CANADIAN HUMAN RIGHTS TRIBUNAL

ANNUAL REPORT 2011

Access to Justice for Canadians—Customized Procedures

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Chairperson's Message

It is my privilege to share with you the work that we have done in 2011 at the Canadian Human Rights Tribunal in "making justice work for Canadians."

In 2010, I worked closely with fellow Members of the Tribunal, practitioners in the field of human rights, lawyers and judges, to seek their input and ideas on ways to make the Tribunal's processes easier and faster to access while ensuring that they are still fair. The main problems for Canadians were that the Tribunal's processes took too long and cost too much. Our vision was to give Canadians a venue where they could be heard on complaints of discrimination that they believed infringed on their dignity as human beings. My hope was to find a way for the Tribunal to help them to bring emotional closure to their feelings of anger, isolation, helplessness, and fear—and to help them to do so without spending a lot of money on lawyers. Conversely, my hope was to ensure that respondents could be fairly heard within a reasonable time frame regarding their view of the events and, in some cases, be able to express their beliefs that the process was lengthy or otherwise unfair.

The processes that I adopted to respond to these needs were two-fold. First, the Members and I, who were adjudicating the complaints, began spending more time helping parties to have short and simple hearings. Much of this was by helping parties to better understand the rules, the facts and the law in their cases. Second, I customized the mediation process to better allow parties "to be heard" or to express themselves to mediating Members. Each mediation is conducted in response to the needs of those particular parties. For example, if the parties seek greater evaluation, then the mediator allows for this. If no evaluation is sought, the mediator respects this wish as well. There may be varying degrees of formality (up to and including a mini-trial), of discussion of issues of liability and quantum, and of time spent in plenary and in caucus. Options include the possibility of even foregoing a joint session entirely, by having the parties present from separate rooms. In some cases, rather than speaking about legal issues, they may choose to share only their emotional challenges.

No two hearings are the same. No two complaints are the same. Each hearing presents a unique intertwining of legal and emotional issues. I believe that the Tribunal's job is to be aware of these issues as it supports parties to come to an informed, meaningful and possibly creative settlement, with genuine emotional closure.

I believe that numbers and statistics are not the sole markers of success. The job of the Tribunal is not to achieve a high settlement rate, but rather to ensure that settlements reached by the parties are voluntary, informed, workable and restorative as appropriate. Even though unrepresented parties are only able to revoke settlements in the seven days following their signing, my goal is that any settlement reached should make sense to the parties, not only on the day of the settlement, but also a week later, a month later or a year later. It is my hope that the parties would be able to say:

> "I participated in the Tribunal process. It made sense to me then. It makes sense to me today. I am satisfied that it helped me to move on with an issue that was difficult for me."
>
> Or:
>
> "It was a fair process. It vindicated me or my organization."

With this proviso, a preliminary assessment of the new processes is as follows: In the last performance reporting period (2010–2011), more than 85% of complaints were resolved within one year. In certain cases, pre-hearing conferences shortened hearing days by more than 50%. Looking at statistics for the 2011 calendar year, one can see that the customized mediation procedures led to 67% of complaints being resolved by the parties with the Tribunal's assistance (see page 11). This is lower than the 80% settlement rate in the prior calendar year. However, the important indicator is that in 2011, 94% of Canadians who participated in these customized sessions were satisfied or highly satisfied with the new processes (see satisfaction results, page 11). Moreover, while many mediated settlements are confidential, it is a

pleasure to be able to report that in 2011, a Tribunal mediator facilitated a novel systemic resolution to a long-standing and litigious complaint of discrimination on the basis of disability, *Canadian Human Rights Commission and Brown v. National Capital Commission* (see page 11 for more details).

In tandem with the development of our complaint resolution processes, in 2011, I engaged Canadians in the first national consultations in the Tribunal's history. We heard the views of Canadians from coast to coast in 10 different cities: Calgary, Edmonton, Fredericton, Halifax, Moncton, Montréal, Ottawa, Toronto, Winnipeg and Vancouver. Participants were given a detailed exposition of the Tribunal's resolution model and were canvassed for their feedback and constructive criticism.

As of June 2011, individuals could file complaints of discrimination arising out of actions or decisions made pursuant to the *Indian Act* (repeal of section 67 of the *Canadian Human Rights Act*). For this reason, I also began discrete consultations with First Nations communities across Canada and was able to visit 10 communities in 2011: Akwesasne Mohawk near Cornwall, Ont.; Dene in the Northwest Territories; Millbrook in Nova Scotia; Peguis in Manitoba; Shubenacadie in Nova Scotia; St. Mary's in New Brunswick; Musqueam in Vancouver; Tsuu T'ina, southwest of Calgary; Fort McKay in northern Alberta; and Samson, south of Edmonton.

I personally wish to thank all those who provided feedback and participated in this process. The Tribunal will be carefully considering the feedback, and hopes to release a report in 2012 regarding the results of these stakeholder engagement sessions.

The year also brought a number of important legal developments that directly impact the Tribunal's operations. On October 28, 2011, the Supreme Court of Canada affirmed, in *Canada (Canadian Human Rights Commission) v. Canada (Attorney General),* 2011 SCC 53 *(Mowat)*, the Federal Court of Appeal's 2009 finding* that the Tribunal does not have the jurisdiction to award successful complainants recovery of their legal costs. We foresee that there may be an increase in the number of unrepresented complainants appearing before the Tribunal. Hopefully, innovations in procedures at the Tribunal since November 2009 have helped and will continue to help unrepresented parties, and all Canadians.

This past year also marked the Tribunal's first inquiry regarding actions or decisions emanating from the *Indian Act: Louie and Beattie v. Canada (Indian and Northern Affairs)*, 2011 CHRT 2. This case, which raises complex and novel issues regarding the reconciliation of anti-discrimination law with the *Indian Act*, is the first of many in what we anticipate to be a significant increase in the number of cases regarding the application of the *Indian Act*.

In looking forward to 2012, we hope to continue to maintain the confidence that Canadians have expressed in our new processes.

Finally, I have been assisted in this important venture by a skilled cadre of staff and Tribunal Members, who, despite staff shortages and infrastructure disruptions, have been actively engaged in helping Canadians to use the new processes, while performing their duties with care, respect and professionalism. In order to express my appreciation to staff, we have had many events to recognize their contribution to our important mission. The diversity of our people and the ideas they generate are the source of our innovation and our sustenance.

Shirish P. Chotalia, Q.C. LL.M.
Chairperson and Chief Executive Officer

* *Canada (Attorney General) v. Mowat*, 2009 FCA 309

Executive Director's Message

It is my pleasure to provide you with information and perspective about key operational and administrative activities and events that occurred in 2011.

