication of further information clarifying the Tribunal's role and how it conducts its business, as compared to the mandate or service offered by the Commission. The *What Happens Next?* guide was updated in 2004 to explain the mediation process used by the Tribunal. In 2005, we began work on a further revision to reflect the Tribunal's new case management process mentioned earlier.

Both the *What Happens Next?* and *Mediation Procedures* guides are available on the Tribunal Web site at http://www.chrt-tcdp.gc.ca/about/tribunalrules_e.asp.

The Tribunal has received very few complaints about its services. Some concern has been expressed, however, about the availability of complete information on past Tribunal decisions. The Tribunal's Web site was redesigned in 2003 according to the Federal Government On-Line Initiative for "Common Look and Feel". Further enhancements were made to improve access to decisions and rulings, including a more powerful search engine, a decision classification system and the availability of decisions and rulings on date of release (see http://www.chrt-tcdp.gc.ca/tribunal/index_e.asp). In 2005, the Tribunal undertook another review of the decision and rulings data source on its Web site, and we have embarked on a project to implement further service enhancements in 2006.

Cases

Tribunal Decisions Rendered

Virk v. Bell Canada (Ontario) 2005 CHRT 2

The complainant, who was of South Asian descent, was employed by the respondent as a resource associate in the direct marketing centre. He alleged that the respondent discriminated against him by failing to permanently appoint him to a management position due to his national or ethnic origin. He further alleged that he was subjected to a retaliatory dismissal after complaining about this matter. The Tribunal found that the respondent gave the complainant a series of acting manager assignments. It was far from certain that an acting manager would become a permanent manager at the end of any given assignment. The respondent acted reasonably when, at one point, it discontinued the complainant's acting assignment and replaced him with a permanent manager; the permanent manager possessed the required sales experience, was a good fit, and was facing the possibility of lay-off due to downsizing. The Tribunal noted that the complainant's director had not hired a person of South Asian descent as a manager for a number of years, that a list of senior managers was mostly composed of apparently Caucasian names, and that the respondent did not meet the national profile for visible minority representation in management. These facts, however, were not sufficient to give rise to an inference of discrimination in the complainant's case. Moreover, for a period of time, a South Asian permanent manager was put in charge of the project that the complainant had formerly managed. On the issue of retaliation, the Tribunal found that the complainant's eventual lay-off was due to his own failure to adequately pursue his displacement rights; his manager had not misled him in this regard. The complaint was dismissed.

Date of decision:
20/01/2005

Member:
P. Deschamps

Employment:
Bell Canada

Complaint dismissed

Date of decision:
11/02/2005

Member:
S. Chotalia

Employment:
RTL Robinson Enterprises Ltd.

Complaint dismissed

Tweten v. RTL Robinson Enterprises Ltd. 2005 CHRT 8

The complainant was employed as a heavy-duty mechanic with the respondent trucking company. After injuring his back on the job and being off work for several months, the complainant requested light duties from the respondent so that he would be able to return to work. The respondent, in turn, requested that the complainant provide a letter from his doctor outlining his physical and occupational limitations. The complainant never provided such a letter and refused several requests from the respondent to meet and discuss his situation. Subsequently the respondent viewed the complainant as having quit his job and no longer treated him as an employee. The complainant alleged that the respondent differentiated adversely against him, and dismissed him based on his disability. In the Tribunal's view, however, the respondent had not terminated the complainant's employment; rather, the complainant himself, by failing to report to work or communicate about a return to work, and by collecting his tools from the workplace, had brought an end to the employment relationship. The Tribunal also rejected the allegation of adverse differentiation. It found that the respondent had cooperated with the complainant by keeping his position open for him pending his return to work and by assisting him in his application for long-term disability benefits. Further, the respondent repeatedly attempted to meet with the complainant to discuss his return to work. By failing to provide information about his limitations, the complainant breached his duty to facilitate the search for meaningful accommodation. It was not reasonable to expect the respondent to obtain this information from the Workers' Compensation Board. The complaint was dismissed.

Date of decision:
02/03/2005

Member:
P. Groarke

Employment:
S & S Delivery Service Ltd.

Complaint dismissed

Smith v. S & S Delivery Service Ltd. 2005 CHRT 13

The complainant was employed to drive trucks for the respondent. He seriously injured himself on the job and was off work for some time. When he attempted to return to work, the respondent indicated that a new drug policy had been introduced and that the complainant would not be accepted back at work until he took a drug test. After obtaining a negative result on the test, the complainant again sought work, but the respondent did not give him any. The complainant alleged discrimination on the basis of disability, namely perceived drug dependency. The Tribunal dismissed the complaint. It found that the respondent's refusal to continue to employ the complainant was based on personal animosity between the respondent's owner and the complainant. The respondent was not prejudiced against drivers who might have consumed drugs. The respondent was

using the drug test as a ruse or ploy to keep the complainant out of the company, but there was no evidence that the animosity motivating these actions related to a prohibited ground of discrimination. Nor had the complainant demonstrated that he was treated differently because of his membership in an identifiable group; no comparisons had been made. Ultimately, the Tribunal was of the view that the case at-hand was a private dispute between two men who disliked one another, but it did not engage human rights interests.

Kasongo v. Farm Credit Canada 2005 CHRT 24 – Judicial review pending.

Date of decision:
21/06/2005

Member:
M. Doucet

Employment:
Farm Credit Canada

Complaint dismissed

The complainant alleged that the respondent discriminated against him on the basis of race, national or ethnic origin and family status, when it refused to hire him for four different positions. In regard to the first position, that of French as a second language instructor, the Tribunal found that the respondent's initial exclusion from consideration had been caused by his failure to follow the application instructions in the job advertisement. As for the job itself, the complainant placed a close second, and the job only went to the other candidate because one of the interviewers had heard positive feedback about her from former students. No discriminatory rationale had been revealed, and it was not the Tribunal's place to review the merits of the hiring decision. In regard to the position of bilingual communications officer, the Tribunal found that the respondent had provided a reasonable explanation for not giving the complainant the job; his English skills did not meet the requisite standards. In regard to the diversity advisor position, the complainant was unable to establish that he possessed the academic background or experience needed to qualify. Moreover his resume had not been properly submitted. In regard to the translator position, the complainant faired poorly on the written test, and acknowledged that translation was not his specialty. The complaint was dismissed.

