*To ensure Canadians have equal access to the opportunities that exist in our society through the fair and equitable adjudication of human rights cases 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. The Tribunal determines whether the activities complained of violate the *Canadian Human Rights Act*. The Tribunal (CHRT) has a statutory mandate to apply the Act based on the evidence presented and on current case law.

The purpose of the Act (CHRA) 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 or any 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 from the CHRT membership on an as-needed basis.

The CHRT 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 current law. The Tribunal may only deal with cases referred to it by the Canadian Human Rights Commission. It renders decisions on individual complaints of discrimination but is without authority to lobby or attempt to influence the federal government's or the Commission's agendas on human rights and it cannot take sides on human rights issues. In addition, the Tribunal's process must be equitable, 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 individual Canadians and for Canada as a whole, are too important to forgo an equitable and accessible process.

# Message from the Chairperson

I am pleased to present this annual report of the Canadian Human Rights Tribunal, and I am proud to share with you the work the Tribunal has accomplished over the past year.

In 2004, the Tribunal reached its highest-ever volume of 139 complaint referrals. That number dropped to 70 in 2006 and last year levelled out at 82. Despite this, the complexity of cases has increased and the number of complainants appearing before the Tribunal without legal representation continues to pose serious challenges for the inquiry process.

During the period 2003 through 2005, the Tribunal's plate was brimming with work. As a result, the Tribunal re-introduced mediation as an alternative dispute resolution mechanism and also implemented, in 2005, a case management system to help the parties better prepare for hearing. These measures to relieve some of the pressure on the Tribunal and the parties have proved valuable: hearing preparations have become increasingly effective and have helped the Tribunal ensure complaint inquiries are conducted more expeditiously and informally, as prescribed by the *Canadian Human Rights Act*. Nonetheless, we recognize there are still improvements to be made.

In the area of human rights, one size certainly does not fit all. For example, some complaints occur within highly structured organizations, such as large companies and federal government departments. Others arise from less rigid organizational environments that function within a different cultural milieu. We recognize that the Tribunal's *pro forma* template of case management requires adjustment to deal with these varied circumstances and we have begun to adapt the inquiry process accordingly.

The Tribunal has also continued to capitalize on technology to help in increasing the efficiency of the inquiry process. In 2007 we implemented a digital voice recording system, ending the costly and time-consuming practice of producing transcripts of proceedings. We have also put in place an electronic filing system for all complaint case files.

In the area of public management, the Tribunal has adopted a plan of action focused on achieving the highest-possible levels of accountability, performance and public service renewal. We have strengthened our suite of organizational policies and have reinforced the Tribunal's risk management framework.

To address the capacity limitations of our small size, we have partnered with central agencies and other like-sized departments and agencies to develop sharing solutions to enterprise-wide public management challenges. The Tribunal has thus been able to become more innovative, flexible and responsive within the context of modern public management and is able to function more efficiently in fulfilling our mandate under the *Canadian Human Rights Act.*

**J. Grant Sinclair**



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# The Year in Review

**Process Refinement: An efficient case management process and modern technology tools are helping the Tribunal improve its inquiry process**

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 this goal requires that the Tribunal make timely, well-reasoned decisions on issues of human rights that are consistent with the law. Both the 2005 and 2006 annual reports acknowledged the Tribunal's continued focus on these objectives, despite the record-high caseload that brought with it increasingly complex inquiries and greater numbers of parties appearing before the Tribunal without expert legal representation.

The complexity of the cases heard in 2005 and 2006 and the lack of legal representation for complainants in those cases continued to present significant challenges for the Tribunal in 2007. Nonetheless, and despite its small size and limited resources, the Tribunal successfully avoided a backlog by actively engaging parties to complaints through a case management process introduced in 2005.

The Tribunal's case management system is designed to assist the parties in ensuring their cases are ready for hearing. At key stages prior to the hearing, a Tribunal member conducts conference calls with the parties, helping them understand their obligations and setting deadlines for meeting them. Early intervention by an experienced Tribunal member in this way helps the parties focus on the issues that must be addressed to substantiate or refute the complaint and helps to resolve key issues that might otherwise result in delays or inefficiencies at the hearing.

## An efficient case management process and advanced technology have helped the Tribunal avoid a case backlog.

The introduction of new technologies has also enhanced the efficiency of the Tribunal's inquiry process. The document-automation and data retrieval software introduced in 2005 has proved highly useful not only for retrieving information but also for enhancing the security and integrity of the Tribunal's official record. In 2007, the Tribunal added digital voice recording to its technological capabilities. This allows Tribunal members and the parties quicker access to Tribunal proceedings, with limited associated cost and without the need for hard copy transcriptions.

Going forward, the Tribunal will continue to leverage new technologies to increase efficiency and reduce operational costs.

## Tribunal Membership

In 2007, the Tribunal's membership consisted of a Chairperson, Vice-Chairperson, one full-time member and seven part-time members representing various geographic areas of Canada (see Appendix 3). Two additional part-time members were appointed at the end of the year.

The Tribunal's Chairperson served as Vice-Chairperson until 2004 and the Vice-Chairperson had earlier been a full-time member. This continuity has been of considerable value in helping the Tribunal cope with its heavy workload and in developing consistent jurisprudence in human rights law.

## TABLE 1 New Case Files Opened, 1997–2007

| | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | Totals |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Human Rights Tribunals/Panels** | 23 | 22 | 37 | 70 | 83 | 55 | 130 | 139 | 99 | 70 | 82 | 810 |
| **Employment Equity Review Tribunals** | 0 | 0 | 0 | 4 | 4 | 0 | 0 | 2 | 0 | 0 | 0 | 10 |
| **Totals** | 23 | 22 | 37 | 74 | 87 | 55 | 130 | 141 | 99 | 70 | 82 | 820 |

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

# 2007 Results

**Vigorous advocacy and the growing complexity of cases in recent years have continued to challenge the Tribunal's inquiry process. Nevertheless, the CHRT has remained committed to reducing case completion time to 12 months and is actively seeking ways to further improve its efficiency.**

## Workload Issues

Although the number of complaint referrals has decreased since the peak years of 2003 and 2004, the volume of work in 2007 continued to strain the Tribunal's resources. In 2007, the Tribunal received 82 new complaint cases—down from 99 in 2005 and up from 70 in 2006. (Table 1).

Given the realities of civil litigation today, this size of caseload places tremendous pressure on the Tribunal. Back in 1979 when the Tribunal was formed, the style of advocacy was very different: an appointed panel would hear a complaint and an inquiry would commence promptly after minimal pre-hearing procedures. The inquiry itself would be brief (often lasting less than a week) and all issues would be dealt with during the hearing.

Today, hearings are far more adversarial and the hearing process is punctuated with procedural motions and preliminary objections. The Tribunal attempts to minimize the impact of these disruptions in several ways. For example, the Tribunal has developed Rules of Procedure that set out clear expectations for disclosure. In addition, the Tribunal's case management system helps parties identify and resolve disclosure disputes at an early stage and offers guidance on how to streamline their case presentation. As a result, the number of formal rulings required has dropped: in 2004, the Tribunal rendered 24 formal rulings on motions; in 2005 and 2006, that number grew to 37 and 44 rulings, respectively; and in 2007, the number was reduced to 35.

## TABLE 2 Hearing Days, 2003–2007

| | 2003 | 2004 | 2005 | 2006 | 2007 |
|---|---|---|---|---|---|
| Hearing Days | 193 | 242 | 169 | 195 | 335 |
| Mediation Days | 46 | 57 | 50 | 59 | 46 |
| Case Management Conferences | N/A | N/A | 162 | 229 | 158 |
| Totals | 239 | 299 | 381 | 483 | 539 |

Note: Hearing days exclude pay equity complaint cases where multi-year hearings were conducted by the Tribunal. A case management system of conference calls with the parties was introduced in 2005.

Where case management is concerned, in 2006 the Tribunal held 229 conference calls to deal with preliminary and procedural matters raised by parties. These were followed by 335 days of hearings—the heaviest hearing workload in the Tribunal's history (excluding pay equity complaint cases where multi-year hearings were conducted). By contrast, in 2007 case management conference calls decreased to 158. (Table 2). We anticipate a concomitant decrease in hearing days in 2008.

At 2007 year-end, 98 case files remained active, compared with 147 in 2005 and 100 in 2006. Relatively high in historical terms, this figure reflects the growing complexity of complaint cases and the increased volume of complaint referrals the Tribunal began to experience in 2003.

### Timeliness of the Hearing Process

In 1998, the Tribunal set a target of reducing the time between the date of referral of a case and its completion to 12 months in at least 80 per cent of cases. Completed cases include those that have been settled (through mediation or otherwise), those that have been discontinued, and cases that have been heard and decided by a Tribunal member.

Significant progress was made in 2007 toward achieving that goal: average case completion time was 137 days and, at year-end, 21 per cent of 2007 cases had been closed. These are encouraging statistics, particularly when compared with historical figures. Case files opened in 2006 were closed, on average, in 227 days and 75 per cent within 12 months. Files opened in 2005 were closed, on average, in 195 days, with 81 per cent completed in less than 12 months. About 77 per cent of the Tribunal's 2004 cases were completed in less than 12 months and only five cases (three per cent) from 2004 remain open. Case files opened in 2003 were completed in an average of 236 days, and files opened in 2002 were completed in an average of 208 days. At year-end of 2007, the Tribunal had closed 77 per cent of 2006 case referrals, 89 per cent of 2005 cases and all complaint cases referred to the Tribunal before 2004.

As the Tribunal's case management process becomes more efficient and human rights jurisprudence evolves, the CHRT will continue its effort to shorten full-hearing case completion times.

Most human rights cases are settled without a hearing. Cases that require a full hearing and decision take longer. Average case closure time for full-hearing cases has varied through the years. In 2001, it was 384 days, with six cases requiring more than one year to finalize. By 2002, the average dropped to 272 days, and no case took more than a year to complete. In 2003, the average rose to 425 days, with more than half of cases requiring more than a year to complete. Of the cases that proceeded beyond the one-year mark in 2003, most were delayed due to requests from the parties or were the subject of Federal Court proceedings. In 2004, the average time rose to 486 days. In 2005, the number dropped again to 427 days, and in 2006 it rose again to 495 days, with most cases exceeding the one-year target. At the time of this annual report's publication, data on the closure of complaint files opened in 2007 was as yet insufficient.

Since 2002, the amount of time it takes for a case to make its way to hearing has been increasing. In 2002, the average number of days between referral to the Tribunal and the first day of hearing was 169. By 2003, that figure had increased to 232 days, and in 2004 the figure rose to 279. Cases opened in 2005 and 2006 took an average of 305 days and 340 days, respectively, to proceed to hearing. In 2007, the average time lapse between referral and the start of hearing dropped to 276 days. Many of the files opened in 2007 are still pending.