Corporate Overview—This has been a year of transition, renewal and continuous efforts to deliver quality services in support of the quasi-judicial mandate of the Tribunal. With ever-increasing demands on limited resources and severe financial pressures, we continued to look for innovative ways to enhance the efficiency of the Tribunal's internal and program operations while improving the work environment.

Workplace and Administration—In April 2011, a major breach in the IT network and support systems required the Tribunal to undertake a complete baseline redevelopment of the IT network and supporting infrastructure. As a result, Tribunal staff had to work with IT systems at considerably less than normal capability while systems, networks, software and hardware were rebuilt. At the end of July, I joined the team as the new Executive Director and Senior Registrar. My first task was to undertake measures to retain and attract employees, and begin rebuilding relationships with the various bargaining agents. In the reporting period, the Tribunal also underwent a core control audit with the Office of the Comptroller General to ensure that core controls over financial management are effective and compliant with corresponding legislation, policies and directives. I look forward to the results, which will assist us in establishing appropriate controls and processes going forward.

Registry Operations—With a reduced workforce, the Registry staff was instrumental in ensuring that services and support to the Members were not affected. As part of the renewal, the new Director of Registry has begun a re-engineering process, simplifying and clarifying the processes to better support access to justice for all Canadians.

Finally, the foundation has been laid to allow the organization to strengthen and streamline its governance practices. While the Tribunal has faced many challenges this past year with limited financial and human resources to meet its objectives, I am proud to acknowledge that, notwithstanding these constraints, we continued to deliver on our commitments. This is a testimony to the employees of the Tribunal whose demonstrated commitment, dedication and professionalism made it possible.

I look forward to continuing to support access to justice for all Canadians.

Rachel J. Boyer
Executive Director and Senior Registrar

Our Vision

Access to Justice for Canadians—Customized Procedures

What does the mantra "Access to Justice" mean in concrete terms?

The goal is to meet the needs of Canadians. The method is to make the Tribunal's hearing process fair, clear and fast, and ensure effective remedies. Efficiency must be balanced by the duty to ensure that parties are afforded natural justice.

The Tribunal has been faced with a large number of unrepresented parties, a potential increase in First Nations parties (both complainants and respondents), and judicial criticism of lengthy processes that delay justice to Canadians.

The 29-year pay equity case of *Public Service Alliance of Canada v. Canada Post Corp.* finally decided by the Supreme Court of Canada in October 2011 is an example of a lengthy hearing process. In the Federal Court of Appeal, the Tribunal was criticized for undisciplined and lengthy hearings,[1] noting the huge expenditure of resources that the parties were forced to bear.

As of June 2011, individuals could file complaints of discrimination arising out of actions or decisions made pursuant to the *Indian Act*. The repeal of section 67 of the *Canadian Human Rights Act* had been legislated in June 2008 and the new Chairperson, after her November 2009 appointment, began preparing the Tribunal for a potential increase in the number and complexity of its caseload.

In October 2011, the Supreme Court of Canada confirmed that the Tribunal does not have the authority to award legal costs.[2] In 2005, the Tribunal found Ms. Mowat's sexual harassment complaint to be substantiated and awarded her $4,000 plus interest for pain and suffering. The Tribunal dismissed all of her other allegations of discrimination. The hearing of Ms. Mowat's complaint consumed about six weeks of hearing time. The case involved over 4,000 pages of transcript evidence. In addition, there were more than 200 exhibits filed with the Tribunal. Ms. Mowat sought her legal expenses, which totalled $196,313. The Tribunal granted her $47,000 for legal costs. The Federal Court of Appeal ruled in September 2009 that the Tribunal did not have the jurisdiction to award successful complainants recovery of their legal costs. In light of this decision, the Tribunal Chairperson, after her November 2009 appointment, proactively and immediately began searching for ways to help unrepresented parties to be heard without the need to expend extensive funds on legal costs.

The return of mandatory retirement cases to the Tribunal from the Federal Court also demonstrates how lengthy hearings, often involving constitutional issues, do not facilitate access to justice. For example, in the *Vilven and Kelly v. Air Canada* case, the Vilven complaint was originally referred to the Tribunal in September 2005. The Federal Court noted that the hearing into Messrs. Vilven and Kelly's complaints was held over some 11 days, before a three-person panel of the Tribunal. The two complaints were joined. Two groups were granted interested party status. After various judicial review applications, the Tribunal's last decision in this matter was in July 2011. A judicial review application of that decision is now pending.

Another example is the *Warman v. Lemire el al.* case, which was referred to the Tribunal on August 24, 2005. Twenty-nine days of hearings were held and five organizations were granted interested party status. It took over four years for the Tribunal to resolve the matter, and an application for judicial review of the Tribunal's decision is currently before the Federal Court.

1 *Canada Post Corp. v. Public Service Alliance of Canada*, 2010 FCA 56, appeal allowed in *Public Service Alliance of Canada v. Canada Post Corp.*, 2011 SCC 57.

2 *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53.

These are some of the concrete drivers that motivated the Chairperson to adapt existing practices to better serve Canadians. The Honourable Warren K. Winkler, Chief Justice of Ontario, warned that the mantra of "access to justice," which has become so commonplace among bureaucrats, politicians and members of the legal community, should not become a cliché, devoid of meaning and significance. Rather, he affirmed that we must open up our system of justice so that it serves the needs of ordinary citizens with real-life problems.[3]

In this regard, the Tribunal has put in place new procedural initiatives: proactive pre-hearing case management and customized mediation with a view to restorative justice, whenever appropriate. Proactive pre-hearing case management reduces the length and complexity of the Tribunal process by narrowing the issues in dispute and enabling the parties to gain a clearer understanding of their case. Customized mediation provides an informal and expeditious alternative to a hearing and aims to achieve the meaningful resolution of disputes, including effective public interest remedies and settlements that restore the dignity of the parties and help preserve relationships. The Tribunal's customized mediation initiative will be discussed in greater detail later in this report.

Many human rights agencies have now accepted methods of dispute prevention and resolution, such as voluntary facilitative or evaluative mediation, as part of the continuum of the human rights complaint process. While their implementation varies from one agency to the next, these measures have benefitted the justice system generally and indirectly by reducing the expenditure of agency resources and wait-times, and by generating cost-savings for parties. The Tribunal's Departmental Performance Report for 2010–2011 shows that 88% of all Tribunal inquiries were concluded (either by settlement or adjudication) within one year of referral. These numbers suggest that the Tribunal's new procedures have improved the efficiency of its hearing process. While procedures and vehicles to achieve the goal of access to justice and restorative justice may well require continuous fine-tuning and refinement, the Tribunal is confident that new procedural initiatives are already better serving all Canadians.

