

**Canadian Human Rights Tribunal
2004–2005**

Departmental Performance Report

Irwin Cotler
Minister of Justice

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SECTION I — OVERVIEW

Chairperson's Message

For the fourth consecutive year, in 2004–2005 the number of complaints the Canadian Human Rights Commission referred to the Canadian Human Rights Tribunal in accordance with the *Canadian Human Rights Act* continued to increase. This level of workload poses a significant challenge for the Tribunal, particularly because there has also been an increase in the number of parties appearing before the Tribunal without legal assistance or representation on their behalf. Many complainants are people of modest means who are not able to afford legal representation. Respondents at the federal level, however, are mostly large corporations or government departments, well resourced and well represented at Tribunal hearings.

One result is that cases that proceed to hearing take longer to complete as lay litigants struggle to cope with an unfamiliar process. Another result is an extra burden on Tribunal staff, to whom unrepresented parties turn for guidance in dealing with pre-hearing procedures and in presenting their case at the hearing.

In response, the Tribunal has prepared guides designed to assist unrepresented parties in understanding the Tribunal's process. The Tribunal will also be introducing new technology, such as an automated case management system, to assist in better management of the complaints that come before it.

In late 2003, the Tribunal's Chairperson was appointed to the Federal Court. The position of Chairperson was only recently filled by promotion from the Vice-Chairperson position in December 2004. The position of Vice-Chairperson was subsequently filled by promotion of a full-time Member in February 2005, and the vacated full-time Member position was filled immediately following the fiscal year under report.

The Tribunal also experienced a transition in management during the last fiscal year. A new Registrar was appointed in May 2004 to replace the retiring Registrar, who had 26 years of corporate history and had been with the Tribunal since its creation as a separate, independent body from the Commission.

The increased number of complaint referrals continued to challenge the Tribunal in 2004–2005. The Tribunal has nevertheless continued to perform well in meeting its legislated mandate to provide an adjudication process that is efficient, equitable and fair, and I am sure that the Tribunal is well positioned to continue to meet these challenges into the future.



J. Grant Sinclair

Management Representation Statement

I submit for tabling in Parliament, the 2004–2005 Departmental Performance Report (DPR) for the Canadian Human Rights Tribunal.

This document has been prepared based on the reporting principles contained in the Treasury Board of Canada Secretariat's *Guide for the Preparation of 2004–2005 Departmental Performance Reports*:

- ? It adheres to the specific reporting requirements;
- ? It uses an approved Business Lines structure;
- ? It presents consistent, comprehensive, balanced and accurate information;
- ? It provides a basis of accountability for the results pursued or achieved with the resources and authorities entrusted to it; and
- ? It reports finances based on approved numbers from the Estimates and the Public Accounts of Canada.



Name: J. Grant Sinclair

Title: Chairperson

Date: September 19, 2005

Summary Information

Raison d'être

The Canadian Human Rights Tribunal is a quasi-judicial body that hears complaints of discrimination referred to it by the Canadian Human Rights Commission (the Commission) and determines whether the activities complained of violate the *Canadian Human Rights Act* (CHRA). The purpose of the CHRA is to protect individuals from discrimination and to promote equal opportunity. The Canadian Human Rights Tribunal also decides cases brought before it under the *Employment Equity Act* (EEA) and, pursuant to section 11 of the CHRA, determines allegations of wage disparity between men and women doing work of equal value in the same establishment.

Total Financial Resources

Planned Spending (\$ millions)	Total Authorities (\$ millions)	Actual Spending (\$ millions)
4.3	5.0	4.2

Total Human Resources

Planned (FTEs*)	Actual (FTEs*)	Difference
26	26	—

*Full-Time Equivalents.

Summary of Performance in Relationship to Departmental Strategic Outcomes, Priorities and Commitments

Strategic Outcome	2004–2005 Priorities/ Commitments*	Type	Planned Spending	Actual Spending	Expected Results and Current Status
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 Canadian Human Rights Tribunal.	1. Review existing performance targets.	Ongoing	n/a		Successfully met
	2. Complete remaining Modern Comptrollership initiatives.	Ongoing	\$30,000	\$17,755	Successfully met
	3. Review and consider developing and implementing a communications strategy to fully inform the public about our mandate and purpose.	Ongoing	n/a		Successfully met

	4. Continue to work, as required, with the Department of Justice on possible amendments to the CHRA, in response to the La Forest Report. ¹	Ongoing	n/a		Ongoing
	5. Develop new tools to assist unrepresented parties who appear before the Tribunal.	New	\$25,000	Nil	Partially met, ongoing
	6. Plan for a smooth transition for the change in senior management.	New	n/a		Successfully met
	7. Conduct a review on the feasibility and benefits of a new computerized case management system and electronic filing system.	New	\$300,000	\$33,076	Successfully met, with ongoing improvements
	8. Other — Business as usual		\$3,923,000	\$4,144,915	Ongoing business
	Total		\$4,278,000	\$4,195,746	

¹ *Promoting Equality: A New Vision*, published by the *Canadian Human Rights Act* Review Panel under the authority of the Minister of Justice and the Attorney General of Canada, Ottawa, 2000 (available at <http://canada.justice.gc.ca/chra/en/>).