Mowat v. Canadian Armed Forces 2005 CHRT 31

Date of decision:
17/08/2005

Member:
G. Sinclair

Employment:
Canadian Armed Forces

Complaint substantiated in part

The complainant alleged that the respondent discriminated against her on the basis of sex, by failing to provide her with a harassment-free workplace, by adversely differentiating against her in employment, and by releasing her from the Forces. The Tribunal found that the complainant had been subjected to sexual comments by a civilian co-worker and that she had clearly indicated that the comments were unwelcome. While comments were only made on three occasions, over a period of three to four months, the Tribunal held that they were very

upsetting to the complainant and created a hostile work environment for her. Furthermore, the respondent had not taken sufficient measures to investigate the harassment upon learning of its occurrence; it failed to follow its own harassment policy, and, despite being informed of the first incident, it was unable to prevent further incidents. The Tribunal awarded the complainant compensation for pain and suffering, and for hearing and legal expenses. As for the allegation of differential treatment in the course of employment, the Tribunal found that it was unsubstantiated. Her gender had not prompted the respondent to undermine the authority of her rank. While she was not treated fairly vis-à-vis a co-worker, her gender played no role in this favoritism. Allegations of differential treatment in regard to attendance could not be accepted due to the lack of comparator evidence. While one of the complainant's superiors might have been pre-disposed against her, having been influenced by rumours about the complainant's problems at her previous posting, the complainant's gender played no role. The complainant's ultimate release from the Forces was not discriminatory; it was a result of the respondent's reaction to her conduct, which had not been proven to be discriminatory.

Date of decision:
22/09/2005

Member:
M. Doucet

Employment:
Canadian National Railway Company

Complaint dismissed

Schecter v. Canadian National Railway Company 2005 CHRT 35

The complainant suffers from a chronic degenerative disease of the lumbar spine. He took the train from Ottawa to Montréal. He had arranged for his son to pick him up by car at the Montréal train station. The complainant's son stopped his car in the zone in front of the station entrance where automobiles pick up and drop off passengers. As there was a five minute time limit for waiting in this zone, the complainant's car was blocking traffic, and no train was due to arrive imminently, a security guard asked the complainant's son to move his car. The complainant's son refused, on the grounds that he was there to pick up his father, who was arriving on the Ottawa train, and had difficulty walking. A confrontation ensued, police were called by the security personnel, and the situation escalated. The complainant alleged that the respondent had discriminated against him by failing to provide parking spaces designated specifically for vehicles with a parking tag for disabled persons. The Tribunal found that the parking service or facility offered to the complainant did not vary significantly from that offered to the general public. The complainant was allowed to park for a certain amount of time in the embarkation /disembarkation zone in front of the station entrance. However, the complainant's son had displayed stubbornness when asked to move his car. He could have done so, as his father was not yet present; his refusal to

move the car was based on the inconvenience involved, and had nothing to do with his father's disability. The complainant's son should have pursued a less confrontational approach in alleging discrimination. There was no discriminatory differential treatment, and the respondent could not be held responsible for any embarrassment, risk of injury, or inconvenience to the complainant. The complaint was dismissed.

Warman v. Warman 2005 CHRT 36

Date of decision:
02/03/2005

Member:
P. Groarke

Hatred Message
Warman

Complaint substantiated

The complainant alleged that the respondent contravened s. 13 of the CHRA by posting anti-semitic messages on the Internet. Evidence was tendered of e-mail postings authored by the respondent, wherein he purported to link the Jewish people to abortion clinics and the Rwandan genocide. He also made abusive references to the Jewish tradition. The tone of the messages was dehumanizing. One in particular, in order to make a strong political statement, exploited associations with atrocities committed against Jewish people by the Third Reich. The postings revealed a racial agenda and incited hatred. The Tribunal was satisfied that the requirements of s. 13 had been met. In particular, the frequency of the messages and the nature of their posting on the Internet satisfied the legal requirement that the impugned communication be repeated. The material undermined the principle that all people are equal. Taken as a whole, the postings vilified the Jewish people, espousing the theme that they were part of an evil conspiracy, which fed into a kind of racial, ethnic or religious enmity that was dangerous for society as a whole. The Tribunal issued a cease and desist order against the respondent. In regard to the Commission's request that a monetary penalty be imposed on the respondent, the Tribunal noted first that the constitutionality of the provision in the CHRA for such a penalty had not yet been conclusively decided. In addition, it observed that the respondent had not participated in the hearing.

The Tribunal concluded that it was unable to deal with the request for a penalty without further submissions on the constitutional compatibility of the penalty provision with the CHRA as a whole, as well as submissions on where to fit the appropriate penalty within the range of available penalties. The complaint was substantiated.

Date of decision:
07/10/2005

Member:
E. Leighton/G. Raynor

Employment:
Canada Post Corporation

Complaint substantiated

Public Service Alliance of Canada v. Canada Post Corporation 2005 CHRT 39 - Judicial review pending.

The complainant alleged that the respondent had engaged in wage discrimination by paying employees in the female-dominated clerical and regulatory group less than employees in the male-dominated postal operations group. After holding that it was an independent and impartial quasi-judicial body, capable of providing a fair hearing in the case before it, the Tribunal determined that the *Equal Wages Guidelines* issued in 1986 could apply to the complaint, even though the complaint had been filed in 1983. The Tribunal went on to uphold the validity of certain provisions of the Guidelines that the respondent had challenged. It noted the presumption in s. 11 of the CHRA that any difference in wages paid to female and male employees for work of equal value was on account of sex; it held that this presumption could only be rebutted by relying on a justificatory factor prescribed in the *Guidelines*. The Tribunal found that the female-dominated complainant group and the male-dominated comparator group had been appropriately defined and designated in the complaint. It also found that, for the purposes of s. 11 of the CHRA, the employee groups representing the complainant and the comparator were employed in the same establishment. The job evaluation system chosen was found to be reasonably reliable, as was the evaluation process and job information. The Tribunal accepted evidence indicating that there was a wage gap between the complainant and comparator groups, and endorsed a "level to line" wage adjustment methodology. It found no differences between the groups in regard to non-wage compensation, ordered a 50% discount in the lost wages award to account for reliability problems, and refused to hold the union jointly liable for the discrimination.