At the Tribunal, we are working hard to embrace necessary changes to improve how Canadians are being served by this institution of the federal government. The Clerk of the Privy Council has been prominent in providing leadership in this area, and the Tribunal is proud that our access to justice initiatives support the Clerk's vision for a more effective and efficient public service.

Clerk of the Privy Council and Secretary to the Cabinet

18th Annual Report to the Prime Minister—April 2011

It is up to all of us to capitalize on the past five years of investment in renewal and to focus on creating the Public Service of the future. To do this we will have to change how we work and how we relate to one another, without losing sight of our traditional values and our vocation of service to Canada.

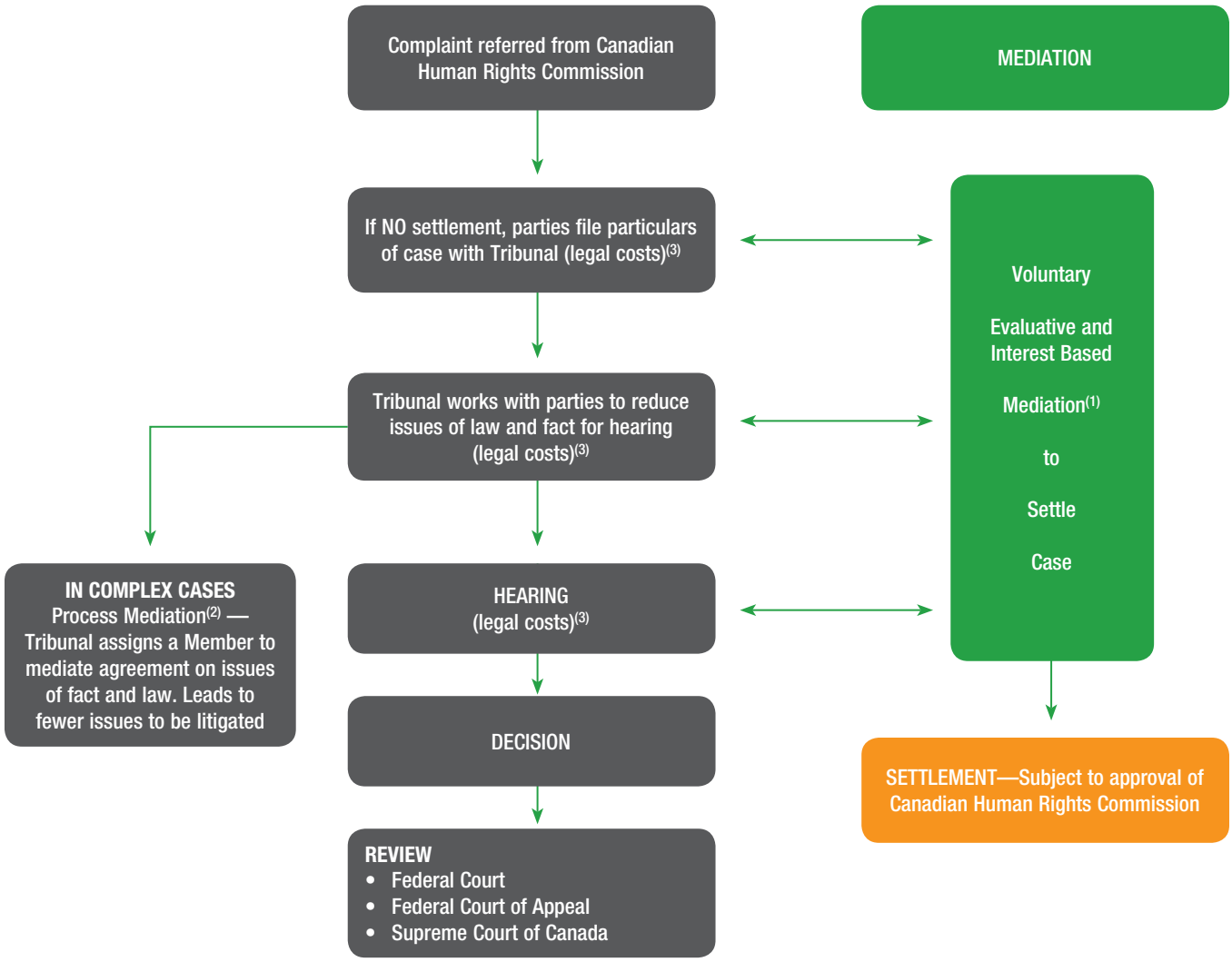
In making excellence our watchword, we will build on the commitment and the professionalism that have long characterized Canada's Public Service. It is our responsibility to show Canadians that their investment in us is being repaid in stronger public institutions that serve their needs more effectively and more efficiently.

I have seen what we can accomplish when challenged. While I will continue to hold deputies accountable, I am challenging all public servants to look for ways, large and small, to improve on our ability to support and strengthen our great country. The engagement, creativity and collaboration of all public servants are needed if we are to achieve our goal of excellence.

Every public servant can contribute to our renewal and I encourage each one to do so.

3 "Access to Justice," Remarks delivered at Canadian Club, London, Ont., April 30, 2008.

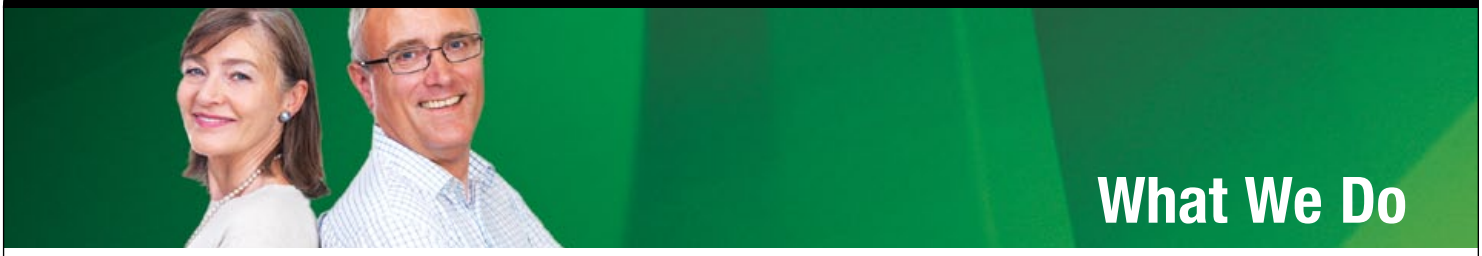
Enhanced Complaint Resolution Process



(1) Evaluative Mediation—The Tribunal Member conducting the mediation evaluates the relative strengths and weaknesses of the positions advanced by the parties and may provide the parties with a non-binding opinion as to the probable outcome of the inquiry.