***Note:** Priority number 1 in the Tribunal's 2004–2005 Report on Plans and Priorities arises from a survey conducted by the Tribunal in 2002 on the quality of services provided to clients. The status of this priority has been reported in the Tribunal's previous fiscal year Performance Report as having been met. The results of the survey suggested a relatively high level of satisfaction with the Tribunal Registry's services. The decision not to hold another survey at this time, however, stems from concerns as to the validity of conclusions based on responses from the small number of clients who would be available for such a survey.

Overall Performance

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

The Tribunal is a small organization with very limited resources. Its ability to draw from internal resource reallocations is practically non-existent. The evidence and issues raised in complaints referred to the Tribunal are becoming increasingly more complex, the workload is increasing and the timelines for processing complaints continue to be challenged. Nonetheless, the period under report was remarkably productive, both from the perspective of an efficient and expeditious inquiry process and from the viewpoint of fair and impartial disposition of complaints.

For a second consecutive year, the number of complaints the Tribunal received was the highest in its history. In 2003, the Tribunal opened 130 complaint files. In 2004, that number rose to 139 complaints, a 200-percent increase over the Tribunal's previous seven-year average of 44.7 cases per year. Table 1 shows the number of new complaints referred to the Tribunal from 1996 through 2004. In addition, the Tribunal rendered 19 decisions and 21 rulings in 2004.

Table 1: New Cases, 1996 to 2004*

	1996	1997	1998	1999	2000	2001	2002	2003	2004	Totals
Human Rights Tribunals/Panels	15	23	22	37	70	83	55	130	139	574
Employment Equity Review Tribunals Appointed	0	0	0	0	4	4	0	0	0	8
Totals	15	23	22	37	74	87	55	130	139	582

* Complaints are referred to the Canadian Human Rights Tribunal by the Canadian Human Rights Commission in accordance with the *Canadian Human Rights Act*

In 2004–2005, the Tribunal began to take a much more active approach to managing cases, followed up on implementation of its Modern Comptrollership Action Plan, piloted a new automated case management process and made a smooth transition to the change in senior management that resulted in a new Chairperson, Vice-Chairperson and Registrar.

A factor that has helped to mitigate the workload facing the Tribunal in 2004–2005 is the continuity of its membership. Beginning in 2003 when his predecessor was appointed to the Federal Court, the Tribunal's Vice-Chairperson acted in the position of Chairperson before being promoted to the latter post by the Minister in December 2004. His established expertise with the inquiry process and mediation has allowed the Tribunal to avoid any loss of efficiency that would have accompanied a steeper learning curve. Similarly, in February 2005, the Minister also promoted an experienced full-time Tribunal Member to the vacated position of Vice-Chairperson. Shortly after the end of the period under report, the resulting full-time Member vacancy was filled. The Tribunal is now operating with a full complement of full-time Members, in addition to a total of six part-time Members representing various geographical locations across Canada.

Operational Environment

The tone of hearings before the Tribunal has become more adversarial and the hearing process more frequently the subject of motions and objections than in the past. Although the Tribunal has developed pre-hearing disclosure procedures to ensure a fair and orderly hearing, the efficiency of that process is frequently threatened by missed deadlines, requests for adjournment and issues vehemently contested between the parties. Such situations are often exacerbated in cases where a party is without legal representation. At the end of the day, the only way out of an impasse is for the Tribunal to intervene by holding a case management conference.

Hearings on the merits of a complaint (i.e., evidence, testimony and legal argument) are also longer and more complex than in the past. Parties are sometimes uncertain of or untrained in how to focus on the issues that require adjudication by the Tribunal. While the Commission's experience at both the pre-hearing and the hearing stage is of considerable help to parties and to the Tribunal, the Commission does not participate in all hearings. The end result is sometimes manifested in additional hearing days, at considerable expense to the parties, as well as to the Tribunal. Once again, the Tribunal has met a new challenge by adapting its approach. It has taken the opportunity to conduct case management conferences with the parties at strategic points throughout the pre-hearing process, to guide the parties toward a more predictable, streamlined and fair approach to the conduct of cases. Case management conferences — an innovation the Commission contributed to and participates in — will enable the Tribunal to ensure more effective and efficient hearings that are more consistent with the expeditious process contemplated by the CHRA.

Faced with its highest-ever volume of new complaints and with the delays described above, the Tribunal cannot reasonably expect that all cases can be completed within the 12-month target period. Based on the procedural adjustments made in 2003–2004, however, and given the more active case management approach adopted in 2004–2005, the Tribunal is optimistic it can minimize the impact of delays. And while the Tribunal is always careful when imposing constraints, particularly in terms of time, so as not to exert undue pressure on parties, it nevertheless sees a more proactive case management approach as one that will benefit parties through a more balanced and efficient use of the available resources.

Context

Jurisdiction

The *Canadian Human Rights Act* (CHRA) protects all Canadians against discrimination by federally regulated employers or service providers, including: federal government departments and agencies; Crown corporations; chartered banks; interprovincial railways; airlines; telecommunications and broadcasting organizations; and shipping and interprovincial trucking companies. Complaints may relate to discrimination in employment or in the provision of goods, services, facilities and accommodation that are customarily available to the public. The CHRA prohibits discrimination on the basis of race, national or ethnic origin, colour, religion, age, sex, marital status, family status, sexual orientation, disability or conviction for which a pardon has been granted.