Date of decision:
14/10/2005

Member:
A. Hadjis

Employment:
A.G. (Canada)

Complaint dismissed

Morin v. A.G. (Canada) 2005 CHRT 41

The complainant alleged his colour was a factor in the termination of his employment after unsuccessful field training as a member of the Royal Canadian Mounted Police. He also alleged he was harassed on the basis of his colour during his training. The respondent argued that he was dismissed because he failed to demonstrate during his probationary period that he possessed the essential qualities required to be a police officer, including the ability to reliably and predictably exercise good judgment in decision-making. The Tribunal noted that it was not in a position to second-guess an employer's assessment of an employee's performance, unless there was evidence that discrimination played a role. Further it was unable to accept that race played a factor in the complainant's various interactions with his trainers: the complainant's allegation that the nickname given to him had racial

overtones was not convincing, and a comparison drawn between the complainant and a black athlete did not reveal racism, nor did a comment about how black men shake hands. The fact the complainant was timed by his trainers in the completion of tasks did not reveal a discriminatory attitude. In addition, comments made about a black officer being dirty, and about employment equity, were not conclusively demonstrative of racism. Moreover, the complainant's attempts to gain similar employment elsewhere, following his discharge from the RCMP, provided independent corroboration of the same shortcomings observed, and relied upon, by the respondent (including a lack of honesty). As for the harassment allegation, the Tribunal only found one comment that could have been perceived as offensive, and this comment was not used persistently or extensively enough to support a finding of harassment. The complaint was dismissed.

Sosnowski v. Public Works and Government Services Canada 2005 CHRT 47

Date of decision:
09/12/2005

Member:
P. Groarke

Employment:
Public Works and Government Services Canada

Complaint dismissed

The complainant worked for the respondent as a project manager at Pearson International Airport. When the Airport was privatized, she was declared surplus during a round of downsizing. She alleged that the process used to determine which project managers would be laid off discriminated against her on the basis of sex and age. The downsizing was conducted through a reverse order of merit process, whereby the employees were ranked against each other on the basis of how well they met the business needs of the organization. The Tribunal found that the complainant's placement at the top of the surplus list was justifiable, given: the high operational demand for civil engineers; the complainant's lack of civil engineering experience and training; and her low score in the civil engineering examination administered as part of the reverse order of merit. Moreover, while the complainant herself was a mechanical engineer, her skills were not highly transferable and the respondent would be playing a greatly diminished role in mechanical engineering matters after the Airport's privatization. The Tribunal found no convincing evidence suggesting that the complainant's age or gender had an impact on the respondent's decision to lay her off. The complainant was not on the best of terms with her supervisor, who prepared her performance reviews, and scored the reverse order of merit. This, however, is not proof of discrimination. In addition, the complainant had accepted her performance reviews at the time they were issued to her. The respondent's earlier refusals to give the complainant civil engineering projects could be justified by the availability of civil engineers who were already qualified to work on them. The respondent had no choice but to downsize. The complaint was dismissed.

Date of decision:
20/12/2005

Member:
A. Hadjis

Employment:
A.G. (Canada)

Complaint dismissed

Maillet v. A.G. (Canada) (Royal Canadian Mounted Police) 2005 CHRT 48

The complainant alleged that the respondent's refusal to hire him as an RCMP member was discriminatory, in that it was based on his perceived sexual orientation and his family status (his relationship with his brother). The complainant also alleged that the respondent pursued a discriminatory hiring policy of ascertaining his sexual orientation. The RCMP claimed that the complainant was not hired for reasons principally related to his apparent lack of candour and honesty during the job interview. The respondent had good reason to believe that the complainant's history of drug use was much more serious and more recent than he had indicated at his interview. Furthermore, while the complainant disclosed that he had been dismissed from employment with another police department, he failed to mention that the dismissal had been based on his poor performance. Finally, at the interview, the complainant had failed to disclose the fact that his brother had been involved in criminal activity. The brother's criminal activity itself was not an obstacle, however, the complainant's failure to reveal it when questioned was cause for concern. The Tribunal found that during one of the background check interviews with a former colleague of the complainant, the colleague had made a remark to the respondent's investigator suggesting that the complainant was involved in a romantic relationship with another man. This prompted the respondent's investigator to ask whether this was indeed the case. However, no information about the complainant's sexual orientation was ever conveyed by the investigator back to the respondent. The Tribunal also found that it was not the respondent's policy to inquire into the sexual orientation of applicants to the Force. Rather applicants were merely asked if they had engaged in secret activities that could render them susceptible to blackmail or extortion. The complaint was dismissed.

Judicial Review of Tribunal Decisions by the Federal Court of Appeal and the Federal Court

Federal Court of Appeal

C.H.R.C. v. A.G. (Canada) representing Canadian Armed Forces ("Morris") 2005 FCA 154 (Décary/Evans/Malone JJA.)

The Tribunal found that age was a factor in the respondent's failure to promote the complainant from the rank of Warrant Officer to Master Warrant Officer. It concluded that discrimination had occurred, and that the complaint had been substantiated. The Federal Court overturned the Tribunal's decision, holding that the Tribunal had used the wrong legal test for determining whether a *prima facie* case of age discrimination had been made out. The Federal Court of Appeal restored the Tribunal's decision. It held that the legal definition of a *prima facie* case does not require a party to adduce comparative evidence to prove the facts necessary to establish that the complainant was the victim of a discriminatory practice. It is a question of mixed fact and law whether the evidence adduced in any given case is sufficient to prove adverse differentiation on a prohibited ground, if believed and not satisfactorily explained by the respondent. It does not advance the purposes of the CHRA to impose additional legal rules governing the type of evidence required. Finally, the Court of Appeal dismissed the respondent's claim that the Tribunal had drawn an adverse inference from the respondent's failure to disclose documents that it did not know it had to disclose. The Tribunal drew no such inference. Rather, it simply concluded that the respondent had the burden of rebutting the Commission's *prima facie* case of discrimination, and that it had failed to do so. Without the Personnel Evaluation Reports of other candidates, the Tribunal could not determine whether the particular non-age-related explanations offered by the respondent justified the complainant's low scores in the promotion process.