(2) Process Mediation—The Tribunal Member conducting the mediation assists the parties to narrow issues, facts and law to clarify matters and support the parties as they focus on resolving the complaint.

(3) The parties may at these stages retain lawyers and incur legal costs.



What We Do

The Canadian Human Rights Tribunal is a quasi-judicial body that inquires into complaints of discrimination referred to it by the Canadian Human Rights Commission, and decides whether the given activity is a discriminatory practice that violates the *Canadian Human Rights Act (the Act)*. The Tribunal can also review directions and assessments made under the *Employment Equity Act*.

The Tribunal operates pursuant to the *Act*, which states that all Canadians have the right to equality, equal opportunity, fair treatment and an environment free of discrimination. The *Act* prohibits discrimination on the basis of race, national or ethnic origin, colour, religion, age, sex (including pregnancy), marital status, family status, sexual orientation, disability (including drug dependency) or pardoned criminal conviction. The discriminatory practices outlined in the *Act* are designed to protect individuals from discrimination in the provision of goods and services, employment and communications. The *Act* applies to federally regulated employers and service providers, including: federal government departments and agencies, federal Crown corporations, chartered banks, airlines, shipping and inter-provincial trucking companies, and telecommunications and broadcasting organizations. With the repeal of section 67 of the *Act*, the Tribunal can now also consider complaints against First Nations governments and federally regulated Aboriginal organizations regarding acts or decisions made under the *Indian Act*.

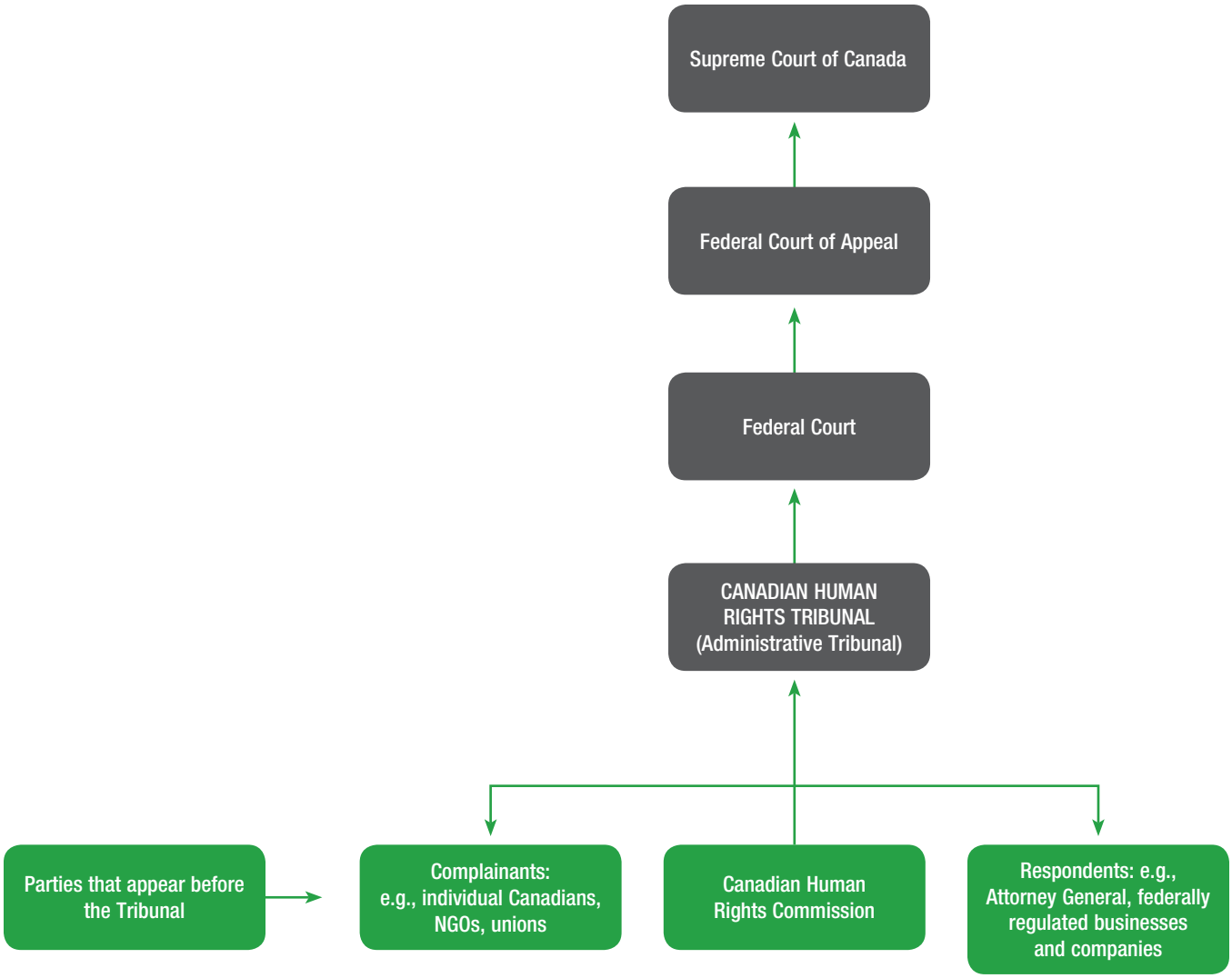
Tribunal's Annual Reports on Plans and Priorities
http://chrt-tcdp.gc.ca/NS/reports-rapports/plans-eng.asp

Like a court, the Tribunal is strictly impartial and renders decisions that are subject to review by the Federal Court at the request of any of the parties. However, unlike a court, the Tribunal provides an informal setting where parties can present their case without legal representation and without adhering to strict rules of evidence and procedure. If the parties are willing, the Tribunal also offers mediation services to allow parties the opportunity to settle their dispute with the assistance of a Tribunal Member.

Administrative responsibility for the Tribunal rests with a Registry that plans and arranges hearings, and acts as a liaison between the parties and Tribunal Members. The Registry is also responsible for managing the operating resources allocated to the Tribunal by Parliament. Details of Registry activities, including recent developments in comptrollership, management accountability and public administration, can be found in the Tribunal's performance reports.

Tribunal's Annual Performance Reports
http://chrt-tcdp.gc.ca/NS/reports-rapports/perf-rend-eng.asp

Human Rights Complaints Resolution Framework



Customized Mediation

A cornerstone of the Tribunal's complaint resolution process is its customized mediation program. This program has now been enhanced to include an evaluative/case assessment component.