The rise in the number of days required for a case to reach a full hearing and decision is a function of the Tribunal's increased efforts at the pre-hearing stage. The Tribunal process must be fair and efficient without compromising due process. In particular, case management conferences with the parties take time. An additional factor contributing to the length of cases overall is the labour-intensive nature of well-reasoned decisions, especially as complaints grow in complexity. As the Tribunal's case management process becomes more efficient and human rights jurisprudence evolves, the CHRT will continue its efforts to shorten completion times for cases requiring a full hearing and decision.

The pre-hearing phase of cases has become increasingly litigious. Nevertheless, in 2007 the Tribunal continued to meet the earliest hearing dates of convenience to the parties. The Tribunal's case management model has also helped ensure an effective and efficient adjudication process. But, given the increase in the complexity of discrimination cases and in the volume of complaint referrals since 2003, the Tribunal has decided to reduce slightly its target for cases completed within a 12-month period to a now more realistically achievable rate of 70 percent, rather than 80 per cent.

## Timeliness of Rendering Decisions

Since 1998, the Tribunal has sought to reduce the time it takes to render a decision once a hearing is complete. Its objective has been to issue a decision no later than four months after the last day of the hearing in at least 90 per cent of cases. This continued to be a challenging target for the Tribunal in 2007.

In 2003, decisions were rendered within an average of 84 days after the close of the hearing. In 2004, that number rose to 121. In 2005, decisions took longer—91 days on average—with less than half rendered within four months. In 2006, the average was 199 days and only four (30 per cent) of the year's 13 decisions met the four-month target. In 2007, decisions were rendered on average in 166 days after a hearing—a small improvement— but only three (14 per cent) of the year's 20 decisions met the four-month target.

Despite the decline in new case referrals in 2006 (Table 1), the 200 per cent increase in new cases received by the Tribunal in 2003 and 2004 continued to affect its workload. Tribunal members rendered 20 decisions in 2007 on the merits of complaints. This represents the second-highest number of decisions rendered in a single year since 1993, when the Tribunal issued a total of 25 decisions.

The increased complexity of cases, the vigorous advocacy at inquiries and the amount of time Tribunal members spent resolving pre-hearing issues added significantly to the Tribunal's workload. Despite these challenges, the CHRT remains committed to striving for the earliest possible disposition of cases. The Tribunal expects that, by helping the parties determine, with greater precision, which issues must be decided at hearing, active case management will continue to yield major process improvements by reducing the number of issues to be addressed at hearing.

Given this, and the generally accepted six-month target for rendering decisions in the judicial sphere, the Tribunal has therefore decided to extend slightly its own target for decision rendering. It now aims to deliver a decision within four months of the close of hearing in 80 per cent of cases, rather than 90 per cent. In doing so, however, the Tribunal has strengthened its commitment to the timely disposition of discrimination complaint cases by way of a Practice Note (see http://www.chrt-tcdp.gc.ca/about/tribunalrules_e.asp) issued in 2007 to parties and the legal profession outlining hearing schedule expectations and the commitment of Tribunal members to meeting their objective of expeditious case disposition.

## Tribunal Settlements and Mediations

Of the case files opened in 2003 and 2004 that went to mediation, settlements were reached in approximately 64 per cent of the cases. In 2005 and 2006, the Tribunal's mediation success rate rose to 87 per cent (29 cases out of 33) and 88 per cent (37 cases out of 42), respectively. At 2007 year-end, 69 per cent of the cases referred for mediation had reached settlement. Several files opened late in the year are still in the early stages of inquiry. As a result, the settlement rate for cases opened in 2007 is expected to increase.

While the continuity of experienced Tribunal members is contributing greatly to the success of the Tribunal's mediation process, as human rights law has continued to evolve the issues arising during mediation have become increasingly complex. Moreover, certain types of complaints—such as those alleging the communication of hate messages and those alleging unequal wages between men and women for work of equal value—have emerged as especially adversarial and are less likely to reach settlement. The Tribunal received 21 such cases in 2005 and 2006, and eight more in 2007.

Refer to Table 3 for more information about average case completion timeframes from 1997 through 2007.

## Case Closures

As noted above, no complaint cases referred to the Tribunal prior to 2004 remain open. Only five cases (three per cent) from 2004 remain open and 89 per cent of the complaint cases from 2005 have been completed, leaving just 11 cases pending. To date, the Tribunal has closed 81 per cent of its 2006 complaint case referrals, leaving 13 cases open. Although 61 of the 82 referrals in 2007 remain open, many files are fixed or otherwise close to hearing.

## Case Management

In 2007, the tenor of hearings before the Tribunal continued to be increasingly adversarial. The hearing process was often interrupted by motions and objections. Although pre-hearing disclosure procedures are in place to ensure fair and orderly hearings, these have not completely solved the problem of frequently missed deadlines, requests for adjournment and

## TABLE 3 Average Case Completion Timeframes: 1998 to 2007

| | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007* |
|---|---|---|---|---|---|---|---|---|---|---|
| **From date of referral from the Canadian Human Rights Commission** | | | | | | | | | | |
| **To mediate a case** | – | – | – | – | – | 124 | 120 | 100 | 104 | 111 |
| **To settle a case** | 245 | 232 | 230 | 202 | 150 | 211 | 196 | 86 | 182 | 131 |
| **To first day of hearing** | 280 | 73 | 213 | 293 | 168 | 232 | 279 | 305 | 340 | 276 |
| **For decision to be released from end of hearing** | 103 | 128 | 164 | 84 | 89 | 84 | 121 | 191 | 236 | – |
| **Average processing time to close case** | 252 | 272 | 272 | 244 | 208 | 236 | 208 | 195 | 227 | 136 |

*Note: There are still many open files from 2007; this will change the averages for that year.

disagreements between parties about the issues being litigated. The case management process introduced in 2005 has offered some relief. By conducting case conferences with the parties at strategic points throughout the pre-hearing stage of the inquiry, the Tribunal helps guide parties toward a more predictable, streamlined and fair approach to case conduct. In turn, the Tribunal is better able to ensure a more effective and efficient hearing on the merits.

While the Tribunal is always careful to avoid coercion when imposing constraints, especially deadlines, on the parties, it nevertheless believes that its proactive case management approach will continue to benefit the parties. Procedural issues left unresolved at the pre-hearing stage can greatly hinder the parties' ability to present their cases at hearing and can cause serious delays. The Tribunal's interventionist approach to case management is helping parties better meet their commitments. In 2007, the Tribunal reinforced this approach with the publication of its first Practice Note (see http://www.chrt-tcdp.gc.ca/about/tribunalrules_e.asp). Based on the principle that the process for inquiring into and exposing acts of discrimination must be expeditious in order to be effective, the Tribunal's Practice Note calls upon counsel and the parties appearing before it to abide by their hearing schedule commitments. The Tribunal reciprocates with its own commitment to ensure its decisions on inquiries are delivered as early as possible and without undue delay.

## Keeping Parties and the Public Informed

In 2002, the Tribunal published a guide, *What Happens Next?*, that explains the entire inquiry process in non-legal language. In 2004, this was followed by a publication clarifying the Tribunal's role and explaining how it conducts its business and the difference between the roles of the Tribunal and the Canadian Human Rights Commission. *What Happens Next?* was updated in 2004 to explain the mediation process used by the Tribunal. In 2006, the Tribunal completed and published a new edition of the guide, incorporating the new case management process introduced in 2005.

Both *What Happens Next?* and the Tribunal's Mediation Procedures guide are available on the Tribunal website at http://www.chrt-tcdp.gc.ca/pdf/Procedures%20Bil%20Jan27-06.pdf.

The Tribunal continues to receive 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 website was redesigned in 2003 to better comply with the Common Look and Feel standards developed as part of the Government of Canada's online initiative. A more powerful search engine, a decision classification system and the online publication of decisions and rulings on the date they are released (see http://www.chrt-tcdp.gc.ca/tribunalrules_e.asp) have improved access to decisions and rulings. In 2005, the Tribunal undertook another review of the decision and rulings data source on its website, completing the project in 2006 and identifying further service enhancements.

In 2007, the Tribunal substituted paper distribution of decisions and rulings with an Internet-based notification and access system and replaced hard-copy transcriptions with digital voice recordings at its hearings. These technology advances have saved both time and paper, and are offering more efficient information access for the Tribunal's clients and the Canadian public in general.

# Cases

## Tribunal Decisions Rendered

**Date of decision:**
24/01/2007

**Member:**
Karen Jensen

**Employment:**
Canada Post Corporation

**Outcome:**
Complaint substantiated

### *Culic v. Canada Post Corporation,* 2007 CHRT 1

The complainant suffered from a permanent partial disability to neck and shoulders that she claimed prevented her from working more than six hours per day. After she moved into a new position, the respondent had concerns about the medical information provided by the complainant's doctor. The respondent ordered her to undergo an out-of-town Independent Medical Examination (IME). The Tribunal found that the imposition of an IME in these circumstances was a bona fide occupational requirement. The respondent had an obligation to protect the complainant's health in the workplace and had exhausted all other means of fulfilling this obligation.

However, the Tribunal also found that the respondent differentiated adversely in regard to the complainant through unwarranted threats of discipline and discharge for failure to provide information about her disability. In addition, the respondent questioned the complainant excessively about her work restrictions. During a period of sick leave, the complainant became pregnant. When she expressed a desire to return to work, the respondent imposed two out-of-town IMEs as a condition of her return to service; one with a psychiatrist and another with an occupational specialist.

The Tribunal found that the former was not reasonably necessary but the latter was. Moreover, it found that requiring the complainant to travel to another city for the IME's and keeping her out of service until she had done so, failed to accommodate her needs to the point of undue hardship. Finally, the Tribunal held that the respondent discriminated against the complainant by disciplining her for insubordination when, out of concern for her pregnancy, she refused to travel to the city where the IMEs were booked. The Tribunal issued orders compensating the complainant for wage loss and directing her return to active service.

## *Warman v. Tremaine* 2007 CHRT 2

**Date of decision:**
02/02/2007

**Member:**
Michel Doucet

**Issue:**
Hate message

**Outcome:**
Complaint substantiated

The complainant, Mr. Warman, alleged that Mr. Tremaine discriminated against persons or a group of persons on the basis of religion, national or ethnic origin, race or colour by repeatedly communicating messages of hatred over the Internet, contrary to section 13 of the CHRA.