Desormeaux v. Corporation of the City of Ottawa 2005 FCA 311 (Linden/Sexton/ Malone JJA.)

The respondent municipal transportation commission had dismissed the complainant for innocent absenteeism arising from her migraine headaches. The complainant alleged discrimination on the ground of disability, and the Tribunal upheld her complaint. The Federal Court overturned the Tribunal's decision, holding that that there was no properly admissible evidence before the Tribunal to support the finding that the complainant suffered from a disability. The Federal Court of Appeal reinstated the Tribunal's decision. It noted that the concept of disability in a legal sense consists of a physical or mental impairment, which results in a functional limitation or is associated with a perception of impairment. In light of this test, there was evidence before the Tribunal upon which it could find that the complainant's headaches constituted a disability. It mattered not whether the evidence conclusively demonstrated that the headaches were migraine headaches, or some other type. The Court of Appeal also upheld the Tribunal's findings on the respondent's failure to accommodate the complainant to the point of undue hardship. In particular, the Tribunal properly found that, through discussions with the respondent, the complainant had fulfilled her duty of notification and facilitation with respect to accommodation. The Court of Appeal concluded that on the unusual evidence in this case, the complainant was fully capable of doing her job when not suffering from one of her periodic headaches. Moreover, her future rate of headache-related absenteeism was predicted to be at a level which the respondent could easily accommodate without undue hardship. The respondent had, therefore, merely been required to reasonably accommodate the complainant, as mandated by the CHRA.

Quigley v. Ocean Construction Supplies Ltd. 2005 FCA 346 (Desjardins/Evans/Malone JJA.)

The Tribunal held that while the respondent's dismissal of the complainant constituted *prima facie* discrimination on the ground of disability, the respondent had justified its actions under the *bone fide occupational requirement defence* (BFOR). The complaint was dismissed. The Federal Court upheld the Tribunal's decision. On appeal to the Federal Court of Appeal, the complainant challenged the Tribunal's finding that the BFOR defence had been made. He argued that such a defence was not available where the respondent had refused to grant the complainant a work trial in order to establish whether he could do a deckhand job safely and efficiently. But the Court of Appeal agreed with the Tribunal's conclusion that a work trial was not necessary on the facts of this case; the complainant already had a work trial three years prior to his dismissal and had not done well in performing the demanding tasks of a deckhand. Since that time, his medical condition had not improved. His previous deckhand experience was limited, and his medical problems had prevented him from working during most of his tenure with the respondent. The complainant also argued that the Tribunal had erred in failing to require the respondent to accommodate the complainant in some other job. However, the Court of Appeal again upheld the Tribunal's assessment of the facts. The complainant had insisted that he be accommodated in the deckhand job that he was unable to perform. The only other job within the complainant's capabilities—that of dispatcher—was already occupied, and working as a deckhand on a different type of vessel would have involved longer shifts, incompatible with the complainant's medication.

A.G.(Canada)(Canadian Armed Forces) v. Irvine 2005 FCA 432 (Rothstein/Sharlow/ Malone JJA.)

The Tribunal found that the respondent had discriminated against the complainant on the ground of disability when it determined that he was medically unfit for service. The Federal Court upheld the Tribunal's decision. Before the Federal Court of Appeal, the essence of the dispute rested on the Tribunal's finding that the complainant's medical condition had not been fairly assessed by the respondent's specialized medical board. In view of this finding, the Tribunal had concluded that the respondent had failed to establish that accommodation of the complainant would cause undue hardship. In the opinion of the Court of Appeal, the Tribunal's finding was not patently unreasonable. The Court of Appeal added that it did not read the Tribunal's decision as necessarily requiring the respondent's specialized medical board to embark on every conceivable form of medical test. Rather, it read the Tribunal's decision as requiring a fair assessment of all of the available medical evidence. Finally the Court of Appeal noted that that this appeared to be a close case, where a well-qualified doctor had conveyed to the medical board that the complainant met the minimum medical standard required by the Forces. And yet, the record disclosed no specific explanation as to why the medical board reached the opposite conclusion. The appeal was dismissed.

A.G. (Canada)(Canadian Armed Forces) v. Irvine 2005 FC 122 (Campbell J.)

The Tribunal found that when the respondent decided to release the complainant for medical reasons, it discriminated against him on the grounds of disability. It had failed to provide him with an appropriate individual assessment, and had failed to conduct an adequate investigation into the medical evidence. The respondent sought judicial review. The Federal Court noted that the complainant had impugned his medical designation as being discriminatory. The Tribunal was, therefore, entitled to carefully examine the medical decision-making process leading to this designation, in order to ascertain whether the obligation of accommodation had been met. The Tribunal did not say that the respondent should have carried out all possible testing; it said the respondent should have taken all possible measures to fairly assess the complainant's medical condition. Moreover, the complainant did not bear the onus of proving that further testing would have yielded a different risk assessment result. Rather, the respondent bore the onus of proving that additional testing would not have made a difference. In making its decision regarding the respondent's failure to accommodate, the Tribunal was not purporting to apply medical expertise it did not have; it was using its decision-making expertise to weigh medical expert opinions. It was entitled to do this. The Tribunal was also entitled to expect the respondent to have demonstrably complied with its own assessment guidelines, and to find that the respondent had failed to do so. Finally, there was evidence supporting the Tribunal's finding that the respondent had failed to take all possible measures to fairly assess the complainant's medical condition. Had such measures been taken, the complainant would, more probably than not, have met the standard for retention in the Forces. The Tribunal's decision was upheld.