Complaints of discrimination based on sex include allegations of wage disparity between men and women doing 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* (EEA), which applies to all federal government departments and federally regulated private sector employers with more than 100 employees. Employment Equity Review Tribunals are created, as needed, from Members of the Tribunal. The subject of the inquiry usually relates to the Tribunal's review of a direction given by the Canadian Human Rights Commission to an employer with respect to an employment equity plan. The Tribunal, after hearing evidence and oral argument, may confirm, rescind or amend the Commission's direction. Since the first appointment of such a tribunal in February 2000, only seven more applications have been made. No applications were made in either 2003–2004 or 2004–2005 (see Table 1). To date, there are no open cases and no hearings have been held, because the parties have reached settlement before a hearing commenced. The EEA has been scheduled for parliamentary review in 2005.

Parliament's passage of amendments to the CHRA in 1998 provided for a more highly qualified Tribunal, which we believe is generating a more consistent body of jurisprudence through its decisions and written rulings. In the years since the amendments were passed, we continue to perceive a greater acceptance of the Tribunal's interpretation of the Act by the reviewing courts. This development is expanded upon in Section II of this report (see Table 3). Eventually, this acceptance will benefit complainants and respondents and will ultimately result in more timely, fair and equitable disposition of complaints, at a reduced cost to the justice system.

Risk Management Issues

The Tribunal faced risks in two major areas in 2004–2005: workload issues and the increased number of unrepresented parties. Developments in these areas were expected to have a substantial impact on how the Tribunal conducts its business and its ability to fulfil its mandate. The following is a brief synopsis of these risks and what the Tribunal is doing to address them.

The number of complaints referred to the Tribunal has risen dramatically since 2002 when only 55 cases were received. In 2003, 130 new complaints were referred, and in 2004, that number rose again to 139 complaints, significantly higher than the average of 45 referrals per year from 1996 through 2002.

In addition to the higher volume of complaints, the Tribunal is also faced with the challenge of conducting an adjudicative process in which many complainants are unrepresented by legal counsel. The Commission's role before the Tribunal is not to provide legal representation for complainants but rather, *inter alia*, to represent the public interest. Nevertheless, the Commission can be of significant assistance to parties and to the Tribunal in the Tribunal's adjudicative process. In 2002, however, the Commission began to limit its participation in hearings before the Tribunal. As a result, many complainants who would otherwise have relied on Commission counsel to lend support are now required to conduct their cases, present evidence and call witnesses without legal

assistance. Accordingly, Tribunal Members and staff must spend much more time explaining the process and coordinating mediation and hearing activities. In addition, the filing of documents with the Tribunal is delayed, additional case management attention is required and the hearings themselves generally move much more slowly.

The Tribunal has made several changes in response to these circumstances. The practice of mediation was reintroduced in March 2003, after having been discontinued for reasons that are still relevant and that are explained in past reports. The Tribunal also adjusted operating procedures to better meet the needs of unrepresented parties; revised initial correspondence to the parties to ensure better understanding of the information required to process a complaint; and adopted a more aggressive approach to case management to keep the process on track and to ensure parties meet deadlines.

Although operating policies and procedures continue to be adjusted, such a large increase in workload and the challenges of dealing with unrepresented parties has placed considerable stress on the Tribunal's ability to meet its targeted timeframes for processing complaints. While the delays are not significant at this time, the Tribunal considers any decline in service to our clients to be unacceptable. The Tribunal is continuing to monitor its workload and procedures closely, and is making adjustments where necessary to ensure the quality of the services it provides is not compromised.

**SECTION II —
ANALYSIS OF PERFORMANCE BY
STRATEGIC OUTCOME**

Analysis of Performance by Strategic Outcome

Strategic Outcome

The Tribunal's single strategic outcome is:

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 Canadian Human Rights Tribunal.

Intermediate Outcomes

- ? To provide clear and fair interpretation of the CHRA and the EEA.
- ? To provide an adjudication process that is efficient, equitable and fair to all who appear before the Tribunal.
- ? To establish meaningful legal precedents for the use of employers, service providers and Canadians.

Immediate Outcomes

- ? To provide Canadians with a dispute resolution process that allows for complaints of discrimination to be heard and ruled on fairly and impartially.
- ? To award fair remedies as appropriate to end future discriminatory practices.
- ? To provide Canadians with an improved and meaningful understanding of their rights and obligations under the CHRA and EEA.

Plans, Priorities and Commitments

1. Review existing performance targets.
2. Complete remaining Modern Comptrollership initiatives.
3. Review and consider developing and implementing a communication strategy to fully inform the public about our mandate and purpose.
4. Continue to work, as required, with the Department of Justice on possible amendments to the CHRA in response to the La Forest Report.
5. Develop new tools to assist unrepresented parties who appear before the Tribunal.
6. Plan for a smooth transition for the change in senior management.
7. Conduct a review on the feasibility and benefits of a new computerized case management system and electronic filing system.
8. Other – Business as usual.

Program, Resources and Results Linkages

The Tribunal has only one program: to conduct hearings and render decisions on those hearings. The following major decisions were reached in 2004–2005:

In an employment case, the Tribunal explored the ambit of the provision in the CHRA that prohibits anyone against whom a complaint has been filed from retaliating or threatening retaliation against the individual who filed the complaint. The Tribunal had to decide, regardless of whether the respondent intended to retaliate, whether the complainant could *reasonably perceive* the respondent's impugned conduct as retaliation for having filed a complaint. Certain incidents were found to meet this standard, while others were not.

In another case, a respondent employer removed a disabled complainant from his driving duties for safety reasons. The Tribunal found this to be discriminatory, given the scientific evidence available and the respondent's failure to attempt to accommodate the complainant by examining different ways of performing his duties. The respondent was able to limit its liability in the case by offering the complainant alternative employment.