The Tribunal offers mediation at various steps of the process. The first is an early mediation that takes place at the beginning of the process. During an early mediation, the Tribunal Member may evaluate the relative strengths and weaknesses of the positions advanced by the parties and may provide the parties with a non-binding opinion as to the probable outcome of the inquiry. This case assessment is added to the existing interest-based model of evaluation.

The Tribunal continues to respect the underlying needs of the parties by encouraging a broader range of solutions or resolutions to address their underlying interests. The Member conducting the mediation is respectful of the unique requirements of each case. The Member seeks to provide the parties with an opportunity to be "heard" (i.e. adjudicative closure without a full and costly adjudication). Then, as appropriate, either in a full session or in private caucus, the Member offers evaluative instruction aimed at giving the parties a realistic assessment of the possible outcomes of the case. This is done within the confines of a confidential and supportive environment for the parties, including unrepresented complainants.

"Evaluative mediation should be used as early as possible to achieve settlement."

Ian Holloway, Q.C., *Professor and Dean of Law, University of Western Ontario*

"When a Human Rights Tribunal provides parties with case assessment in a mediation 'hearing', it helps them to better understand and to identify what an appropriate way to settle it might be. This process is most effective when all issues are identified and as early as possible, but bearing in mind a case-by-case approach. Essentially, the parties are receiving legal advice about the strengths and weaknesses of their case. When this leads to settlement, it is an informed settlement. The parties participated in the decision-making and, therefore, are empowered and satisfied with the decision. This is access to justice. This philosophy already adopted by Courts, which is oriented towards conflict resolution, does not undermine the importance of Courts' and Tribunals' decisions that set boundaries and elaborate principles of law."

Michèle Rivet, *President, Quebec Human Rights Tribunal*

The second juncture wherein mediation is offered is after the parties have filed their particulars and disclosed their case. It is usually offered approximately two weeks prior to the hearing. During a post-disclosure mediation, the Tribunal Member will proceed as noted in the previous paragraphs. However, at this interval, the parties are ready to commence a full hearing and are generally more informed about the relative strengths and weaknesses of their positions.

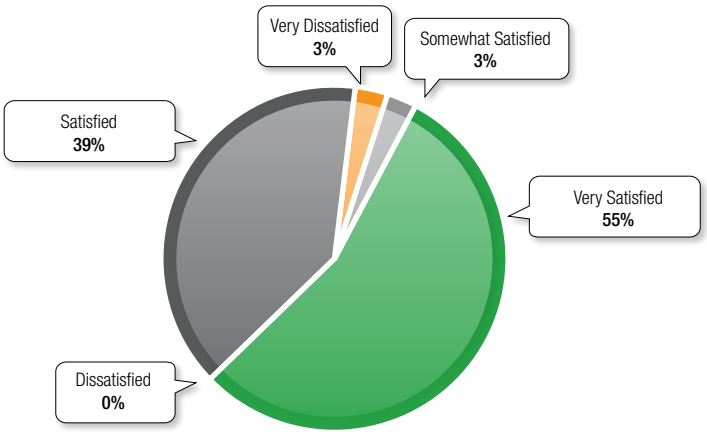
If the mediation does not result in settlement, with the consent of the parties, the Member may help the parties to reduce the issues to be litigated in the hearing. In addition, the parties can elect to utilize mediation at any time before, and even during, the hearing.

In 2011, the Tribunal had 82 cases referred to it by the Canadian Human Rights Commission. Of those, 43 cases pursued mediation. Of these cases, 21 involved complaints against government departments and agencies; 19 involved complaints against corporations, banks or private companies; 2 complaints were against First Nations, and one case involved two individuals.

The areas of complaint in the 43 mediated cases were: disability (29), sex (8), race (6), colour (3), nationality or ethnic origin (3), marital status (3), family status (2), age (2), religion (1) and retaliation (1).

Twenty-nine of the 43 cases were settled through mediation (67.44%). It's estimated that the Tribunal's successful mediation model avoided an estimated 41 weeks of hearings and saved at least $300,000 in costs. The entire justice system has realized significant efficiencies. More importantly, the parties have realized substantial savings, and have experienced restorative healing and emotional benefits that cannot be quantified in dollar terms.

How is our new customized mediation process working? Satisfaction Results from Participants, 2011



Satisfaction Scale

"The evaluative mediation process was integral in assisting the parties in reaching a mediated settlement in such a complicated matter. The parties benefit immensely from hearing an evaluative view of their case before they reach the point-of-no-return in a Tribunal hearing. The process allowed an excellent mix of reviewing the strengths and weaknesses of the parties' positions while maintaining a resolution-driven focus. I would highly recommend the process for my clients going forward."

Nicole Chrolavicius, *Barrister & Solicitor, Bakerlaw.ca*

In the facility accessibility case of the *Canadian Human Rights Commission and Brown v. National Capital Commission,* 2009 FCA 273 (also known as the York Street steps case), following the Court of Appeal remittance order, the Tribunal attempted mediation. The resulting settlement, certain aspects of which were made public, is a good example of a successful mediation. The settlement provided, among other things, that the respondent would create an advisory committee on universal accessibility on which the complainant Mr. Brown would serve as vice-chair. The committee would make recommendations directly to the CEO of the respondent and the minutes from its meetings would also be made public.

Tribunal Rules and Procedures

The Tribunal has developed the following rules, procedures and guides to assist parties in their dealings with the Tribunal:

- Canadian Human Rights Tribunal Practice Note No. 1—Timeliness of Hearings and Decisions
- Canadian Human Rights Tribunal Practice Note No. 2—Representation of Parties by Non-Lawyers
- Canadian Human Rights Tribunal Practice Note No. 3—Case Management
- Canadian Human Rights Tribunal Rules of Procedure
- Guide to the Operations of the Employment Equity Review Tribunal
- Evaluative Mediation Procedures
- Tribunal Glossary (2010)

Further details concerning the Tribunal's rules, procedures and guides can be found at:
chrt-tcdp.gc.ca/NS/about-apropos/trp-rpt-eng.asp

"The most rewarding part of my work at the Tribunal is being in contact with the parties and being able to listen with compassion to their views on the suffering they feel they endured. It gives a humanized approach that reflects what human rights are all about."