The complainant had been monitoring activities of what he described as "white supremacist" and "neo-Nazi" groups. While monitoring a website, the complainant noticed postings by an individual whom the complainant later identified as the respondent. The respondent admitted before the Tribunal to being the author of the impugned postings. The complainant alleged that the impugned postings contained discriminatory remarks towards blacks, Jews, Aboriginals, other non-whites and homosexuals.

To establish that the postings by the respondent were in violation of section 13 of the CHRA, the complainant had to lead evidence on three points. The first was that the material was communicated repeatedly; the second was that it was communicated by means of a telecommunication undertaking within the legislative authority of Parliament; and the third was that it was likely to expose persons to hatred or contempt because they were identifiable on the basis of a prohibited ground of discrimination.

In this case, the Tribunal noted that the Internet was designed to facilitate repeated mass transmission of a message. Consequently, it concluded that the respondent's postings were viewed repeatedly. Moreover, the Tribunal concluded that the Internet was a mode of telecommunication that fell under Parliament's authority. Finally, it was established that the tone and content of the respondent's postings were aggressive and violent in nature, and that they exposed people to hatred and contempt based on prohibited grounds, contrary to section 13—the messages completely dehumanized the groups that they targeted. For the above-mentioned reasons, the complaint was substantiated. The respondent was prohibited from communicating material substantially similar in nature to the impugned messages. In addition, the respondent was ordered to pay a monetary penalty.

**Date of decision:**
21/02/2007

**Member:**
J. Grant Sinclair

**Employment:**
Royal Bank of Canada

**Outcome:**
Complaint dismissed

## *Sugimoto v. Royal Bank of Canada* 2007 CHRT 5

The complainant alleged that the respondent, the Royal Bank of Canada (RBC), in its Pension Plan discriminated against her by treating her in an adverse differential manner on the grounds of sex, contrary to section 7, 10 and 21 of the CHRA.

Under the RBC Pension Plan (the "Plan"), a male of the same age as the complainant could retire with an unreduced pension at age 56, 70 months earlier than she could. The reason for this was that prior to May 1, 1974, male employees of RBC were eligible to become contributory members of the Plan at age 21, while women had to wait until the age of 24. On May 1, 1974, the membership eligibility age was changed to 30 for all employees.

In 1980, the CHRA began to apply to pension plans.

In 1996, in an effort to correct the discriminatory practice of the Plan that existed prior to 1974, RBC introduced a Gender Buy-Back (GBB) plan to allow the affected women to purchase benefits for the three lost years. While the GBB was underinclusive as a curative measure, it was aimed at pre-CHRA discrimination and as such its underinclusiviness could not be relied upon to found liability under the CHRA.

In 2001, RBC introduced the "2001 Re-opener" which allowed employees who had opted out of the Plan implemented on May 1, 1974 to regain their lost benefits. Among other things, that program allowed male employees who had been between the ages of 21 and 24 in 1974 to regain their lost benefits and ultimately retire earlier. By proving that the "2001 Re-opener" gave her male counterpart an advantage, the complainant established a prima facie case of discrimination on the grounds of sex. However, the respondent explained that the "2001 Re-opener" distinguished only between plan members and non-plan members. While plan membership had been previously restricted on discriminatory grounds, the discriminatory membership rule in question had been legal at the time it was made and it was abolished before the coming into force of the CHRA.

One could not impose liability for the respondent's facially neutral "2001 Re-opener" initiative simply because it indirectly incorporated a discriminatory rule that had existed prior to the enactment of equality legislation.

On the above-mentioned grounds, the Tribunal dismissed Ms. Sugimoto's complaint.

## *Durrer v. Canadian Imperial Bank of Commerce* 2007 CHRT 6

**Date of decision:**
30/03/2007

**Member:**
Matthew D. Garfield

**Employment:**
Canadian Imperial Bank of Commerce

**Outcome:**
Complaint dismissed

After working for the Canadian Imperial Bank of Commerce (CIBC) for over 28 years, Mr. Durrer was notified that his position was going to be eliminated and his employment terminated because of company-wide downsizing and restructuring. The restructuring aimed to eliminate 2,500 jobs and as a result, employees were encouraged to look for work outside CIBC. Because Mr. Durrer's position was found to be redundant and unnecessary, his position was eliminated.

At the time, CIBC was offering immediate, unreduced pensions to its employees over 55 years of age. Because Mr. Durrer was younger than 55, he was not eligible. Following notification of termination of his employment in October 1999, Mr. Durrer managed to find three temporary positions within CIBC that extended his employment for another 28 months. Through the temporary positions, the complainant was hoping to ensure employment until he reached the age threshold required to qualify for a pension. However, at the end of the third temporary position, and before he qualified for the pension, his employment was terminated. Mr. Durrer alleged that CIBC had discriminated against him on the basis of age.

The Tribunal found the evidence did not support the complainant's allegation that CIBC had eliminated his position because of his age. The position was eliminated because it was redundant and not needed in CIBC's newly consolidated structure. Moreover, CIBC did not frustrate Mr. Durrer's attempts to obtain sufficient temporary assignments in order to qualify for the pension; by the time of termination, Mr. Durrer had simply not been able to find a fourth assignment that matched his needs and qualifications, and this was not attributable to his age. The complaint was dismissed.

**Date of decision:**
04/04/2007

**Member:**
A. Hadjis

**Employment:**
Bell Canada

**Outcome:**
Complaint substantiated

## *Cole v. Bell Canada* 2007 CHRT 7

Upon returning from maternity leave, Ms. Cole, an employee of Bell Canada (Bell), asked the company to provide her with a work schedule that would enable her to go home and breastfeed her child at the same time every day. The complainant's child was born with a serious health condition and physicians advised the complainant that, given the imminent need for surgery, she should breastfeed her child for as long as possible in order to strengthen his immune system.

The complainant alleged that in turning down her request for a modified work schedule, Bell refused to accommodate her and thus discriminated against her based on her sex and family status, in violation of section 7 of the Canadian Human Rights Act.

The Tribunal found that Bell did not treat Ms. Cole's request to change her work schedule to better accommodate nursing as a request coming from a mother. Instead, Bell treated it as a medical issue and asked Ms. Cole to provide medical notes and reports in support of her request. The respondent thus viewed the complainant as suffering from a disability and required periodical updates from Ms. Cole's physician to support the continuance of accommodation. By discouraging Ms. Cole's request as a mother for unpaid time off work each day in order to nurse her child, the respondent subjected the complainant to adverse differential treatment on the basis of her sex within the meaning of section 7 of the Act. The Tribunal further found that Bell had no policy on accommodating employees with respect to breastfeeding, and that the respondent had failed to prove that Ms. Cole's daily departure, up to one hour before her ordinary shift end in order to nurse her child would have caused undue hardship to Bell.

The Tribunal ordered that Bell take measures to prevent this discrimination from occurring in the future by establishing policies relating to requests by Bell employees for accommodation with regard to breastfeeding that were consistent with the findings in its decision. Ms. Cole was awarded compensation for pain and suffering and compensation for Bell's reckless conduct. She was also compensated for lost income related to wages unearned while at her physician's office obtaining the requested medical notes and reports.

## *Knight v. Société de transport de l'Outaouais* 2007 CHRT 15

**Date of decision:**
02/05/2007

**Member:**
M. Doucet

**Employment:**
Société de transport de l'Outaouais

**Outcome:**
Complaint substantiated

Mr. Knight alleged that the respondent, the Société de transport de l'Outaouais (STO), discriminated against him because of a disability in relation to employment, contrary to section 7 of the CHRA.

Mr. Knight had earlier been involved in a workplace accident that caused him to injure his right hand. Following the accident, the complainant received income replacement benefits from the Commission de la Santé et de la Sécurité au Travail (CSST) and was assessed by a doctor who determined that he had permanent functional limitations.

When the complainant applied for a position with the respondent he was asked to undergo a medical exam. When the doctor learned of the complainant's disability, he told him that his hiring would be delayed until he could review the CSST's file. After the review, the doctor determined that the complainant did not meet the requirements for the position. The STO later informed him that he had not been hired.

In reviewing the evidence, the Tribunal found that, although the respondent had considered accommodating the complainant, it had erroneously concluded that doing so would cause it undue hardship. For example, the possibility of offering the complainant a driver's job was never properly examined and, given the circumstances, too much weight was attached to the effect of accommodation on employee morale and the collective agreement. Moreover, the STO relied on the CSST's determination of the complainant's work restrictions, despite the fact that the STO had made its own, more positive observations of the complainant's abilities, and had been provided with a more recent and more positive prognosis from the complainant's physician. For those reasons, the Tribunal substantiated the complainant's allegations and ordered the STO to take steps to integrate him into the workplace and to compensate him for lost wages.

**Date of decision:**
15/05/2007

**Member:**
K. Jensen

**Employment:**
Canada Post Corporation

**Outcome:**
Complaint substantiated

## *St. John v. Canada Post Corporation* 2007 CHRT 19

Mr. St. John, a partially disabled full-time postal clerk for Canada Post, who had been diagnosed with bipolar mood disorder and lower back and knee problems, alleged that Canada Post had discriminated against him on the basis of his disability by treating him in an adverse differential manner contrary to section 7 of the Canadian Human Rights Act. In addition, Mr. St. John alleged that Canada Post engaged in a discriminatory policy or practice, contrary to section 10 of the Act, when he and three other disabled employees were sent home early from the Edmonton mail processing plant due to lack of work, and were paid from their sick leave credits.

During the hearing, the parties reached an agreement on the section 7 aspect of the complaint. Regarding the section 10 policy/practice allegation, the Tribunal concluded that the allegation was founded and that the practice followed in May 2003 was not in accordance with the respondent's official accommodation policy. The practice was discriminatory because it entailed that during periods of low mail volume, when other employees could be retained, disabled employees such as the complainant were sent home without verifying if productive work being performed by others could have been given to them. The blanket rule against "back-filling," which prohibited the respondent from re-assigning a non-disabled employee to a different position so as to allow a work-restricted disabled employee to keep working during low mail volume periods, did not comply with the CHRA. Furthermore, because the disabled employees being sent home were not given a choice of leave options, the practice was discriminatory for a second reason. Canada Post was ordered to offer the same leave options to disabled employees for whom alternative work cannot be found during low volume periods as are offered to other employees sent home for reasons of incapacity. Canada Post was also ordered to cease the blanket prohibition against back-filling that existed in May 2003 and which prevented it, during low mail volume periods, from re-assigning a non-disabled employee to other tasks and replacing him or her with a disabled work-restricted employee.