Bergeron v. Télébec Limitée and Rivard 2005 FC 879 (Gauthier J.)

The complainant alleged that his employer and one of its managers had differentiated adversely against him and harassed him on the ground of disability, namely depression.

The Tribunal dismissed the complaint, and the complainant sought judicial review. The Court noted that the Tribunal had erred in purporting to determine whether a *prima facie* case of discrimination had been made, after it had already given consideration to the respondent's evidence. However, this was not a fatal error. The Court then indicated that the Tribunal's harassment findings were sound. Likewise, there was no reason to set aside the Tribunal's findings that the complainant did not suffer from a disability (real or perceived) during certain relevant periods. In regard to the complainant's lay-off of January 24, 1997, there was no evidence that the respondents knew the complainant was still on medication (which was not argued before the Tribunal), and his assertion that he had cried during meetings with his managers was not found to be credible. The Tribunal had not erred in failing to accept the complainant's allegation of discrimination on the ground of perceived disability; the respondent Rivard's evidence was that he perceived the complainant as being apt to return to work without restrictions. The complainant's argument based on adverse effect discrimination had not been made before the Tribunal, and there was no evidentiary basis for it. While the Tribunal had, at one point, used unfortunate language, in actual fact, it had not required the complainant to prove that his disability was the determinative factor in the decision to lay him off. In regard to the complainant's lay-off of December 24, 1997, there was medical evidence before the Tribunal that the complainant had been cured, and the respondents had no effective knowledge of his relapse. The Tribunal's decision was upheld.

Benoit v. Bell Canada 2005 FC 926 (Gauthier J.)

The complainant, who suffered from alcoholism, alleged that the respondent had discriminated against him on the basis of disability when it refused to continue to employ him. The Tribunal dismissed his complaint, holding that the complainant's managers had not known the complainant suffered from alcoholism at the time they made their decision to lay him off. A document was tendered in evidence that suggested, among other things, that the complainant had an alcohol abuse problem. The Court upheld the Tribunal's conclusion that the supervisor had not authored the document, and that the document itself did not prove that the supervisor had been aware of the complainant's alcoholism at the relevant time. The Court also upheld the Tribunal's conclusions that the brevity of the meeting preceding the decision to lay the complainant off, and the respondent's handling of an impending vacancy in the work unit, did not prove that the complainant's dismissal was discriminatory. Nor had the Tribunal erred by allowing previously undisclosed accusations of financial irregularities to be used to undermine the complainant's credibility. The Tribunal had noted the complainant's denial of these accusations, and it found the complainant to be a sincere and candid witness. The Court refused to fault the Tribunal for failing to give consideration to an investigator's report; this report had not been in evidence before the Tribunal. Likewise, the Tribunal could not be faulted for failing to mention in its decision the fact that a conversation between the complainant's supervisor and the complainant's former spouse allegedly violated the respondent's code of ethics; this issue was not a basis of the complaint but rather a collateral issue that was used to attack the supervisor's credibility. The Tribunal's decision was upheld.

Beauregard v. Canada Post 2005 FC 1384 (Gauthier J.)

The complainant alleged that the respondent had discriminated against him on the ground of disability when it refused to continue to employ him. The Tribunal was not convinced that the complainant suffered from a disability, and dismissed his complaint. The complainant sought judicial review of the Tribunal's decision. The Court first considered the Tribunal's assessment of the evidence of a Doctor Berthiaume, who held a management position with the respondent. While Dr. Berthiaume's notes may have displayed certain inconsistencies, the notes were completely irrelevant to the question of whether the complainant had a disability. Dr. Berthiaume's testimony had no bearing on this question either; therefore the Tribunal did not commit a reviewable error by failing to analyse it. In its assessment of the expert testimony of Dr. Guérin, a respondent witness, the Tribunal took into account that his opinion was based on a very brief interview with the complainant, one that had not permitted the doctor to reach a psychiatric diagnosis.

The Tribunal had not erred either in its assessment of another respondent expert witness, Dr. Gagnon. It properly noted the witness' statements that the complainant did not have a personality disorder, that instead he probably had a personality problem, and that any minor adjustment disorders he had did not constitute a disease. Finally, the Court found no error in the Tribunal's assessment of the evidence of Dr. Gamache, one of the Commission's witnesses; in its decision, the Tribunal had noted this witness' testimony that the complainant had a 50 per cent plus one chance of suffering a relapse. The relapse statistic was absent from the witness' medical report, but there was no reason for the Tribunal to attach significance to its absence. The Tribunal's decision was upheld.

Tribunal Rulings on Motions, Objections and Preliminary Matters

In addition to the 11 decisions rendered on the merits of discrimination complaints, the Tribunal also issued 37 rulings (with reasons) dealing with procedural, evidentiary, jurisdictional or remedial issues. This can be viewed as a resumption of the upward trend observed over the past several years, that had leveled off somewhat last year.

Among the issues addressed in the 2005 rulings was a request for the Tribunal to fund the translation of a hearing into a language other than English or French, the privilege and relevance attaching to disclosure documents and several aspects of the law in relation to expert evidence.

Certain trends emerge in respect of 2005. One observes that issues surrounding the making and implementation of remedial orders were addressed several times, as was the Tribunal's ability to amend a complaint. The ratio of rulings to decisions on the merits has swung more toward the former form of disposition. In 2004, the Tribunal issued 16 decisions on the merits and 24 rulings. The 37 rulings issued by the Tribunal in 2005 include eight rulings that deal with remedial questions (which go to the core of the Tribunal's mandate) and two rulings which, although did not deal with the merits of the complaint, put an end summarily to the Tribunal inquiry.

Reviews of Tribunal Rulings by the Supreme Court and the Federal Court

Vaid v. House of Commons and Parent 2005 SCC 30 (McLachlin C.J., Major, Bastarache, Binnie, LeBel, Deschamps, Fish, Abella and Charron JJA.)