Sophie Marchildon, *Full-Time Member of the Tribunal*

"My three-year term as part-time Member of the Tribunal ended in December 2010, just a few months before my 80th birthday. I had not considered requesting a further term until Chairperson Chotalia engaged me in a discussion over her objectives for the Tribunal; that all Canadians be given better access to justice, particularly by quickening the process to inquiries and making mediations more effective by adding evaluation to the mediator's role. The Chairperson's determination to succeed persuaded me to request another term of three years, which I have been granted. I believe that what Chairperson Chotalia is doing will ensure meaningful access to justice for all Canadians and I look forward to assisting her in every way I can."

Wallace Craig, *Part-time Member of the Tribunal*

Jurisprudence

The bulk of the Tribunal's work involves conducting mediations and hearings, issuing rulings and rendering decisions. In 2011, the Tribunal heard cases on a broad range of issues. The full text of all decisions and rulings is usually available on the Tribunal's website. However, due to infrastructure challenges, most decisions and rulings rendered in 2011 were not posted online. That said, the Tribunal is rapidly working towards solutions to this problem, which it expects to have in place in 2012. In the interim, decisions and rulings are made available to the public on request.

Decisions and Rulings

Decisions

For the purpose of this report, a "decision" is defined as a set of adjudicative reasons issued by a Member or Panel of the Tribunal, which actually decide the question of whether a discriminatory practice occurred in a given case.

Therefore, this would exclude reasons where:

- The only issue in contention before the Tribunal is what type of remedial order is appropriate.
- The complainant is dismissed for want of prosecution by the complainant.
- The complaint is dismissed for lack of jurisdiction, abuse of process, delay, irreparable breach of fairness, etc.
- The issue before the Tribunal is a motion for some type of procedural or evidentiary order.

(It should be noted that reasons issued in respect of matters in the aforementioned list are classified as rulings, which are dealt with in the following section on rulings.)

The following table outlines the decisions rendered by the Tribunal in 2011:

DECISIONS RENDERED BY THE TRIBUNAL IN 2011

#	Date	Parties	Neutral Citation
1	January 26	Louie and Beattie v. Indian and Northern Affairs Canada*	2011 CHRT 2
2	February 8	Marchand v. Department of National Defence	2011 CHRT 3
3	April 8	Silva v. Canada Post	2011 CHRT 8
4	August 10	Thwaites et al. v. Air Canada & Air Canada Pilots Association	2011 CHRT 11
5	September 23	Cruden v. Canadian International Development Agency and Health Canada	2011 CHRT 13
6	November 25	Dinning v. Veterans Affairs Canada	2011 CHRT 20

* This department has since been renamed "Aboriginal Affairs and Northern Development Canada." To facilitate research and reference, this report generally uses the parties' names in the form in which they appear on the complaint when it is referred to the Tribunal.

Rulings

As previously discussed, all sets of adjudicative reasons issued by the Tribunal that do not qualify as decisions (i.e. they do not actually decide whether a discriminatory practice occurred) are classified as rulings. This would include reasons for an order that actually dismissed a complaint or otherwise brought the adjudicative mandate of the Tribunal to an end vis-à-vis the case in question.

The following table outlines the rulings issued by the Tribunal in 2011:

RULINGS ISSUED BY THE TRIBUNAL IN 2011			
#	Date	Parties	Neutral Citation
1	January 7	Grant v. Manitoba Telecom Services Inc.	2011 CHRT 1
2	March 14	First Nations Child and Family Caring Society & Assembly of First Nations et al. v. Indian and Northern Affairs Canada	2011 CHRT 4
3	March 16	Marshall v. Cerescorp Company	2011 CHRT 5
4	March 28	Davis v. Canada Border Services Agency	2011 CHRT 6
5	March 31	Cannon et al. v. Human Resources and Social Development Canada	2011 CHRT 7
6	July 7	Marshall v. Cerescorp Company	2011 CHRT 9
7	July 8	Vilven & Kelly v. Air Canada & Air Canada Pilots Association	2011 CHRT 10
8	September 9	Palm v. International Longshore and Warehouse Union et al.	2011 CHRT 12
9	September 27	Schneider et al. v. Indian and Northern Affairs Canada	2011 CHRT 14
10	September 29	Malec et al. v. Conseil des Montagnais de Natashquan	2011 CHRT 15
11	October 7	Tiwari v. Air Canada & Canadian Auto Workers Union	2011 CHRT 16
12	October 14	Bailie et al. v. Air Canada & Air Canada Pilots Association	2011 CHRT 17
13	October 20	Davis v. Canada Border Services Agency	2011 CHRT 18
14	October 21	Ruth Walden et al. v. the Attorney General of Canada (Treasury Board, Human Resources and Skills Development Canada, and the Professional Institute of the Public Service of Canada)	2011 CHRT 19
15	December 5	Cruden v. Canadian International Development Agency and Health Canada	2011 CHRT 21
16	December 8	Andrews v. Aboriginal Affairs and Northern Development Canada	2011 CHRT 22
17	December 29	Berberi v. Attorney General of Canada	2011 CHRT 23

Significant Tribunal Decisions and Rulings

The following four case summaries provide information about some Tribunal decisions or rulings that were particularly significant in their impact.

JAMES LOUIE AND JOYCE BEATTIE V. INDIAN AND NORTHERN AFFAIRS CANADA, 2011 CHRT 2

The Complainants alleged that officials of Indian and Northern Affairs Canada (INAC) had engaged in discriminatory conduct in the provision of services, within the meaning of section 5 of the *Canadian Human Rights Act*. The Complainants had entered into a joint-venture agreement for a long-term and pre-paid residential lease. The proposed lease was to be for a term of 49 years with a nominal rent of $1. The Complainants submitted the proposed lease to INAC for approval under s. 58(3) of the *Indian Act*, which provides that the Minister may lease for the benefit of any Indian the land of which the Indian is lawfully in possession. INAC officials took issue with the nominal rent and asserted that they had an unfettered right to determine all aspects of the proposed lease, including periodic rent based upon appraisal of the subject land.

The Tribunal found that the Complainants' joint-venture agreement was either misunderstood by INAC officials or was never given adequate consideration by them. INAC attempted to impose unilateral authority over every aspect of the Complainants' proposal for a locatee lease. In doing so, INAC demonstrated how the *Indian Act* has become an anachronism that is out of harmony with the guaranteed individual liberty, freedom and human rights enjoyed by all Canadians. The Tribunal concluded that the application process under s. 58(3) of the *Indian Act* must become an enabling administrative function that recognizes and accepts status Indians as personally responsible Canadians capable of making their own determinations of anticipated benefits to be derived from leasing their lands and that ministerial discretion must not be exercised unilaterally.

The Tribunal ordered that INAC reconsider the Complainants' applications and amend its policies to provide that where individual locatees have determined for themselves that a transaction is for their individual benefit, INAC will accept that determination and conduct the processing of requested leases on that basis.