## *Witwicky v. Canadian National Railway* 2007 CHRT 25

**Date of decision:**
6/07/2007

**Member:**
M. Doucet

**Employment:**
Canadian National Railway

**Outcome:**
Complaint dismissed

The complainant filed two complaints under sections 7, 10, 14 and 14.1 of the CHRA against Canadian National Railway (CN). The complaints alleged that the respondent had engaged in a discriminatory practice on the grounds of disability and retaliation in a matter related to employment.

Mr. Witwicky, a train conductor, was called to work a train from Kamloops, British Columbia to Jasper, Alberta. Following his arrival, he phoned his wife and they had a conversation that left him emotionally distraught. Upset by the news he had received, the complainant decided to book himself off as unfit for duty and informed the respondent that he would not return to work for a few days. Mr. Witwicky then went out for dinner. Later that evening he was taken into custody for a short time by the RCMP when he was found passed out in a stolen vehicle. Afterward, the complainant returned to his workplace without informing his supervisor of the previous day's events. He was later investigated by CN for these events, dismissed, and then eventually conditionally reinstated. The reinstatement contract included a clause that required the complainant to be regularly tested for drugs and alcohol.

The complainant alleged discrimination on the basis of a perceived disability, namely the perception that he suffered from a substance abuse disorder and that he was perceived as being an alcoholic. The Tribunal found this allegation to be unsubstantiated. It determined that the complainant's employment was terminated because the respondent felt that he had violated the company's policies prohibiting the use of "intoxicants or narcotics by employees subject to duty, or their possession or use while on duty" and because Mr. Witwicky had reported fit for duty while the evidence showed that he was not.

The complainant alleged that the terms of this reinstatement contract created the perception he was an alcoholic. But since he had not established that he was an alcoholic, nor had the respondent perceived him as such, the section 7 complaint was dismissed. For the same reasons, the Tribunal found that even if the complainant had been harassed, the harassment was not based on a "prohibited ground of discrimination" as required by section 14.

The Tribunal also dismissed the complainant's allegations that the respondent retaliated against him because he had filed a complaint under the Act. The allegedly retaliatory actions he had experienced were a reasonable consequence of his reinstatement contract.

**Date of decision:**
10/07/2007

**Member:**
Athanasios D. Hadjis

**Issue:**
Hate message

**Outcome:**
Complaint substantiated

## *Warman v. Wilkinson* 2007 CHRT 27

Mr. Warman's complaint alleged that Mr. Wilkinson and the Canadian Nazi Party (CNP) engaged in a discriminatory practice, within the meaning of section 13 of the CHRA, by repeatedly communicating hate messages through an Internet website. The discrimination was alleged to have been based on disability, religion, race, colour, sexual orientation, and national or ethnic origin.

Although the respondent was made aware of the proceedings, he failed to appear at the hearing. The Tribunal based its decision only on the evidence provided by the complainant.

The Tribunal found that the impugned messages contained the hallmarks of hate messages within the meaning of section 13 of the CHRA. The messages called for "getting rid of" identifiable groups and advocated their mass killing. Various messages called for the segregation of non-whites and were replete with inflammatory, derogatory epithets referring to the targeted groups. Others trivialized or alternatively celebrated past persecution or tragedy involving members of the targeted groups. Finally, some of the messages portrayed Jews as a powerful menace seeking to monopolize the media with a view to controlling public opinion.

On the basis of evidence pertaining to the respondent's former physical address and certain personal information conveyed online by the administrator of the web forum where the impugned messages were posted, the Tribunal was able to conclude that Mr. Wilkinson was the forum's administrator. As administrator, Mr. Wilkinson had the means to ensure that the impugned messages were never viewed publicly or that they were removed. The level of control he exercised over the posting of the messages was sufficient to establish that he caused them to be communicated within the meaning of the CHRA. The Tribunal was unable to make a finding against the CNP; while the CNP's name was associated with the web forum where the impugned messages were posted, there was not sufficient evidence to show that the CNP was an actual person or group of persons, as opposed to simply Mr. Wilkinson's alter ego.

The Tribunal ordered Mr. Wilkinson to stop communicating the impugned messages or any other messages of a similar type. It also ordered him to pay a penalty of $4,000.

## *Moore v. Canada* 2007 CHRT 31

**Date of decision:**
25/07/2007

**Member:**
J. Grant Sinclair

**Employment:**
Canada Post Corporation

**Outcome:**
Complaint substantiated

The complainant, an employee of the Canada Post Corporation (CPC) in Vancouver, alleged that CPC contravened sections 7 and 10 of the Canadian Human Rights Act on the grounds of disability.

Mr. Moore was working as a mail handler for the CPC when, after two back injuries, CPC's medical consultant concluded that Mr. Moore should be designated as permanently, partially disabled (PPD) and should therefore be subject to some work limitations.

Mr. Moore alleged that the employer discriminated against him by permanently assigning him to the manual section and reclassifying him to an inferior position, at a lower wage rate, because of his disability. In addition, Mr. Moore claimed that in 1999, CPC adopted a policy that adversely differentiated between PPD employees and other employees by limiting the shift bid choices of PPD employees.

The Tribunal found that the first allegation in the complaint had not been substantiated. The complainant himself never disputed the accommodation involving his reclassification to a lower position, and in his own admission on a 1999 internal grievance form, Mr. Moore stated that he was not confident that he could return to his previous duties.

In regards to the allegation that CPC adopted a policy that adversely differentiated between PPD employees and other employees by limiting their shift bid choices, the Tribunal concluded that CPC did engage in a discriminatory practice in this regard. Nevertheless, because Mr. Moore did not demonstrate that notwithstanding the discriminatory practice he would have received the shift he wanted despite his lack of seniority, the Tribunal did not make any award of compensation.

**Date of decision:**
08/08/2007

**Member:**
M. Doucet

**Employment:**
AZ Bus Tours Inc.

**Outcome:**
Complaint substantiated

## *Tanzos v. AZ Bus Tours Inc.* 2007 CHRT 33

The complainant alleged that the respondent had engaged in a discriminatory practice on the grounds of sex and disability in a matter related to employment.

Five months after she began her employment with the respondent, the complainant, a bus driver, took sick leave. She returned to work under certain medical restrictions. The complainant sought to continue working full-time but with fewer hours, per her doctor's orders. Instead, the respondent assigned her part-time on-call status. After her doctor authorized five-day work weeks—provided there was no night work—the respondent still refused to reinstate the complainant to full-time status because of the restriction. As a result, the complainant eventually stopped working for the respondent. The Tribunal found that the respondent had discriminated on the basis of a disability, contrary to section 7 of the CHRA.

The Tribunal noted that the complainant had presented her employer with a medical diagnosis of her disability, yet the only accommodation offered by the respondent was converting the complainant's full-time employment to part-time employment. This did not constitute accommodation to the point of undue hardship. The respondent was ordered to pay compensation for lost wages and compensation for pain and suffering.

**Date of decision:**
09/08/2007

**Member:**
Kerry-Lynne D. Findlay

**Employment:**
Greyhound Canada Transportation Corporation

**Outcome:**
Complaint dismissed

## *Khiamal v. Greyhound Canada Transportation Corp.* 2007 CHRT 34

Since 1980, the complainant, Mr. Khiamal, had worked for the respondent, Greyhound Canada Transportation Corporation, as a mechanic. In July 2002, he applied to the position of Night Shift Maintenance Foreman but did not get the job. In August 2003, Mr. Khiamal filed a complaint under sections 7, 10 and 14 of the CHRA against the respondent, alleging discrimination based on race, national or ethnic origin, colour, age and disability.

The complainant made three allegations. First, he claimed he was denied the Night Shift Maintenance Foreman position because of discrimination. Although the complainant established a prima facie case of discrimination on this point, the respondent presented evidence demonstrating that personal problems between Mr. Khiamal and a colleague were at the root of the unfair treatment, not discrimination based on prohibited grounds. In view of the evidence, the Tribunal accepted the respondent's explanation and dismissed the first allegation.

Second, the complainant claimed that he suffered continued harassment by his co-workers and managers based on his race. However, the evidence presented by Mr. Khiamal was not complete or sufficient in that it did not establish a connection between the pattern of unwelcome conduct and a prohibited ground. The second allegation was thus dismissed.

Third, the complainant alleged that he had been denied training and courses in violation of sections 7(b) and 10(a) of the CHRA. Although there was prima facie evidence that the respondent differentiated against the complainant adversely in the approval of courses and training, there was no evidence linking that differentiation to a prohibited ground of discrimination. The third allegation was therefore also dismissed (judicial review pending).

## *Vilven* 2007 CHRT 36

**Date of decision:**
17/08/2007

**Panel:**
Grant Sinclair, Karen A. Jensen, Kathleen Cahill

**Employment:**
Air Canada and Air Canada Pilots Association

**Outcome:**
Complaints dismissed

The complainants, George Vilven and Robert Neil Kelly, had worked for the respondent, Air Canada, since 1986 and 1972, respectively. They alleged that Air Canada discriminated against them on the basis of age, contrary to sections 7 and 10 of the CHRA by requiring them to retire at age 60. Mr. Kelly also filed a complaint against the Air Canada Pilots Association (ACPA), alleging a contravention of sections 9 and 10 of the CHRA. Finally, the Fly Past 60 Coalition challenged the constitutionality of section 15(1)(c) of the CHRA, claiming it violated section 15(1) of the Charter.

The Tribunal found that the termination of the complainants' employment with Air Canada on the basis of the mandatory retirement policy established a prima facie case of discrimination under section 7 of the Act. Furthermore, the sole fact that ACPA had agreed to this policy through the collective agreement and pension plan established a prima facie case of discrimination against the union respondent.

However, under section 15(1)(c) of the CHRA, if the respondents could prove that age 60 was the normal age of retirement for similar positions, the case against them would fall. In this situation, the onus to prove that the normal age of retirement was 60 rested with Air Canada since it had greater access to the relevant information and superior financial resources. In comparing Air Canada with other major international airlines, the data revealed that age 60 was the normal age of retirement for the majority of positions in other major airline companies. Moreover, age 60 had been

designated as retirement age by the industry in an international standards document. The result was that Air Canada's mandatory retirement policy could not be viewed as a discriminatory practice under the CHRA; it imposed the "normal age of retirement" for similar positions.

With regard to the constitutional challenge put forward to the "normal age of retirement" defence, the Tribunal found that the mandatory retirement policy did not violate the dignity of the complainants and did not fail to recognize them as full and equal members of society. Thus the section 15 Charter claim failed. For all these reasons, the complaints were dismissed (judicial review pending).