The complainant alleged his race, colour, and national or ethnic origin had played a role in the respondents' decision to refuse to continue to employ him as a chauffeur. He also alleged harassment on these same grounds of discrimination. The respondents challenged the Tribunal's jurisdiction to hear the complaint, claiming that the power to manage and dismiss employees was immune from review under the CHRA by virtue of the doctrine of Parliamentary Privilege. The respondents also asserted that the Tribunal's jurisdiction was ousted by the *Parliamentary Employment and Staff Relations Act* (PESRA). The Tribunal rejected the respondent's arguments, as did the Federal Court (Trial Division) and the Federal Court of Appeal. The Supreme Court refused to find that the management of all employees of the House of Commons is so closely and directly connected with proceedings in Parliament that intervention by the courts in any circumstances would interfere with Parliament's sovereignty, or prevent its members from discharging their functions. While immunity from review by the courts would most certainly exist in regard to some parliamentary employees, the respondents had only argued in favour of the broadest possible immunity, and this argument had to be rejected. The Court then noted, however, that the human rights complaint, while alleging discrimination, was essentially grounded in the employment text. The PESRA permitted employees who alleged discrimination to file a grievance and obtain substantive relief. Parliament had expressed its intent in PESRA that grievances of employees covered by that statute were to be dealt with exclusively under that statute. The application of the CHRA to the dispute at issue would have been clearly duplicative, and contrary to Parliament's intent.

Canada (A.G.) v. Brown 2005 FC 1683 (Hansen J.)

The Tribunal had ruled that it had the authority to order the respondent to compensate the successful complainant in a case for the costs she incurred in retaining a non-lawyer to represent her at the Tribunal hearing.

The Federal Court disagreed, and, on judicial review, set aside the Tribunal's ruling. It was not necessary to decide the issue of the Tribunal's jurisdiction to award hearing costs generally. Nor did the Court squarely decide whether a party to a Tribunal hearing may be represented by a non-lawyer. What it did decide, however, was that the Tribunal could not order compensation for the cost of representation by a non-lawyer, since this would conflict with the *Legal Profession Act of British Columbia*, which clearly prohibited non-lawyers from appearing as counsel or advocate for a fee.

Pay Equity Update

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

In 2005, hearings continued in the Canadian Telephone Employees' Association (CTEA) et al. v. Bell Canada pay equity case. The CTEA settled, and then withdrew, its complaint against Bell Canada in October 2002. The complaints of the Communications, Energy and Paperworkers Union of Canada and Femmes-Action are continuing. On June 26, 2003, the Supreme Court dismissed Bell Canada's appeal in regard to the Tribunal's independence and impartiality, allowing hearings to proceed. The Tribunal sat 55 hearing days in 2005, for a total of 292 days since hearings began in this case in 1998.

Hearings began in 1992 in the Public Service Alliance of Canada (PSAC) v. Canada Post Corporation pay equity case, for a total of 414 days. Written final submissions were completed early in 2004. Final arguments were heard in spring and early summer 2004. A final decision (summarized above) was released by the Tribunal in 2005.

Four new pay equity cases were referred to the Tribunal under s.11 of the Act in 2004, one of which has settled between the parties. Case conferences have been held with the parties in the three remaining cases, one of which is scheduled for hearing in 2006. Another new pay equity case was referred to the Tribunal in 2005. Dates for initial case management conferences are currently being fixed by the Tribunal.

Employment Equity

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

Update on Other Tribunal Matters

MANAGEMENT AND ACCOUNTABILITY

The Tribunal is committed to making progress in all areas of the federal government's Management Accountability Framework.

Although the Canadian Human Rights Tribunal is small in size, it nevertheless remains fully accountable for the delivery of results for Canadians and the adjudication of complaints of discrimination, with due regard for efficiency, effectiveness, probity and public service values.

In 2005, the Tribunal completed the development of a results-based management accountability framework, which comprises targets, indicators and risk management practices that will assist the Tribunal in monitoring progress toward achieving its goal of conducting hearings in an effective and efficient manner. This also serves as a tool for reinforcing the stewardship, governance and strategic directions, and people and performance measurement areas of the government's Management Accountability Framework.

In consultation with the federal central agencies, as well as with representatives from other like-sized tribunals and agencies, with the represented unions and within the Tribunal itself, the Tribunal has developed and implemented human resource management policies that will serve to reinforce the Tribunal's progress toward modernization of human resources management. Decisions taken regarding staffing and human resources management are made at committee levels within the Tribunal, and recorded. These initiatives form a solid foundation for enabling advancements in the accountability areas of learning, innovation and change management at the Tribunal.

Initiatives have also been taken within the Tribunal, through verbal and electronic means, as well as through records of decisions taken by committees, to heighten understanding and awareness of diversity, linguistic duality and the interconnection between our public service values and the Tribunal's obligations for delivering results for Canadians.

Guidelines for the new public service employment appointment process, disclosure and recourse policies were put in place in 2005. The Tribunal has been engaged with central agencies and a network of small departments to begin development of an internal audit capacity.

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

In 2005, the Tribunal also set about modernizing, standardizing and harmonizing its computer systems. These consolidations have generated a solid platform for greater efficiencies to be realized in data source capacity, security and reporting. The Tribunal also

participated in, and contributed to, the federal government's initiative for the achievement of multi-year procurement savings, and forged new partnerships with other departments and agencies to offset its limited resource capacity in several areas, including policy development, security clearances, human resource management, accommodations, access to information and privacy.