Finally, the Tribunal rendered a decision in a case in which a black complainant alleged that a hiring and promotion process was discriminatory. The Tribunal found that the competition was corrupted by favouritism and that the respondent had failed to establish that there was no racial element to the favouritism. However, the Tribunal also found that the complainant would not have obtained a position in that particular competition, even if it had been properly conducted.

Planned spending for fiscal year 2004–2005 was \$4,278,000. Total authorities received were \$5,058,031. Actual spending was \$4,195,746.

Key Activities

To achieve our strategic outcome, the Tribunal must perform the following key activities:

- it must manage the Tribunal's workload; and
- it must provide efficient and effective coordination of complaint cases.

Tribunal's Workload

The Tribunal experienced its highest-ever workload in 2004. A total of 139 complaints were referred under the CHRA (130 complaints were received in 2003). This represents a 200-percent increase over the average number of complaints received during the previous seven-year period. In addition, the number of litigants appearing at hearings before the Tribunal who are without expert legal representation has risen dramatically in recent years.

A question often arises as to how closely the adjudication process should be managed and scrutinized by an adjudicating body to ensure an efficient and expeditious process. While much depends on the nature of each particular case, the dramatic increase in the workload

of the Tribunal in recent years has meant that active management of complaint cases before the Tribunal is necessary to avoid delays and the inevitable additional costs. Active case management is particularly important in cases in which parties appearing before the Tribunal are without legal representation and may be unfamiliar with the adjudication process. It is equally important to optimize time spent at hearing, where witnesses, evidence and argument on the issues might otherwise become embroiled in debates that are irrelevant to the main points requiring decision by the Tribunal.

Case Coordination

The Tribunal is a small organization. To optimize its limited resources and meet workload challenges, the Tribunal not only must coordinate mediation and hearings, but it must also coordinate the pre-hearing process, which often entails hearings to decide preliminary issues as well as a series of case management teleconferences in cases where mediation is either declined or is unsuccessful.

The Tribunal’s Registry closely monitors the deadlines within which the parties are required to meet their pre-hearing obligations, such as disclosure, identification of witnesses and facts, and submissions on preliminary issues. Although the Tribunal has only one office located in the National Capital Region, its federal jurisdiction poses a particular challenge for ensuring efficiency and effectiveness in conducting hearings at locations across Canada.

Performance Accomplishments

1. Review existing performance targets.

Planned Activities	Results
Assess adequacy of existing targets, analyze case statistics and service levels, modify procedures and develop new performance measurements if appropriate.	Previous performance measurements confirmed; Tribunal assessing the timeliness and effectiveness of the hearing process.

The Tribunal has identified three leading performance measurement targets for ensuring the timely and effective delivery of hearings processes to clients:

? commencing hearings within six months of receiving a case referral, in 80 percent of cases;
? rendering decisions within four months of the close of the hearing, in 95 percent of cases; and
? concluding cases within 12 months of referral.

These targets were reviewed in 2004–2005 during an exercise to develop a Results-based Management Accountability Framework for the Tribunal. Although the Tribunal’s heavy

workload in 2003–2004 and 2004–2005 has stressed the limits of these measures, they remain adequate targets for the purpose of assessing the Tribunal’s performance.

Last year, the Tribunal reported that it was having difficulty achieving its targets due to two main factors: delays requested by the parties and a dramatic increase in the number of complaints. The same factors, in addition to a slightly higher number of complaints received by the Tribunal in 2004, have continued to make it difficult to meet these targets during the period under report.

- ? Only 12 (42.9 percent) of the 28 cases that commenced hearings in 2003–2004 did so within a six-month timeframe. The greatest delays were incurred during the earliest period of the transition to the Tribunal’s new procedures, which were revised in response to the increased workload and to changes in the Commission’s level of participation in inquiries before the Tribunal. In 2004–2005, only 4 (26.7 percent) of the 15 cases that began hearings during that period did so within a six-month timeframe. However, many complaints received in 2004 are still in the pre-hearing case management process and, therefore, remain open.
- ? In 2003–2004, 62 percent of the 16 decisions that were rendered by the Tribunal were released within a four-month time frame. Although that ratio decreased to 54 percent of the 19 decisions released in 2004–2005, only three decisions took longer than six months and the overall average time for release of decisions was only marginally above the four-month target.
- ? As noted in Table 2, the average number of days to complete cases was 214 in 2002. This average decreased to 187 in 2003, and has dropped markedly to 131 days in 2004. For the most part, this drop can be attributed to settlements, arrived at through mediation conducted by a Tribunal Member and/or with the help of the Commission. For cases requiring a full hearing and decision, however, 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 time was reduced to 272 days, and no case