**Date of decision:**
22/08/2007

**Member:**
Michel Doucet

**Employment:**
AZ Bus Tours Inc.

**Outcome:**
Complaint dismissed

## *Tanzola* 2007 CHRT 38

The complainant, Maureen Tanzola, worked for the respondent, AZ Bus Tours Inc. from October 1997 to November 2001. She alleged that the respondent engaged in discriminatory practice on the grounds of sex in a matter related to employment in violation of sections 7 and 10 of the CHRA. She claimed she had been harassed because she is a woman, and that because of her gender she was transferred to a new division—a three-hour commute from her home—forcing her to resign.

The Tribunal found the complainant never established that the respondent engaged in any form of discriminatory practice toward her during her employment. Nothing showed that the respondent's policies or practices stereotyped or were prejudiced against female employees. On the contrary, the evidence showed that both male and female employees were expected to meet the same requirements and qualifications. The complainant's allegations did not establish a link between the way she claimed she was treated and the fact that she is a woman. Complaints under the CHRA are not wrongful dismissal actions; the complaint depends on a finding of discrimination. There was no such finding here and the complaint was therefore dismissed.

## *Graham v. Canada Post Corporation* 2007 CHRT 40

**Date of decision:**
02/10/2007

**Member:**
Grant Sinclair

**Employment:**
Canada Post Corporation

**Outcome:**
Complaint dismissed

Since 1977, the complainant, Ms. Graham, worked for the respondent, Canada Post Corporation. In 2001, she became acting superintendent. When she assumed the position, a new project that placed a lot of responsibility and pressure on her as acting superintendent was about to be launched.

Starting in May 2002, Ms. Graham stopped going to work and remained absent until November 2005 because of illness. In 2003, Ms. Graham filed a complaint alleging that Canada Post discriminated against her by failing to accommodate her temporary disability and by treating her in an adverse differential manner—both contrary to section 7 of the CHRA. Ms. Graham claimed that Canada Post terminated her status as acting superintendent because of her disability and that the corporation caused her disability and her inability to work by its failure to provide sufficient staff and support for her to carry out her duties.

The Tribunal concluded that although it was clear Ms. Graham had suffered from a temporary disability, she did not establish a prima facie case that CPC discriminated against her by failing to accommodate her. In fact, "failure to accommodate" is neither a prohibited ground of discrimination nor a discriminatory practice under the CHRA. Further, no evidence was presented by the complainant to establish that CPC treated her in an adverse differential manner because of her disability.

Ms. Graham claimed that the CPC terminated her acting assignment because of her disability. However, the Tribunal found that although the obligation rested on the respondent to demonstrate that the complainant was accommodated to the point of undue hardship, it was the complainant's duty to prove that she had assisted in securing an appropriate accommodation. In this case, Ms. Graham failed to do so.

Finally, Ms. Graham claimed that the respondent had caused her to become disabled by not providing her with sufficient staffing support. This claim implied that she had become disabled prior to taking her leave of absence. Unfortunately, she presented no evidence to support that allegation.

For these reasons, the Tribunal dismissed Ms. Graham's complaint.

**Date of decision:**
19/10/2007

**Member:**
K. Jensen

**Employment:**
Canada Post Corporation

**Outcome:**
Complaint partially substantiated: one allegation substantiated; nine allegations dismissed

## *Day v. Canada Post Corporation* 2007 CHRT 43

While working for Canada Post Corporation, Mr. Day became ill and was diagnosed with depression, anxiety disorder and an obsessive compulsive personality disorder. The complainant alleged that Canada Post never accepted his psychiatric disability. Mr. Day raised 10 allegations of discrimination. The complainant's allegations related to: his psychological fitness to work; Canada Post's requirement that he work the night shift; the termination of his employment; and negative differential treatment and harassment on the basis of his disability contrary to sections 7 and 14 of the CHRA.

The Tribunal dismissed nine allegations; one was substantiated because the evidence showed that Canada Post treated Mr. Day differently from non-disabled employees—and without sufficient dignity and respect when, after witnessing disturbing behaviour, it removed him precipitously from the workplace and placed him on sick leave. The respondent was able to justify the need to remove the complainant from the workplace on the grounds of protecting Mr. Day's safety and that of his co-workers. However, the respondent was unable to justify its failure to provide Mr. day and his physician, in a timely way, with the information on which the decision to remove Mr. Day was made. To the extent that it failed to share this medical and observational information promptly, the respondent did not fulfill its procedural duty to accommodate.

The Tribunal awarded the complainant compensation for pain and suffering, reimbursement for legal fees, and compensation for wilful and reckless conduct.

## *Willoughby v. Canada Post Corporation* 2007 CHRT 45

**Date of decision:**
26/10/2007

**Member:**
Julie C. Lloyd

**Employment:**
Canada Post Corporation

**Outcome:**
Complaints substantiated

Mr. Willoughby's complaint alleged that his employer, Canada Post Corporation, discriminated against him on the basis of his disabilities—both physical and mental—in breach of either or both of sections 7(a) and 7(b) of the Canadian Human Rights Act.

Mr. Willoughby was first employed by Canada Post in 1977. Twenty years later he was assigned to a shift that started at 3:30 a.m. and ended at 11:30 a.m. Having difficulty performing his job, the complainant underwent a medical assessment. The physician found that Mr. Willoughby was suffering from a sleep disorder and should work a regular day shift. In addition, the physician found that Mr. Willoughby had knee injuries and should not be required to do excessive walking, standing or lifting.

Canada Post initially assigned the complainant to a number of different day positions. Mr. Willoughby alleged that the second position he was assigned was too difficult for him and did not suit either his experience or his abilities. As a result the complainant made numerous mistakes, received a poor performance evaluation, and was removed from his position. He was reassigned to his initial position and placed on the 3:30 a.m. to 11:30 a.m. shift—the same shift his physician had found to be unsuitable. Mr. Willoughby's psychological condition deteriorated as a result of this change and his psychologist said that he should be assigned to a day shift. Canada Post advised the complainant that the company had no positions available to meet his medical restrictions and that he should go on disability leave. Following the end of that leave, Mr. Willoughby wanted to return to his job: Canada Post again informed him there were no positions available to meet his medical restrictions.

The Tribunal found that Canada Post treated Mr. Willoughby in an adverse differential manner based on his disabilities when it failed to accommodate his medical restrictions and reassigned him to the night shift. In addition, the Tribunal found that Canada Post was not sensitive to or respectful of Mr. Willoughby's skills, capabilities and potential contributions, did not consider alternative approaches to accommodate him and was not flexible and creative enough in conducting an adequate search for alternative employment.

The Tribunal therefore found that the complaint regarding Mr. Willoughby's reassignment to the night shift and the complaints regarding the two occasions on which Canada Post did not find a suitable position for him were substantiated, and that Mr. Willoughby had suffered discrimination on the basis of his disabilities.

Mr. Willoughby was awarded compensation for lost wages, pain and suffering, wilful or reckless discrimination, and legal expenses.

**Date of decision:**
26/10/2007

**Member:**
Athanasios D. Hadjis

**Issue:**
Hate messages

**Outcome:**
Complaint substantiated

## *Warman v. Beaumont* 2007 CHRT 49

The complainant alleged the respondent had communicated messages that were likely to expose persons to hatred or contempt on the basis of race, national or ethnic origin, religion and sexual orientation. The messages were allegedly posted in Canada on a website based in the United States.

The Tribunal found that the respondent was indeed the person who had communicated the material in question, and that she had communicated "repeatedly" by means of the Internet, within the meaning of section 13 of the CHRA. In particular, the Tribunal rejected the assertion that the communication was of a private nature, occurring amongst friends and acquaintances; rather, the evidence established that the communication of the respondent's messages via the website forum resulted in their gaining a wider, public circulation. In this case, the Internet served as an inexpensive means of mass distribution of information.

The Tribunal concluded that the material in question was likely to expose persons to hatred or contempt on prohibited grounds. First, many of the messages contained highly inflammatory and derogatory language, including epithets that targeted individuals on the basis of race, religion, ethnicity and sexual orientation. Second, the messages depicted the targeted groups as having no redeeming qualities, at times describing them as "degenerates", the "spawn of Satan," and expressing the wish that they all die from disease. Third, some of the messages masqueraded as objective reporting (so-called "true stories") and portrayed targeted groups as the cause of crime and educational deficits. Other messages invoked terminology widely used by the regime of Nazi Germany, advocated the forced deportation of non-whites or their segregation and blamed Jews for the anti-Semitism they have experienced. Remedial orders included: to cease the communications in question, to compensate the complainant who was specifically identified in some of the material, and to pay a monetary penalty.

## *Montreuil v. Canadian Forces Grievance Board* 2007 CHRT 53

**Date of decision:**
20/11/2007

**Presiding member:**
Michel Doucet

**Position:**
Canadian Forces Grievance Board

**Outcome:**
Complaint allowed

The complainant alleges that the respondent, the Canadian Forces Grievance Board (the Board), discriminated against her on the basis of sex (transgender), contrary to sections 3 and 7 of the CHRA.

The complainant applied for a position as a senior grievance officer with the Board. According to the advertisement, some positions were bilingual imperative whereas "some are unilingual English or French." After passing a competition and an interview, Ms. Montreuil, a unilingual francophone, was placed on an eligibility list used to fill vacant positions. A little while later, the Board informed her that, in view of the limited number of francophone cases, it would not hire a unilingual French officer unless there was a marked increase in the number of francophone cases.

However, according to the evidence filed, the Board would never need a unilingual French officer because the bilingual officers could process the French cases. Based on this, the Board implicitly rejected Ms. Montreuil's application.

The evidence established that the candidates hired by the respondent were all unilingual English and were not better qualified than Ms. Montreuil. None of the candidates hired were transgendered. The Tribunal determines that the Board used language as a pretext for rejecting the complainant's application, whereas the actual ground for dismissing her application was discrimination on the basis of sex.

Therefore, the complainant was able to establish *prima facie* discrimination that the respondent could not refute or explain. For these reasons, the Tribunal must allow the complaint.

**Date of decision:**
13/12/2007

**Member:**
K. Jensen

**Employment:**
Social Development Canada, Treasury Board of Canada and Public Service Human Resources Management Agency

**Outcome:**
Complaint substantiated

## *Walden v. Canada (Social Development)*, 2007 CHRT 56

Ms. Walden was part of a group of predominantly female nurses working as medical adjudicators in the Canadian Pension Plan Disability Benefits Program. These nurses worked alongside a predominantly male group of doctors who acted as medical advisors. The complainants alleged that the respondents discriminated against them on the basis of their gender by treating them differently from the medical advisors—contrary to section 7 of the CHRA—and/or by pursuing a practice that deprived the complainants of employment opportunities contrary to section 10 of the CHRA.