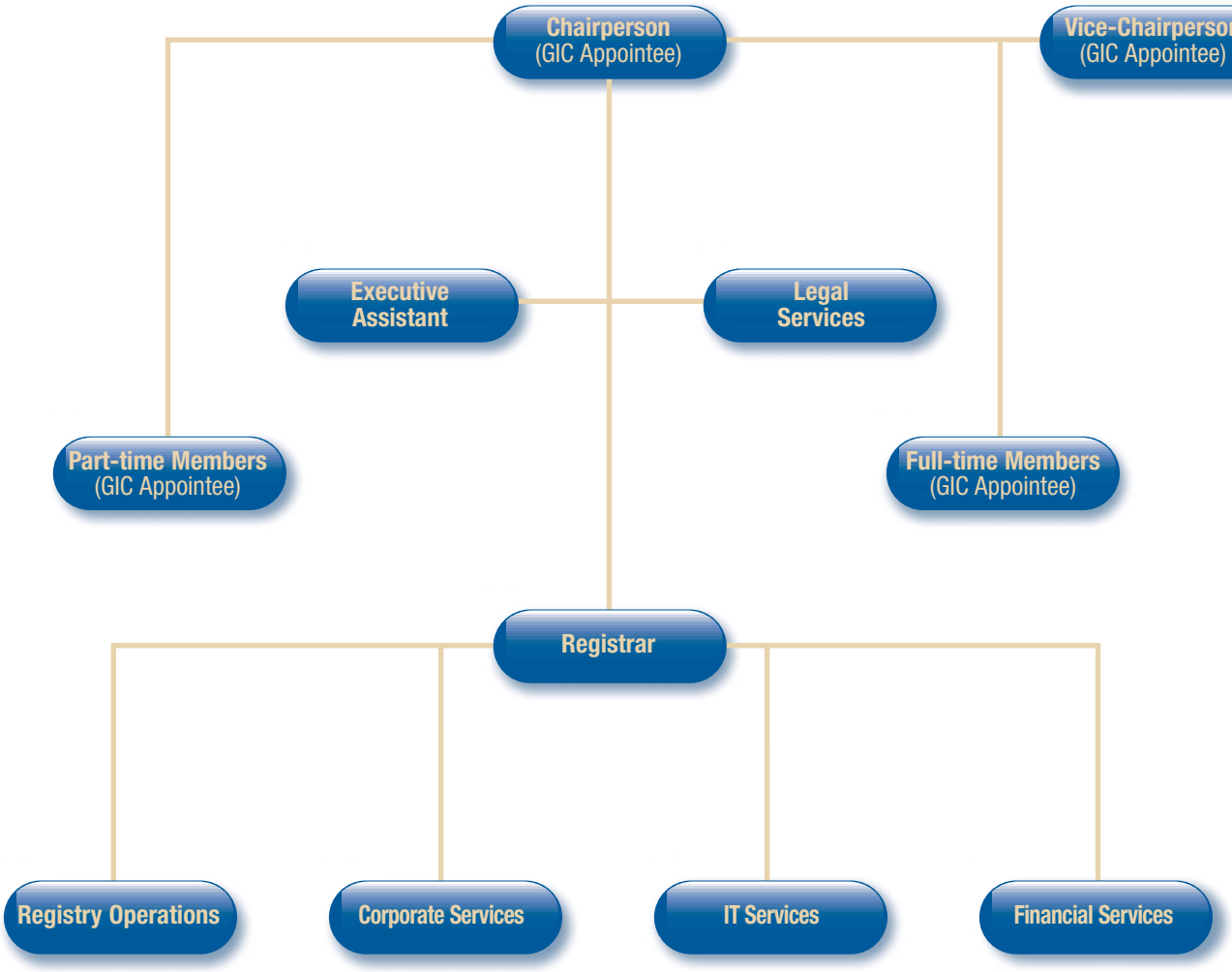
The Tribunal's mandate comprises a single program: the adjudication of complaints of discrimination. Combined with the Tribunal's small size (26 full-time equivalents), this highly operational focus poses difficult constraints for providing staff with learning and development opportunities. The Tribunal is, nevertheless, committed to fostering a continuous learning environment.

"The Tribunal's mandate comprises a single program: the adjudication of complaints of discrimination."

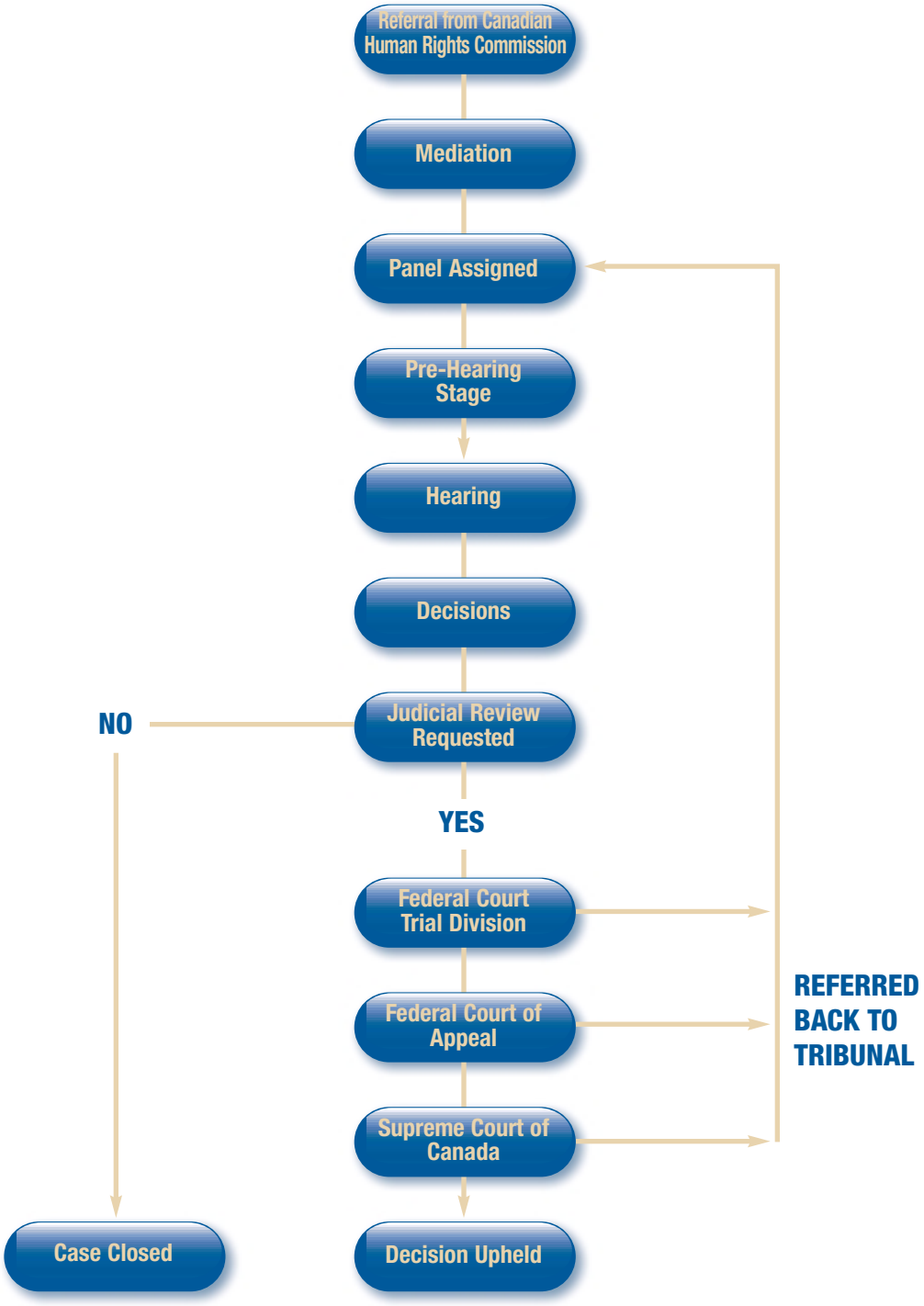
Opportunities for development were created in 2005 through assignments, committee work, project sharing and other positive work exchanges and engagements. Communication and involvement within a network of other small agencies has been enhanced to help realize further opportunities. Plans were also put in place in 2005 to develop a more formalized human resources plan for the Tribunal, one that will articulate a learning framework for the organization.