Table 2: Average Days to Complete Cases from Date of Referral, 1996 to 2004

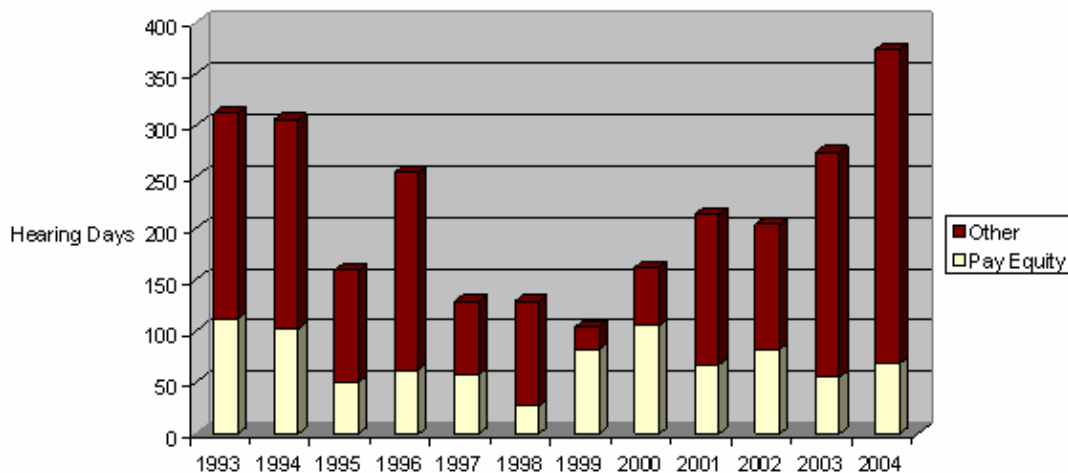
	1996	1997	1998	1999	2000	2001	2002	2003	2004*
No. of days to first day of hearing	234	93	280	73	213	293	257	190	217
Time for decision to be submitted from close of hearing	189	75	103	128	164	177	158	126	121
Average processing time to close file	266	260	252	272	272	255	214	187	131

* As at report date, many complaints referred in 2004 are still at the pre-hearing case management stage or otherwise remain open due to delays from the parties. Figures with respect to complaints referred in 2004 are therefore subject to change.

took more than a year to complete. In 2003, the average was 405 days, with eight cases requiring more than one year to complete. Although the average time to close a case improved slightly to 396 days in 2004, 11 cases took more than a year to complete. Of the cases that proceeded beyond the one-year target in 2004, the delays incurred were mostly in response to requests from the parties or became the subject of Federal Court proceedings.

In 2004, the number of hearing days conducted by the Tribunal rose dramatically again to 372, including 67 days for hearings in pay equity cases (see Figure 1). Although the Tribunal's workload increased dramatically in both 2003 and 2004, the number of available Members declined following the appointment of the Tribunal's Chairperson to the Federal Court in November 2003 and the resignation of a part-time Member. The Minister has now filled all full-time positions at the Tribunal, including the positions of Chairperson and Vice-Chairperson, and has made four new appointments of part-time Members, for a total complement of 10 Tribunal Members. The Tribunal is now well positioned to continue conducting inquiries that meet the earliest convenience of the parties.

Figure 1: Number of Hearing Days per Year



The Commission plays an important role in the inquiry process. While it has limited the number of full hearings in which it participates, the Commission's extensive experience is nevertheless of assistance in helping the parties, particularly unrepresented complainants, understand the adjudicative process. The Commission has also undertaken to participate in all mediations before the Tribunal and has contributed to the development of the case management process introduced in 2004 to reduce delays in the pre-hearing process and to increase efficiencies at hearing. For cases in which the Commission decides not to participate at the hearing, considerably more of Tribunal Members' time is devoted to giving directions and hearing cases presented by claimants who are unrepresented and do not have the benefit of legal training. To further assist litigants, the Tribunal's information pamphlets are designed to help guide the parties

through the Tribunal process and Registry staff are trained in providing parties with additional information and guidance.

Early involvement by a Tribunal Member in case management appears to be helping to avert problems between the parties that might otherwise create a log jam at the front end of cases. Although the annual total of decisions and rulings rendered by the Tribunal rose consistently until 1994, it has remained relatively stable since. In 1994, the Tribunal rendered 16 decisions on the merits of discrimination complaints and issued 24 rulings (with reasons) dealing with procedural, evidentiary, jurisdictional or remedial issues. In 2003 and 2004, those figures were 12 decisions/30 rulings and 19 decisions/21 rulings, respectively. The ratio of rulings to decisions on the merits appears to be swinging more toward the latter form of disposition than in the past. Whether or not this trend is wholly or partially attributable to case management is difficult to say. Case management as a formal process is a relatively new initiative at the Tribunal; some time will be needed before its success can be determined.

2. Complete remaining Modern Comptrollership initiatives.

Planned Activities	Results
Develop a Results-based Management Accountability Framework (RMAF), implement the RMAF and monitor Modern Comptrollership sustainability.	The Tribunal has developed its RMAF and is monitoring Modern Comptrollership practices.

In 2004–2005, the Tribunal completed development of a Results-based Management Accountability Framework (RMAF) to help ensure that programs, projects and initiatives meet their intended goals and objectives. The RMAF, an approach developed by the Treasury Board Secretariat of Canada in 2001, provides the Tribunal with a blueprint to plan, measure, evaluate and report on results. Future reports on the Tribunal’s performance will be guided by the RMAF. Ultimately, the RMAF will help the Tribunal to remain responsive to evolving issues and to measure its progress in achieving expected results.

The Tribunal has embedded Modern Comptrollership principles and practices into the culture of the organization and ensures their sustainability through ongoing monitoring.

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

Planned Activities	Results
Distribute information packages.	Information packages made available to parties appearing before the Tribunal and to the general public.

A number of information packages on the Tribunal's role were already in place prior to the period under report. These are revised and updated whenever procedures or practices change, or when the Tribunal releases decisions and rulings. For example, the Tribunal's Rules of Procedure have been republished and information on the Internet site is updated on a regular basis.