The Tribunal found that although the medical advisors exercised an oversight and advisory role not performed by the adjudicators, the differences in the work performed were not significant enough to explain the wide disparity in the treatment of the two groups. This was especially so regarding recognition of the medical advisors as health professionals within the Health Services Group in the Public Service. Furthermore, because the respondents had failed to prove that similar recognition of the nurses would cause the employer undue hardship in terms of cost, the Tribunal found that the complaints had been substantiated.

Some of the discriminatory practices at issue occurred before the enactment of the CHRA and others occurred afterward. The Tribunal determined that its decision in the present case could not apply to practices that pre-dated the legislation's enactment.

At the request of the parties involved, the Tribunal did not issue a remedy other than to order the respondents to cease the discriminatory practice and to direct the parties to negotiate appropriate remedial measures. The Tribunal retained jurisdiction to make further remedial orders in the event that the parties were unable to reach an agreement.

## Review of Tribunal Decisions by the Federal Court of Appeal

### *Chopra v. Canada (Health and Welfare)* 2007 FCA 268 (Desjardins/Pelletier/ Malone JJA)

The complainant alleged that the respondent had denied him the opportunity to serve in an acting position as a result of discrimination on the basis of his national or ethnic origin. The Tribunal found this portion of the complaint to be substantiated. In a separate decision on remedy, the Tribunal awarded the complainant compensation but limited the compensation on various grounds. The Federal Court dismissed the complainant's application for judicial review.

On appeal, the Federal Court of Appeal held that the principle of foreseeability is not an appropriate device for limiting the losses for which a CHRA complainant may be compensated. That said, there must still be a causal link between the discriminatory practice and the loss claimed. Moreover, when exercising its discretion to compensate for any or all lost wages, the Tribunal may apply the doctrine of mitigation. In this case, the Tribunal's reference to foreseeability was not fatal to its decision. Turning to the issue of instatement, the Tribunal did not err in refusing to appoint the complainant to the position for which he competed; even discounting the discrimination, it was not probable that the complainant would have acceded to the post. The Tribunal appropriately compensated the complainant for the loss of the opportunity to compete on a non-discriminatory basis. Finally, the Tribunal's conclusions regarding the non-retrospective nature of amendments to the CHRA and the appropriate award of interest disclosed no error.

### *Dreaver et al. v. Pankiw* 2007 FCA 386 (Décary/Linden/Nadon JJA)

The complainants alleged that the respondent, a Member of Parliament, had distributed literature to his constituents containing discriminatory comments about Aboriginal people. The respondent objected to the Tribunal's jurisdiction on the grounds that the principle of parliamentary privilege prevented the Tribunal from inquiring into the complaints. The Tribunal dismissed the objection. The Federal Court dismissed an application for judicial review of the Tribunal's decision.

The respondent appealed. The Federal Court of Appeal dismissed the appeal and generally endorsed the reasons given by the Federal Court. The Court of Appeal noted that the author Joseph Maingot, in his text *Parliamentary Privilege in Canada*, took the position that in respect of the contents of "householder mailings" sent to constituents, members of the House of Commons cannot claim parliamentary privilege. Furthermore, according to Maingot, "householder mailings are not protected by the Parliament of Canada Act."

## Tribunal Rulings on Motions, Objections and Preliminary Matters

The number of rulings issued by the Tribunal in 2007 fell by 20 per cent from the previous year. In addition to its 20 decisions on the merits of discrimination complaints, the Tribunal issued 35 rulings (with reasons) dealing with procedural, evidentiary, jurisdictional or remedial issues. The ratio of rulings to decisions on the merits increased dramatically compared to 2006 when the Tribunal issued 44 rulings and 13 decisions on the merits.

Among the issues addressed most often in the 2007 rulings were:

- adjournment requests;
- the security of witnesses called to testify before the Tribunal;
- the effect of delay on the proceedings; and
- the application of the law of privilege to the disclosure and hearing process.

In addition, the Tribunal had to rule a number of times on the proposed joinder of additional respondents to a complaint as well as the standing of complainants. Finally, the Tribunal had to deal with two objections arising from the fact that the subject matter of the complaint had allegedly been fully disposed of in an earlier proceeding before another body.

As a concluding observation, it is encouraging to see that the number of rulings has decreased in 2007—both in absolute terms and in relation to the number of decisions on the merits. This signifies that the Tribunal's deliberative and adjudicative resources are increasingly being directed towards the core mission of the organization: the determination of whether or not an entity has engaged in a discriminatory practice.

## Reviews of Tribunal Rulings by the Federal Court

### *Goodwin v. Birkett* 2007 FC 428 (Harrington J.)

The complainant and the respondent, her co-worker, were bus drivers for a coach line. The complainant alleged that during an out-of-town charter the respondent had sexually harassed her in her hotel room. After she reacted negatively to his advance and complained to management, he treated her in an adverse differential manner. The Tribunal found the complaint to be substantiated and the respondent sought judicial review of the Tribunal's decision.

The Federal Court dismissed the judicial review application. The Court found that the Tribunal was entitled to decide remedy and liability together without bifurcation. It also held that given the Commission's non-participation at the hearing and the fact that the parties had no counsel representing them, the Tribunal's interventions in the proceeding disclosed no bias and were scrupulously fair and helpful to both sides. The Tribunal did not err in refusing to allow the respondent to call a witness where the complainant had already admitted the relevant facts related to the witness' proposed testimony, nor did the Tribunal err in refusing to allow the respondent to enter into evidence a tape recording of a conversation with a company supervisor, as this supervisor was not available for cross-examination at the hearing. Further, it was not necessary for the Tribunal to refer in its reasons to testimony that was irrelevant to its final decision. The respondent was advised well in advance of the hearing of his right to be represented by counsel and there was absolutely no evidence that the Tribunal member counselled the complainant in the respondent's absence. The Tribunal's findings of fact were entitled to deference. Moreover, the Tribunal did not err in the application of the law; sexual harassment is prohibited not just in the workplace but in all matters related to employment.

The Tribunal reasonably concluded that the respondent's impugned conduct detrimentally affected the complainant's work environment. Finally, the fact that the respondent's and the complainant's employer had already conducted an inquiry into the sexual harassment allegations did not prevent the complainant from availing herself of the CHRA in respect of the same allegations.

### *Sangha v. Mackenzie Valley Land and Water Board* 2007 FC 856 (de Montigny J.)

The complainant alleged that the respondent discriminated against him on the basis of race and national or ethnic origin when he was not hired for the position of registry officer. The Tribunal concluded that in rejecting the complainant's candidacy because he was overqualified, the respondent had engaged in adverse effect discrimination; visible minority immigrants were more likely to be excluded from the higher rungs of the job market and were thus more likely to seek jobs for which they were overqualified.

The standard assumptions about the future conduct of over-qualified candidates did not apply in the case of visible minority immigrants. After finding that the complaint was substantiated, the Tribunal considered the issue of remedy. It refused to order the complainant to be instated into the job for which he had applied or to grant him lost wages. In the Tribunal's view, even if the complainant had not been screened out on the basis of over-qualification, there were still other candidates who were more qualified for the job than he was. The complainant did not have a serious chance of winning the position "but for" the discrimination.

The complainant sought judicial review. The Federal Court agreed with the Tribunal's legal approach in determining whether to order lost wages or instatement. It found, however, that the Tribunal had erred in applying the law to the facts of the case. The evidence indicated that the complainant's over-qualification played a significant role in the respondent's decision not to hire him. While the Tribunal held that factors other than over-qualification would have prompted the respondent to turn down the complainant's application in any event, the Tribunal's reasoning in this regard was vague. The record indicated that the job interview questions addressed "congruency issues", but there was very little discussion in the Tribunal's reasons of the actual meaning of " congruency". There was room to suspect that this highly subjective criterion served as a back-door reintegration of the over-qualification factor that the Tribunal had already supposedly discarded. The Court was unable to conclude that the other candidates were more suitable than the complainant once the over-qualification factor was completely disregarded.

### *Buffett v. Canada (Canadian Forces)* 2007 FC 1061 (Harrington)

The complainant alleged that the respondent had adversely differentiated against him on the grounds of disability when he was denied employment health coverage for an infertility procedure. The Tribunal found that the complaint had been substantiated. The respondent sought judicial review of the complainant's decision.

The Federal Court held that the respondent's health coverage decision in relation to infertility treatment had been made in relation to an "employee", within the meaning of the CHRA. Comparing the complainant to female members of the Forces revealed that female members received health coverage for infertility procedures only to the extent that these procedures were performed on their person; costs related to sperm were not covered. In the same fashion, a number of infertility treatments were funded for male members that were directed at male physiology. The complainant, however, wanted the respondent to fund that portion of the treatment for his infertility that would be performed on his wife, namely in vitro fertilization (IVF). The Tribunal correctly held that the respondent should fund the "male portion" of the complainant's desired treatment—intra-cytoplasmic sperm injection (ICSI). The Tribunal erred however in requiring the respondent to fund the IVF, the "female portion" of his treatment. As a result, the Court set aside the Tribunal's decision and referred the case back for re-determination consistent with the Court's finding that in female infertility cases womb and egg costs were covered but sperm costs were not and in male infertility cases sperm costs should be covered while those relating to egg and womb should not.

### *Brar v. Canada (R.C.M.P.)* 2007 FC 1268 (Mactavish J.)

The complainant alleged that he experienced discrimination and harassment in the workplace while working for the respondent, the RCMP. Prior to the hearing, the parties brought a motion before the Tribunal for an order clarifying the nature and scope of the complaint. The RCMP also sought an order prohibiting the complainant from calling certain witnesses, limiting the ambit of other witness' testimony and striking certain paragraphs from the complainant's Statement of Particulars which contained allegations of events occurring subsequent to the filing of his complaint. The Tribunal dismissed the RCMP's motion without prejudice to the RCMP's right to make an objection on the same grounds at the hearing. At the pre-hearing stage, it was not clear to the Tribunal that the allegations were irrelevant or prejudicial to the respondent.

The respondent applied for judicial review of the Tribunal's ruling. The Federal Court dismissed the application on the basis of prematurity. The Court noted that special circumstances aside, interlocutory rulings made by administrative tribunals should not be challenged until a final decision has been rendered. The Tribunal's ruling in this case did not determine the scope of the hearing to be held; the right of the RCMP to object later on was specifically preserved. Moreover, even if the Tribunal eventually permitted the complainant to advance post-complaint allegations, it was possible these allegations could end up being dismissed.