In 2005, the Tribunal also put in place plans for modernizing the management of our corporate information, records and documents. Privacy and security issues have been included in this initiative in line with the government's Management of Government Information policy.

Appendix 1: Organization of the Tribunal



Appendix 2: An Overview of the Hearing Process



Appendix 2: An Overview of the Hearing Process

Referral by the Canadian Human Rights Commission

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

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

Hearings

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

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

Appeals

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

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

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

Appendix 3: Canadian Human Rights Tribunal Members

Full Time Members

J. Grant Sinclair, Q.C.
Chairperson

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

Athanasios D. Hadjis

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

Paul Groarke

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

Karen Jensen

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

Pierre Deschamps
Quebec

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

Michel Doucet
New Brunswick

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

Julie Lloyd
Alberta

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

Kathleen Cahill
Quebec

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

Marilou McPhedran
Ontario

Marilou McPhedran was appointed in 2005 to a two-year term as a part-time member of the Tribunal. She holds Bachelor and Master degrees in law from Osgoode Hall Law School in Ontario, a Doctorate of Law (honoris causa) from the University of Winnipeg, and has been a member of the Order of Canada since 1985, in recognition of her leadership in the grassroots campaign to strengthen protections in the Constitution of Canada through Section 15 on general equality rights and Section 28 on sex equality rights of the *Canadian Charter of Rights and Freedoms*. A 2003 recipient of the Governor

General's medal to commemorate the Persons Case, she is a co-founder of several non-governmental organizations that focus on galvanizing systemic changes to promote human rights. As the founder of the International Women's Rights Project, now based at the University of Victoria Centre for Global Studies, Dr. McPhedran has designed and directed interdisciplinary research, including a ten country pilot study to assess the impact of the CEDAW - the Convention on the Elimination of all forms of Discrimination Against Women. Dr. McPhedran has written for a number of journals, co-authored the textbook *Preventing Sexual Abuse - a Legal Guide for Health Professionals*, published in 2004, and for more than 25 years has provided strategic counsel in health and human rights to national and international agencies in the private and public sectors.

Maureen Maloney
British Columbia

Maureen Maloney was appointed in 2005 to a two-year term as a part-time member of the Tribunal. She joined the Institute for Dispute Resolution at the University of Victoria in January 2000 and is currently the Director and the Lam Chair of Law and Public Policy. From 1993 to 2000, Professor Maloney served as Deputy Minister in the provincial government of British Columbia, including a term as Deputy Attorney General of the province of British Columbia from 1997 to 2000. Prior to her work with the provincial government, Professor Maloney served as Dean of Law at the University of Victoria. She has published and lectured extensively in the areas of tax law, tax policy, women and the law, and aspects of the law on disadvantaged groups. Her current teaching and research interests are in the areas of dispute resolution, international human rights law, the administration of justice and restorative justice. She is a former board member of the Canadian Human Rights Foundation and the International Centre for Criminal Law Reform and Criminal Justice Policy and has been a governor of the Law Foundation of British Columbia, president of the Canadian Council of Law Deans and co-chair of the Federal-Provincial-Territorial Deputies of Justice meetings. Professor Maloney also served as a board member of the Need Crisis Centre and an executive committee member of Lawyers for Social Responsibility. In addition, she has been involved in justice, dispute resolution and human rights projects in Brazil, South Africa, China, Cambodia, Indonesia, Thailand and Guatemala.

Appendix 4: The Tribunal Registry

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

Registrar
Gregory M. Smith

Special Advisor to the Registrar
Bernard Fournier

Executive Assistant to Chairperson
Louise Campeau-Morrissette

Manager, Registry Operations
Gwen Zappa

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

Mediation and Hearings Coordinators
Francine Desjardins-Gibson
Natalie Jerôme

Counsel
Greg Miller

Chief, Financial Services
Doreen Dyet

Analyst, Financial Services
Nancy Hodgson-Grey

Chief, Corporate Services
Marilyn Burke

Human Resources Coordinator
Karen Hatherall

Senior Administrative Assistant
Thérèse Roy

Administrative Assistant
Jacquelin Barrette

Chief, Information Technology Services
Julie Sibbald/Raymond Pilon

Information Support Specialist
Alain Richard

Appendix 5: How To Contact The Tribunal

Canadian Human Rights Tribunal

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