As noted earlier in this report, the Tribunal instituted an active case management approach in early 2004 with a view to enhancing the efficiency of the inquiry process. Accordingly, the Tribunal's booklet, *What Happens Next?* which is currently made available to assist parties in understanding the inquiry process, has been reviewed and will be revised shortly. A plan was also developed in 2004–2005 to review and update the Tribunal's full suite of information packages, including an initiative to modernize its Internet site. These activities will be completed in 2005–2006 before embarking on a comprehensive review and revision of the Tribunal's communications strategy.

4. Continue to work, as required, with the Department of Justice on possible amendments to the *Canadian Human Rights Act*, in response to the La Forest Report.

Planned Activity	Results
Develop operational models based on the changes proposed to the Tribunal's structure and role by amendments to the CHRA.	The Tribunal will await action by the Department of Justice on this initiative and is prepared to move forward if requested to do so.

5. Develop new tools to assist unrepresented parties who appear before the Tribunal.

Planned Activity	Results and Timelines
Develop additional how-to documents for the use of unrepresented parties.	User information available and being revised for unrepresented parties.

The rise in unrepresented parties appearing before the Tribunal has placed an increased burden on staff to explain the basics of an administrative law system. A number of how-to documents are distributed to all parties appearing before the Tribunal to assist clients in understanding the inquiry process. These, in addition to ongoing updates to the Tribunal's Internet site, are in the process of being revised to reflect the Tribunal's new case management approach.

6. Plan for a smooth transition for the change in senior management.

Planned Activities	Results and Timelines
Prepare briefing materials, schedule meetings and provide support to new managers.	Materials, activities and resources fully completed to support transition to a new Chairperson, Vice-Chairperson and Registrar.

7. Conduct a review of the feasibility and benefits of a new computerized case management and electronic filing system.

Planned Activities	Results and Timelines
Research case management systems, install chosen product and conduct cost-benefit analysis of implementing electronic system of case filing.	Feasibility review completed and automated case management system installed and being piloted, including capacity for electronic filing of documents.

In 2004–2005, the Tribunal completed its research into automated case management systems and continued even further by embarking on an ambitious project to introduce an affordable automated case management system. Called the “Tribunal Toolkit,” this product has capabilities for enhancing information storage, evidence tracking, note-taking by Tribunal Members, and retrieval of electronic documents and statistical data. It is also compatible with the federal government’s leading Records, Documents and Information Management System.

The Tribunal Toolkit has already reached the pilot stage. Full implementation is planned for 2005–2006. The Toolkit has also been designed with a robust capability for receiving and processing documents electronically. It is important to keep in mind, however, that the clients the Tribunal serves have different levels of access to electronic means, and in some cases no access at all. To ensure equal access to fair adjudication of discrimination complaints, the Tribunal is therefore mindful of the need to support a dual-track system (i.e., electronic and hard-copy documents) for the foreseeable future.

8. Other — Business as usual.

Planned Activities	Results and Timelines
Ensure readiness to meet legislated requirements for modernization of human resources management in the public service.	The Tribunal has worked closely with central federal government agencies to ensure the Tribunal’s human resources management policies and practices are compliant with recent amendments to the <i>Public Service Labour Relations Act</i> and to ensure readiness for the coming into force in December 2005 of changes to the <i>Public Service Employment Act</i> .

The Effect of Recent Tribunal Decisions on Canadians

The mission of the Tribunal is to provide Canadians with a fair and efficient public inquiry process for enforcement of the CHRA and the EEA.

The Tribunal has a single program — conducting hearings — and its principal goals in carrying out this responsibility are to conduct hearings as expeditiously and fairly as possible, and to render fair and impartial decisions that will withstand the scrutiny of the parties appearing before the Tribunal and the courts that review the Tribunal’s decisions. In other words, whatever the result of a particular case, all parties should feel they were treated with respect and fairness.

In 2004–2005, the Tribunal issued 13 decisions with reasons that answered the question, “Did discrimination occur in this case?” Tribunal decisions put an end to disputes between complainants and respondents (subject to rights of judicial review before the Federal Court) as to whether the CHRA was infringed in a particular instance. The decisions also have an impact beyond the parties to the case, bringing real benefits to Canadian society as a whole.

Simply put, Tribunal decisions give concrete and tangible meaning to an abstract set of legal norms. The CHRA prohibits discriminatory practices. It also offers justifications for certain conduct that may be discriminatory, but it does not give examples or illustrations. For that matter, the CHRA does not even define the word “discrimination.” It is mainly through Tribunal decisions that Canadians’ rights and obligations under the legislation are defined. In that regard, a decision dismissing a complaint is just as noteworthy as a decision that finds a complaint to have been substantiated.

The following are summaries of three decisions rendered by the Tribunal in 2004–2005. They offer a glimpse of the kinds of complaints brought before the Tribunal, as well as some insight into how such cases affect all Canadians. The summaries of the other 10 Tribunal decisions of 2004–2005 can be found in the Tribunal’s 2004 annual report.

Virk v. Bell Canada (Ontario) 2005 CHRT 02 (Deschamps)

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.

Tweten v. RTL Robinson Enterprises Ltd. 2005 CHRT 8 (Chotalia)

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.

Smith v. S & S Delivery Service Ltd. 2005 CHRT 13 (Groarke)

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 each other, but it did not engage human rights interests.