Finally, in the event post-complaint allegations remained an issue of controversy at the end of the hearing, by that point a reviewing court would benefit from a fully developed record, including the Tribunal member's reasons for having dealt with the allegations in question. As for the possibility that immediate judicial review could potentially shorten the Tribunal hearing, this was not a determinative consideration, especially where it was not plain and obvious that the Tribunal lacked jurisdiction to entertain the post-complaint allegations.

### *Durrer v. Canadian Imperial Bank of Commerce* 2007 FC 1290 (Hughes J.)

The complainant alleged that the respondent eliminated his job, refused to transfer him to another position in the same department and interfered with his attempts to seek redeployment within the bank—all because of his relatively advanced age. The Tribunal found that none of the three allegations had been substantiated and dismissed the complaint. The complainant sought judicial review of the Tribunal's decision.

Before the Federal Court, the complainant argued that the Tribunal had erred in failing to adequately consider section 7(b) of the CHRA, which in this case required that before an employee is terminated, consideration must be given to the employee's age, his or her accrued benefits and the opportunity to secure further benefits. This argument, based on adverse differentiation, had not been properly addressed by the Tribunal.

The Federal Court found that the adverse differentiation argument had not been presented to the Tribunal during its inquiry into the complaint, nor had the argument been squarely raised in the complainant's judicial review factum. As a result, and in the absence of special circumstances, this argument could not be considered by the Court.

Alternatively, the Court concluded that such an argument failed on its merits. According to the complainant, Supreme Court jurisprudence (*Meiorin*) required the respondent to consider an employee's individual needs before termination, so as to prevent an adverse impact related to age and his or her eligibility for enhanced benefits. The Federal Court, however, found that the *Meiorin* case could not be invoked in support of such a proposition; *Meiorin* dealt with standards or policies put in place by an employer in the course of employment—a situation captured by section 10 of the CHRA, which the complainant had not relied on in this matter.

The Federal Court dismissed the application for judicial review (appeal pending).

## Reviews of a Tribunal Ruling by the Supreme Court of Canada

No decisions were issued by the Supreme Court of Canada in 2007.

## Pay Equity Update

There are no outstanding pay equity cases that were referred to the Tribunal under section 11 of the Act prior to 2006. Of the three pay equity cases referred to the Tribunal in 2006, two settled following mediation by a Tribunal member and the remaining proceeding is in the case management process. Four additional pay equity cases were referred to the Tribunal in 2007, one of which has settled following Tribunal mediation.

## 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 were held in 2007.

# Update on Other Tribunal Matters

## PUBLIC MANAGEMENT

**The Tribunal remains committed to continued progress in all areas of the Government's Management Accountability Framework (MAF), and to pursuing its objectives with the highest regard for efficiency, effectiveness, probity and public service values. In this way, the Tribunal can best ensure Canadians have access, within the shortest possible timeframe, to a fair and capable process of dispute resolution for discrimination complaints brought before the Tribunal.**

### Management Accountability Framework

The Management Accountability Framework (MAF) sets out the Treasury Board's expectations of senior public service managers. Structured around 10 key elements that collectively define 'management', the MAF provides a vision for good management, a process for assessment and monitoring, and an analytical tool for identifying strengths and weaknesses.

The Tribunal implemented a results-based management accountability framework of its own in 2005, comprising targets, indicators and modern risk-management practices that support four performance-measurement areas of the Treasury Board MAF: stewardship, governance and strategic direction, people and performance.

Building on the previous year's reported progress, the Tribunal maintained its focus throughout 2007 on enhancing public service management performance—and especially on the MAF elements of policy, public service values, risk management, accountability and citizen-focused service.

In 2007, the Tribunal was also included in Round Four (2006-2007) of the Treasury Board's MAF assessment of public service management performance. Although the results of the assessment have not yet been released, the Tribunal is confident that the management-improvement plan of action it implemented in 2004—and its continuing efforts to ensure good management—will produce a positive assessment.

The Public Service Commission, in its 2005–2006 annual report, recognized the Tribunal for its staffing management framework, singling out the Tribunal as a top performer in the areas of governance, policy, communication and control and again in 2007, the Tribunal received a grade of 100 per cent for meeting its public accounts reporting deadlines, and its financial statements were accepted as having been prepared in full accordance with Treasury Board's accounting standards and principles.

## Accountability

In 2007, the Tribunal continued to invest in efforts to ensure the alignment of its mission, planned strategic outcomes, expected results, and employee performance (at senior, management and individual levels). A systematic and comprehensive approach to accountability was put in place to ensure a logical organizational structure and clear lines of responsibility for reporting on results. Through training, learning and dialogue, special efforts have been made to enhance managers' understanding of the intent and use of their delegated authorities within the organization. The Tribunal's performance management framework is being restructured to support ongoing performance monitoring and review.

The Tribunal also strengthens accountability through yearly sectoral reports to the central agencies of the federal government in a number of areas including official languages, staffing, classification, employment equity and communications. Performance accountability is reported by means of the present annual report and the Tribunal's report to Parliament on performance and on plans and priorities, the latter of which articulates the organization's corporate business plan.

## Risk Management

The Tribunal has continued to build on its risk management framework by integrating risk management into business planning and performance, and by incorporating risk management considerations into decision-making at all management levels. This includes monitoring work and action plans and maintaining continuous senior-level involvement in the risk assessment process. Working in partnership with representatives of the Office of the Comptroller General of Canada and within the community of the Small Agency Administrators Network, the Tribunal has taken the lead in the development of a process for implementing the Government's internal audit policy. Through its efforts, and despite its small organizational size, the Tribunal is well positioned to become a leader in modern management.

## Public Service Renewal

In 2007, the Tribunal focused on the federal government's public service renewal initiative and on achieving excellence in people management. It engaged independent experts to support ongoing consultation and dialogue with employees in response to the findings of the *2005 Public Service Employee Survey*. Recommendations for additional training, learning and workplace well-being initiatives have been acted upon and integrated into the Tribunal's ongoing management framework.

The Tribunal is well on its way to completing a comprehensive human resources policy, one that is fully in step with federal public service values. An orientation guide for new employees, an employment equity plan, guidelines for accommodating employees in the workplace and for the prevention and resolution of harassment were all introduced to the Tribunal in 2007. Grievance procedures and contact information listings have also been introduced to help employees understand and be fully informed of the recourse available to them in the workplace. The Tribunal has also begun a project to expand and reinforce its Informal Conflict Management System.

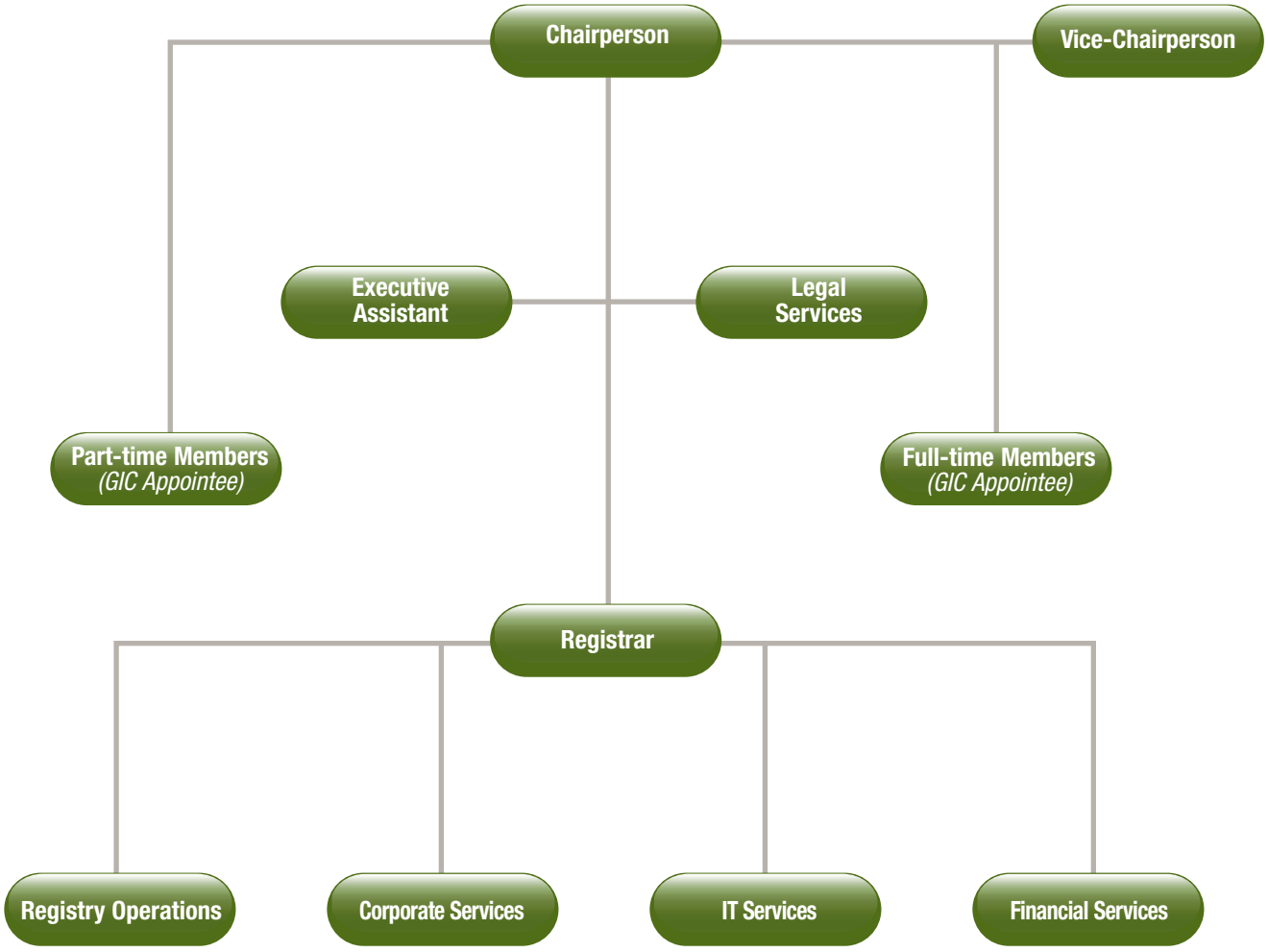
Requests by employees who want training and development are taken seriously at the Tribunal. Consistent with its priority to implement a modern, dynamic human management strategy that supports professional development, the Tribunal has strengthened its participation within the network of federal small agencies and departments, and has begun building partnerships to sustain a learning framework that will go beyond the limitations of the Tribunal's small organizational size. This approach has already yielded professional development opportunities for Tribunal staff. With the planned completion of a learning policy in 2008 (to be followed by a competency profile framework), the Tribunal's management efforts will create further training and learning opportunities and cultivate a stronger, more adaptable workforce in step with the higher level of skills and education demanded in a modernized public service environment.