This decision is currently subject to an application for judicial review.

Results for Canadians

With the repeal of section 67 of the *Canadian Human Rights Act* in 2008 (which fully came into force in 2011), the Tribunal was granted the jurisdiction to consider discrimination complaints emanating from the application of the *Indian Act*. This decision is one of the first cases where the Tribunal had the opportunity to apply the *Act*'s anti-discrimination scheme to a provision of the *Indian Act*.

This decision will affect the manner in which INAC (now AANDC) and other federal government departments interpret and apply the *Indian Act*. Specifically, any application of the *Indian Act* must take into account the discriminatory practices identified in the *Canadian Human Rights Act*. The *Act* identifies these practices, and seeks their eradication, with a view to ensuring equal opportunity for all individuals, including status Indians.

FNCFCS ET AL. V. ATTORNEY GENERAL OF CANADA, 2011 CHRT 4

The First Nations Child and Family Caring Society (FNCFS) and the Assembly of First Nations filed a complaint alleging that First Nations children living on reserve were being discriminated against by INAC. According to the Complainants, funding for child and family care services for on-reserve children was inadequate when compared to the funding that provinces provide to other children residing off reserve. The Complainants argued that this inadequacy in funding differentiated adversely against First Nations within the meaning of section 5(b) of the *Canadian Human Rights Act*. The Respondent brought a motion for a ruling that questions arising out of the complaint were not within the jurisdiction of the Tribunal. Specifically, it argued that funding/transfer payments did not constitute the provision of "services" within the meaning of the *Act*, and that INAC's funding could not, as a matter of law, be compared to provincial funding.

The Tribunal determined that it could not decide the services issue on the evidence filed. INAC's funding scheme is complex: it supports 108 First Nations child welfare service providers to deliver child welfare to approximately 160,000 children and youth in approximately 447 First Nations communities. Various funding agreements and memoranda are involved, and there are provincial and territorial differences in funding schemes and service models. Given that the material facts were not clear, complete and uncontroverted, the Tribunal was prepared to proceed to an oral hearing on the services issue.

However, on the comparator issue, the Tribunal determined that it had sufficient evidence and submissions to decide the question. According to the words, scheme and object of section 5(b) of the *Act*, the Tribunal found that in order to find that adverse differentiation exists, one has to compare the experience of the alleged victims with that of someone else receiving those same services from the same provider.

In this regard, the Tribunal found that the *Act* did not allow a comparison to be made between federal government funding and provincial government funding since—to the extent funding can constitute a service—these two funding streams emanate from two separate and distinct service providers with separate service recipients. The Tribunal also found that if it were to accept the comparison being advocated by the Complainants, this would have unacceptable consequences both in terms of the future interpretation of other sections of the *Act*, and in regard to the likely impact on Aboriginal people themselves. As a result, the Tribunal dismissed the complaint, as it could not succeed on this legal point.

This decision is currently subject to an application for judicial review.

Results for Canadians

Even though the complaint in this case does not directly impugn the *Indian Act*, it is a harbinger of the complex and novel issues that may be raised by the repeal of section 67 of the *Act*. The scope and breadth of this complaint exceeded any complaint filed with the Tribunal to date and, as such, it underscored the need for the Tribunal to pursue its commitment to work with First Nations communities, in order to learn how it can facilitate access to justice for them in a cost-effective, innovative and culturally sensitive manner.

In this decision, the Tribunal also provides insightful analysis and interpretation of the *Act*, examples of which include the Tribunal's determination that the complaint could be dismissed under the *Act* without a full oral hearing; its interpretation of the term "differentiate adversely" as used in s. 5; and its determination regarding appropriate comparator groups.

CRUDEN V. CIDA AND HEALTH CANADA, 2011 CHRT 13

Health Canada conducts medical assessments of Canadian International Development Agency (CIDA) employees seeking postings in other countries. Health Canada developed medical evaluation guidelines specific to the assessment of employees seeking a posting in Afghanistan. Pursuant to these *Afghanistan Guidelines*, under the heading "Absolute medical requirements," employees do not meet the medical requirements for posting if they have a medical condition that would likely lead to a life-threatening medical emergency if access to prescribed medication and/or other treatment is interrupted for a short period of time.

On this basis, the Complainant alleged that her employer, CIDA, engaged in a discriminatory practice when it decided that she was not suitable for a job posting in Afghanistan due to the fact that she had diabetes. The Complainant also alleged that Health Canada engaged in a discriminatory practice when it recommended to CIDA that she not be posted to Afghanistan because of her diabetic condition.

That being said, the evidence indicated that it would pose an undue hardship for CIDA to accommodate the Complainant in Afghanistan. There are serious health and safety risks present for Canadians working in Afghanistan and these risks frequently materialize. It is not only the Complainant who bears these risks, but also members of the Canadian Forces and other foreign military personnel. Medical services and facilities are limited and, therefore, must be reserved to the greatest extent possible for the treatment of troops, injured Afghani civilians and unpredictable emergencies that impact all civilians posted in Afghanistan.

The Tribunal found that the *Afghanistan Guidelines* did not reflect equality between all members of society. Although the guidelines were meant to be instructive and informative, their wording suggested mandatory medical requirements without consideration of the individualized circumstances of each person. The process by which Health Canada assessed and arrived at its recommendation, influenced as it was by the *Afghanistan Guidelines*, failed to consider the inherent worth and dignity of the Complainant. The application of these guidelines to the Complainant resulted in her being discriminated against in the course of her medical assessment. Health Canada did not provide sufficient evidence that its conduct was non-discriminatory. Therefore, the Complainant suffered adverse differentiation on the basis of her disability by the wording and application of the *Afghanistan Guidelines* by Health Canada.

The Tribunal also found that CIDA had breached its duty to explore all reasonable accommodation measures for the Complainant. It had a duty to obtain all relevant information about its employee's disability and seriously consider how the Complainant could be accommodated. It did not provide sufficient evidence demonstrating that it had explored all reasonable accommodation measures for the Complainant in Afghanistan or otherwise.

Therefore, both the complaints against Health Canada and CIDA were substantiated, and the Tribunal ordered appropriate remedial action to eliminate the discriminatory practices.

This decision is currently subject to an application for judicial review.

Results for Canadians

The *Cruden* decision is unique in the fact that the Tribunal had to analyze the applicability of the duty to accommodate in an international war zone context. The Tribunal in this decision referred to international law such as the *Convention on the Rights of Persons with Disabilities* in its analysis. The decision highlights some important aspects of the law surrounding disability accommodation. First, employment policies can potentially be discriminatory if they are "absolute" and do not provide for a consideration of the individualized circumstances of each person. Second, in situations such as the one detailed above, employers may have a duty to obtain all relevant information about an employee's disability and seriously consider how the employee can be accommodated. If this analysis is not performed, an employer may fail in its duty to accommodate an employee with a disability.