Judicial Review of Tribunal Decisions

As noted in Section I above, in the years since the amendments to the CHRA were passed (1998), we continue to perceive a greater acceptance of the Tribunal's interpretation of the Act by the reviewing courts. Between January and March of 2005, the Tribunal rendered three discrimination decisions; none of them were challenged in the Federal Court.

Table 3: Judicial Review of Tribunal Decisions

Total Cases and Disposition of Decisions	No. of Cases				
	2001	2002	2003	2004	Total
Total Cases Referred to Tribunal	83	55	130	139	407
Decisions Rendered	18	12	12	19	61
Challenged					
Upheld	3	2	0	2	7
Overtured	3	2	3*	0	8
Withdrawn/ Struck for Delay	1	1	1	0	3
Pending	0	0	0	5	5
TOTAL Challenges	7	5	4	7	23

Note: The cases included in Table 3 are those for which the Tribunal wrote and submitted a final judgment. They do not include complaints that were withdrawn or settled prior to hearing.

The column for 2003 has been changed from previous reports to reflect the fact that, of four formerly pending judicial review applications, one was dismissed for delay and the other three overturned the Tribunal's decision.

* One of these decisions is being appealed to the Federal Court of Appeal.

Pay Equity Update

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

In 2004, hearings continued in one of the Tribunal’s two remaining pay equity cases. The hearing was concluded in the other and a final decision is currently under reserve:

- ? ***Canadian Telephone Employees’ Association (CTEA) et al. v. Bell Canada*** — There were 67 hearing days in this case in 2004, making the total 237 since hearings began in 1998. In October 2002, the CTEA settled and then withdrew its complaint against Bell Canada, but the complaints of the Communications, Energy and Paperworkers Union of Canada and Femmes-Action have continued. On June 26, 2003, the Supreme Court dismissed an appeal by Bell Canada challenging the Tribunal’s independence and impartiality. Hearings subsequently resumed.
- ? ***Public Service Alliance of Canada (PSAC) v. Canada Post*** — After more than 10 years at hearing and 414 hearing days, final arguments were heard in the Tribunal’s longest-running case in the spring and early summer of 2003. Supplementary written submissions from the parties were filed in the summer of 2004. A final decision may be released in fall 2005.

Four new pay equity cases were referred to the Tribunal under section 11 of the CHRA in 2004 and two more were referred in early 2005. Two cases were settled between the parties. Initial case management conferences have been held with the parties in the four remaining cases to establish timelines for disclosure and to set dates for next conferences with a Tribunal Member. No clear estimates are available as yet with regard to the expected duration of the hearings on the merits in these cases.

Employment Equity Cases

No applications were made in 2004. To date, there are no open cases and no hearings have been held because the parties have reached settlements before hearings commenced. The EEA is scheduled for parliamentary review in 2005.

SECTION III — SUPPLEMENTARY INFORMATION

Organizational Information

Our Organizational Structure

Members

The Canadian Human Rights Tribunal is a small, permanent organization, comprising a full-time Chairperson and Vice-Chairperson and up to 13 full- or part-time Members (see Figure 2). Both the Chairperson and the Vice-Chairperson must have been members of the bar for more than 10 years.

To be eligible for appointment by the Governor-in-Council, all Members of the Tribunal are required to have expertise in, and sensitivity to, human rights issues. In addition, Members attend regular meetings for training and briefing sessions on such topics as decision-writing techniques, evidence and procedure, and in-depth analysis of human rights issues. Throughout their three- or five-year terms, all Tribunal Members are given opportunities for professional development. The level of expertise and skill of Members is undoubtedly at the highest level it has been since creation of the Tribunal in 1978.

Registry Operations

Administrative responsibility for the Tribunal rests with the Registry. It plans and arranges hearings, acts as liaison between the parties and Tribunal Members, and provides administrative support. The Registry is also accountable for the operating resources allocated to the Tribunal by Parliament.

Corporate, Financial, Legal and Information Technology Services

Tribunal and Registry operations are supported by Corporate Services, Financial Services, Legal Services and Information Technology (IT) Services.

Corporate Services provides support to the Tribunal in facilities management, communications, material management, procurement of goods and services, information management, security, reception and courier services. It also assists the Registrar's Office in the development and implementation of government-wide initiatives, such as the Service Improvement Initiative and Modern Comptrollership.

Financial Services provides the Tribunal with accounting services, financial information and advice.

Legal Services provides the Tribunal with legal information, advice and representation.

The main priority of IT Services is to ensure that the Tribunal has the technology required to perform efficiently and effectively. The section advises Registry staff and Tribunal Members on the use of corporate systems and technology available internally and externally, and offers training. It also provides procurement and support services for all computer hardware, software and information technology services.

IT Services is also involved in implementing government initiatives, such as Government On-Line, and represents the Tribunal on the Electronic Filing Project Advisory

Committee, a committee that includes government agencies involved in either court or administrative law activities.

Figure 2 shows the Tribunal's organizational structure.

Human resources services are contracted out to Public Works and Government Services Canada.