## Technology

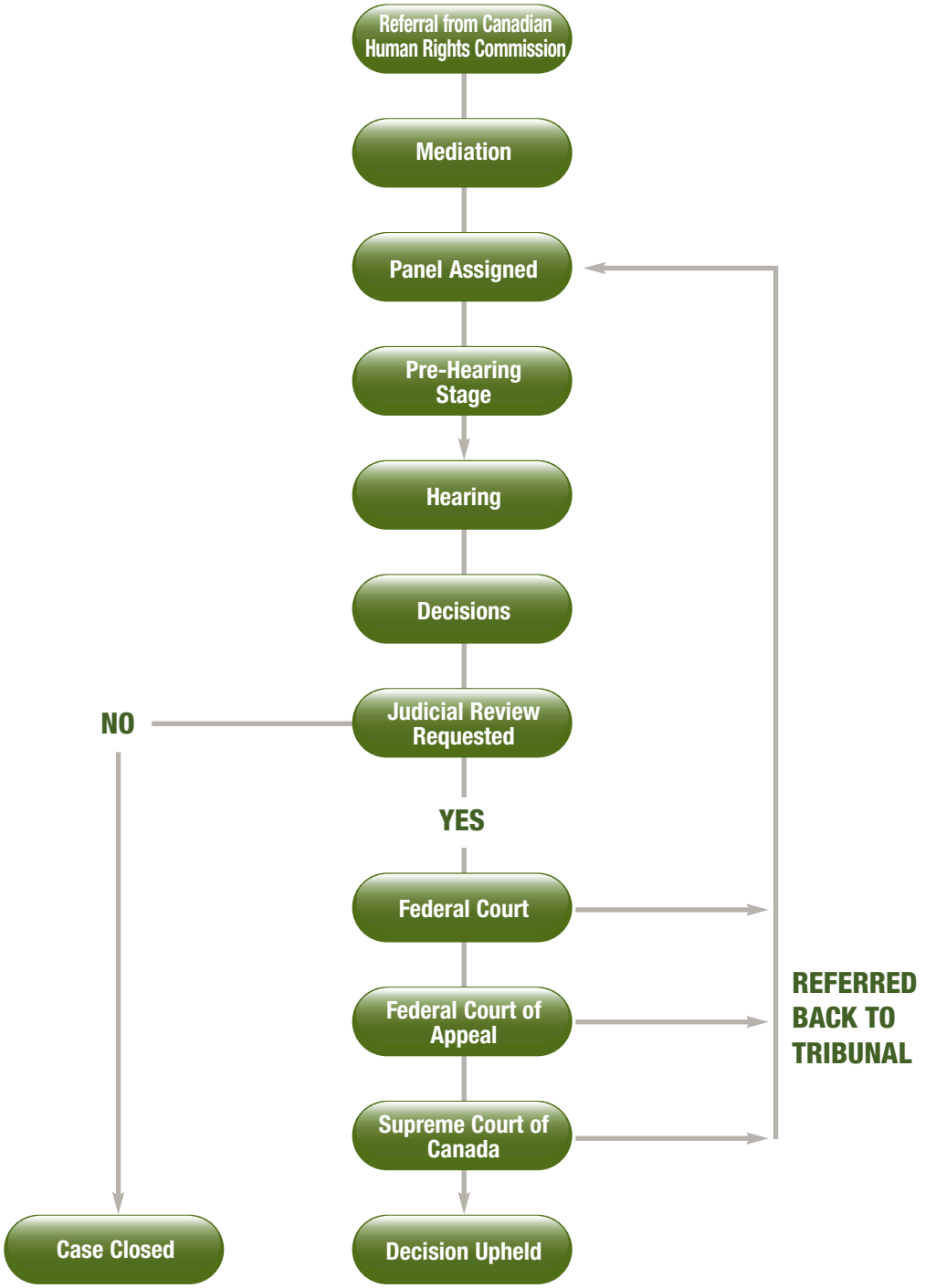
On July 1, 2007, the Tribunal transitioned to the use of digital voice recording in place of verbatim court reporters for recording the verbal communications that transpire at Tribunal hearings. Digital voice recording is a technology already used in some judicial and quasi-judicial environments across North America and has proved to be highly economical and effective. Audio recordings of proceedings on CD-ROM can be obtained by interested parties who would previously have had to purchase paper transcripts. This innovation improves the quality of the Tribunal's services by enabling parties to listen to the spoken words communicated at hearings immediately following their conclusion—in some cases, at the end of each hearing day.

The Tribunal is continuing its efforts to make the best possible use of new technologies, to find ways of increasing efficiencies in its inquiry process, and to improve the quality of its services. These efforts and the innovations they provide ultimately help reduce costs for Canadians.

# Appendix 1: Organization of the Tribunal



# Appendix 2: 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 receiving the complaint and representatives' contact information from the Commission, the Tribunal sends a letter to the parties offering its mediation services. If mediation is declined or fails to achieve a settlement, a case management conference call is convened within two weeks. During this call a Tribunal member begins scheduling disclosure and hearing dates with the parties and guides them in addressing 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 a 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 with the intention of proving 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 and decides 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, delivering it in writing 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 outlining the remedies.

## Appeals

All parties have the right to seek judicial review by the Federal Court of any Tribunal decision. The Federal Court holds a hearing with the parties to listen to 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 federal Department of Justice on issues arising out of the *Canadian Charter of Rights and Freedoms*. He has acted on behalf of the Attorney General of Canada and other federal departments in numerous Charter cases and has practised law for more than 20 years.

### Athanasios D. Hadjis
Vice-Chairperson

Athanasios Hadjis has degrees in both civil law and common law from McGill University and was called to the Quebec Bar in 1987. Before becoming 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 as a part-time member of the Canadian Human Rights Tribunal in 1998. He became a full-time member in 2002 and was appointed Vice-Chairperson of the Tribunal in 2005.

### Karen Jensen

Karen Jensen was appointed a full-time member of the Tribunal in 2005. Ms. Jensen was called to the Ontario Bar in 1994 and holds a Bachelor of Arts from the University of Winnipeg, a Master's 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 forums and has won various academic awards and scholarships.

## Part-time Members

### 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 and 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 has 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 Université de Moncton Law School and is an associate with the Atlantic Canada law firm of Patterson Palmer.

**Julie Lloyd**
Alberta

In 2005, Julie Lloyd was appointed 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, focusing on 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 has received numerous awards, including the Queen's Golden Jubilee Award for volunteerism in 2003.

**Kathleen Cahill**
Quebec

In 2005, Kathleen Cahill was appointed to a three-year term as a part-time member of the Tribunal. A graduate of the University of Ottawa civil law program, Ms. Cahill was called to the Quebec Bar in 1986. She practises in the private sector, focusing on 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 practised at Jutras & Associates, and from 1988 to 2000 at Melançon, Marceau, Grenier & Sciortino.

**Maureen Maloney**
British Columbia

In 2005, Maureen Maloney was appointed 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 various aspects of the law and disadvantaged groups.

Her current teaching and research interests are 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. She has served as 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.

**Matthew D. Garfield**
Ontario

Matthew D. Garfield was appointed for a five-year term as a part-time member of the Tribunal in 2006. Mr. Garfield is a chartered mediator and chartered arbitrator, specializing in human rights and workplace disputes. Since 2005, he has monitored the implementation of the Orders of the Honourable Alvin Rosenberg, Q.C., in the Human Rights Tribunal of Ontario case of *Lepofsky v. Toronto Transit Commission*. From 2000 to 2004, Mr. Garfield was the Chair of the Human Rights Tribunal of Ontario. He joined the then Board of Inquiry (Human Rights) as Vice-chair in 1998. Prior to his appointment to the Ontario Tribunal, Mr. Garfield practised law in Toronto. He graduated from Dalhousie Law School in 1988 and was a recipient of the class prize in constitutional law. He was called to the Nova Scotia Bar in 1989 and the Ontario Bar in 1992. He was also Co-chair of the 2001 Conference of Ontario Boards and Agencies.

**Kerry-Lynne Findlay**
British Columbia

In 2006, Kerry-Lynne Findlay was appointed as a part-time member of the Tribunal for a five-year term. Ms. Findlay graduated from the University of British Columbia with a B.A. in history in 1975 and an LL.B in 1978. She was called to the British Columbia Bar in 1979 and was appointed Queen's Counsel in 1999. Ms. Findlay is a partner of the Vancouver law firm of Watson Goepel Maledy, and practises civil and commercial litigation in a variety of areas including family law and mediation, estate matters, employment law and Aboriginal land issues. Active in the Canadian Bar Association, Ms. Findlay served on the National Task Force on Court Reform in Canada, as National Chair of the Constitutional Law Section and as Chair of the National Women Lawyers Forum. In addition to her national profile, Ms. Findlay has served on several boards including Science World, Chair of the Vancouver City Planning Commission and Honourary Counsel for the Chinese Benevolent Association of Canada—a century-old association that provides umbrella services and support for the Chinese Canadian community. In 2001, Ms. Findlay was named the YWCA Woman of Distinction in the category of Management, the Professions and Trades.

# 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.**

### Executive Director and Registrar
Gregory M. Smith

### Special Advisor to the Registrar
Bernard Fournier

### Executive Assistant to the Chairperson
Louise Campeau-Morrissette

### Director, Registry Operations
Guy Grégoire

### Registry Officers
Nicole Bacon
Linda Barber
Ghislaine Cyr
Carol Ann Hartung
Line Joyal
Katherine Julien
Holly Lemoine
Roch Levac

### Mediation and Hearings Coordinators
Francine Desjardins-Gibson
Jodi Séguin

### Counsel
Greg Miller

### Director, Financial Services
Doreen Dyet

### Analyst, Financial Services
Nancy Hodgson-Grey

### A/Director, Administrative Services
Marilyn Burke

### Human Resources Coordinator
Karen Hatherall

### Senior Administrative Assistant
Thérèse Roy

### Administrative Assistants
Jacquelin Barrette
Stéphanie Doré

### Director, Information Technology Services
Julia Sibbald

### Information Support Specialist
Alain Richard

### Data Entry Clerk
Marcela Flores

# Appendix 5: How to Contact the Tribunal

**Canadian Human Rights Tribunal**

160 Elgin Street,
11th Floor
Ottawa, Ontario
K1A 1J4
**Tel.:** 613-995-1707
**Fax:** 613-995-3484

**E-mail:** registrar@chrt-tcdp.gc.ca
**Website:** www.chrt-tcdp.gc.ca