Figure 2: The Tribunal's Organization Chart

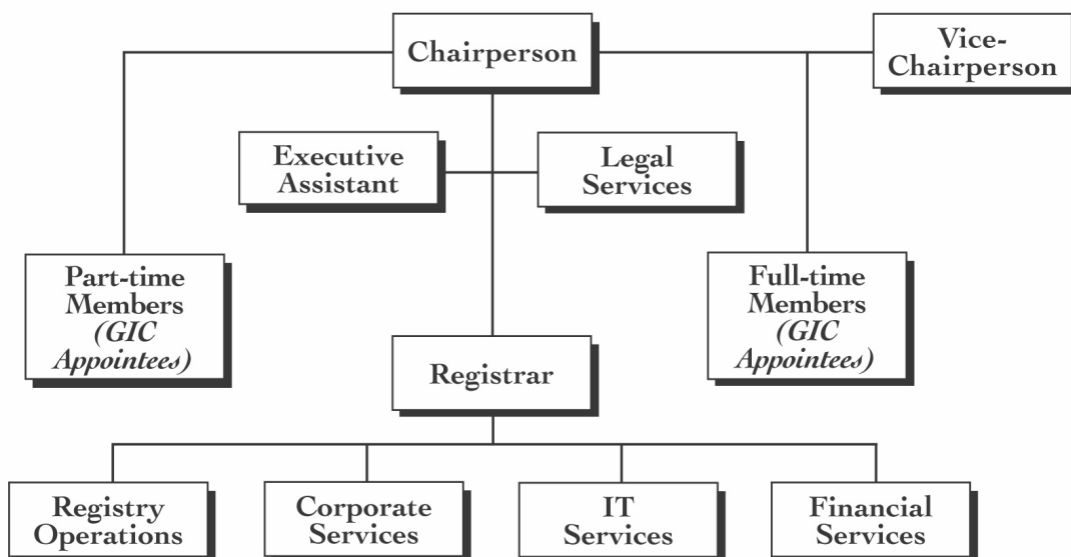


Table 4: Comparison of Planned to Actual Spending (including Full-Time Equivalents)

(\$ millions)	2002-03 Actual	2003-04 Actual	2004-2005			
			Main Estimates	Planned Spending	Total Authorities	Actual
Canadian Human Rights Tribunal	3.7	4.3	4.3	4.3	5.0	4.2
Total	3.7	4.3	4.3	4.3	5.0	4.2

Total	3.7	4.3	4.3	4.3	5.0	4.2
Less: Non-Responsible revenue	-	-	-	-	-	-
Plus: Cost of services received without charge *	0.6	0.7		0.7		1.1
Net cost of Department	4.3	5.0	4.3	5.0	5.0	5.3

Full-Time Equivalents	24	26	26			
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* Services received without charge refers to services provided and paid by another department on behalf of the CHRT, such as office accommodations from Public Works and Government Services Canada.

Table 5: Use of Resources by Business Line

2004–2005 (\$ millions)								
Business Lines – BL (or Program Activity – PA)	Budgetary						Plus: Non-Budgetary	Total
	Operating	Capital	Grants and Contributions	Total: Gross Budgetary Expenditures	Less: Responsible Revenue	Total: Net Budgetary Expenditures	Loans, Investments and Advances	
Canadian Human Rights Tribunal								
Main Estimates	4.3	-	-	4.3	-	4.3	-	4.3
<i>Planned Spending</i>	4.3	-	-	4.3	-	4.3	-	4.3
Total Authorities	5.0	-	-	5.0	-	5.0	-	5.0
<i>Actual Spending</i>	4.2	-	-	4.2	-	4.2	-	4.2

Table 6: Voted and Statutory Items

Vote or Statutory Item	Truncated Vote or Statutory Wording	2004–2005 (\$ millions)			
		Main Estimates	Planned Spending	Total Authorities	Actual
15	Operating expenditures	3.9	3.9	4.7	3.9
(S)	Contributions to employee benefit plans	0.4	0.4	0.3	0.3
	Total	4.3	4.3	5.0	4.2

Table 7: Net Cost of Department

(\$ millions)	2004–2005
Total Actual Spending	4.2
<i>Plus: Services Received without Charge</i>	
Accommodation provided by Public Works and Government Services Canada (PWGSC)	1.0
Contributions covering employers' share of employees' insurance premiums and expenditures paid by TBS (excluding revolving funds)	0.1
Worker's compensation coverage provided by Social Development Canada	-
Salary and associated expenditures of legal services provided by Justice Canada	-
<i>Less: Non-responsible Revenue</i>	-
2004–2005 Net cost of Department	5.3

Table 8: Response to Parliamentary Committees, Audits and Evaluations for FY2004–2005

Response to Parliamentary Committees
No recommendations were received.
Response to the Auditor General
No recommendations were received.
External Audits or Evaluations
No external audits or evaluations were conducted.
Internal Audits or Evaluations
No internal audits or evaluations were conducted.

**Table 9: Travel Policies
Comparison to the TBS Special Travel Authorities**

The Canadian Human Rights Tribunal follows the TBS Special Travel Authorities.
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Comparison to the TBS Travel Directive, Rates and Allowances

The Canadian Human Rights Tribunal follows the TBS Travel Directive, Rates and Allowances.
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SECTION IV — OTHER INFORMATION

Contact Information

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Legislation and Associated Regulations Administered

The appropriate Minister is responsible to Parliament for the following Acts:

Canadian Human Rights Act (R.S. 1985, CH-6, amended)

Employment Equity Act (S.C. 1995, C.44, given assent on December 15, 1995)

Statutory Annual Reports and Other Departmental Reports

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

Annual Report (1998, 1999, 2000, 2001, 2002, 2003 and 2004)

Report on Plans and Priorities (2004–2005 Estimates)

Rules of Procedure