MARCHAND V. DEPARTMENT OF NATIONAL DEFENCE, 2011 CHRT 3

The Complainant, Paul Marchand, filed a complaint against the Department of National Defence (DND) alleging that it had refused to employ him in one of several temporary and one indeterminate full-time cleaner positions on the basis of his gender. According to the evidence led by the Complainant, the candidate hired for the indeterminate position along with all of the candidates hired for the temporary positions were women. The Complainant alleged that in so doing, the Respondent engaged in a discriminatory practice within the meaning of s. 7(a) of the *Canadian Human Rights Act.*

The Tribunal found that the Complainant had established a *prima facie* case of discrimination. The Complainant established that he was qualified for the employment, had not been hired, and that someone no better qualified but lacking the distinguishing feature—which is the *gravamen* of the human rights complaint (in this case the feature being the male gender)—subsequently obtained the position.

Once the onus shifted and the Respondent provided its evidence regarding the appointment, however, the Tribunal found that the Respondent had provided a reasonable explanation for the refusal to employ the Complainant. The Tribunal concluded that the evidence revealed that the temporary appointments were made after the Complainant had already been screened out of the process due to his own failure to demonstrate that he possessed the essential qualifications for the positions. As for the indeterminate position, the evidence showed that the chosen candidate was determined to be a better fit for the position. The Tribunal concluded that sex was not a factor in the Respondent's decision not to appoint him.

Results for Canadians

The importance of this decision lies primarily in its provision of a clear and concise overview of the state of the law regarding the *prima facie* test for discrimination in the context of a complaint where an employer refused to employ the Complainant. The decision also exemplifies the sort of "reasonable explanation" a Respondent can provide in such a scenario. Also noteworthy is the Tribunal's explicit recognition of the Public Service employers' discretion in deciding to appoint a candidate who not only meets the essential qualifications for the position, but is the "right fit" because of additional asset qualifications, current or future needs, and/or operational requirements.

From the perspective of the Tribunal's mission and mandate, it is noteworthy that the decision promoted access to justice for Canadians in that it is concise, well structured and explains the law in accessible language. In the case of this decision, access to justice is also facilitated by a detailed Table of Contents with headings that clearly reveal the decision's components, the "architecture" of the decision maker's reasoning and the flow of ideas from one subject to the next.

Rulings on Motions and Objections

In addition to decisions, the full text of all formal rulings on motions and objections rendered in 2010 can be found on the Tribunal's website at **http://chrt-tcdp.gc.ca/NS/index-eng.asp.**

Corporate Activities

Appointments and Staffing

While not Public Service appointments, it is noteworthy that the re-appointment by the Canadian Government of four part-time Members served to solidify the adjudicative experience and expertise on the Tribunal and add valuable continuity to our cohort of Members.

Turning to the Public Service component of the Tribunal, the most pivotal staffing development of 2011 was the appointment of an Executive Director and Senior Registrar for an indeterminate period. The conclusion of this staffing action added significant stability to the organization and led to more robust stewardship of human, financial and material resources.

Also, we were pleased to welcome:

- a Chief Administrative Officer to oversee procurement, contracting, human resources, information technology and other infrastructure functions;
- a new Director of Registry to lead the Registry office team and streamline procedures;
- two legal advisors to provide enhanced legal support to Members.

Members' Meeting

Members are provided with opportunities for common professional development experiences where they can exchange information and expertise on administrative and human rights law. In October 2011, the Chairperson convened a three-day meeting in Ottawa for the full-time and part-time Members. Together with members of the Legal Services team, they reviewed and discussed the vision, notable legal developments, and various aspects of the complaint resolution model, which by that time had been operating for the better part of a year. As a follow-up to the October 2010 meeting, this meeting provided the opportunity for Members, who are geographically distanced from one another, to exchange experiences and information. As part of the October 2011 Members' meeting, the Chairperson administered the oath of office to all part-time Members of the Tribunal. (The full-time Members had taken their oath of office in 2010.)

Subsequent to the meeting, a series of Member conference calls was inaugurated to provide a voluntary forum for interested Members to share their experiences and keep abreast of new developments.

Stakeholder Consultation

In refining our vision of access to justice, in 2010 the Chairperson had amended the Tribunal's Case Management Practice Note (No. 3), proposing the following:

- replacement of the first conference call with a letter to the parties;
- evaluative mediation both pre- and post-disclosure;
- enhanced disclosure of anticipated expert testimony;
- signed witness statements and/or affidavits to replace generalized "will-says";
- process mediation;
- rigorous disclosure by all parties of remedies sought or proposed.

In January 2011, the Chairperson launched an extensive national stakeholder engagement initiative, presenting the key components of her new complaint resolution model to members of the legal profession, academics, labour and industry groups, and First Nations communities. Stakeholder sessions were held across the country from January to September 2011. Participants at every stakeholder session were canvassed for their views on the model and, in particular, feedback was solicited in regard to any areas of concern, and suggestions for improving the system were welcomed.

In 2012, the Tribunal will issue a report that synthesizes the stakeholder feedback received, sets out any amendments adopted in response thereto and provides reasons, as the case may be, for why some stakeholder-proposed changes may not have been implemented.

Speaking Engagements to Date

Feb. 28–29, 2012	How to Run a Fair Hearing: Tips and Good Practices, Canadian Institute—Tribunal Training Course, Ottawa
Feb. 14–15, 2012	"Introduction to the Decision Writing Process," principal lecturer, Federated Press Conference, Ottawa
Dec. 9, 2011	Panellist: "The Judicial and Administrative Tribunal Mediation Experience in Ontario," Ontario Bar Association Conference Centre, Toronto
Nov. 24, 2011	Distinguished Lecturer Series, Law Faculty of the University of Manitoba, Winnipeg
Nov. 8, 2011	"Managing Change to Ensure Justice for Canadians," Canadian Club, London, Ont.
Oct. 24, 2011	"Access to Justice for all Canadians—Advocacy, Litigation, Adjudication," Cathedral Arts Program, Ottawa
Oct. 22, 2011	"The Future of Human Rights Advocacy: The Journey of One Practitioner—From Advocacy to Adjudication," Canadian Civil Liberties Association, RightsWatch National Conference, Calgary
Oct. 18, 2011	National Stakeholder Consultation Session— Aboriginal, Peguis First Nation, Peguis, Man.
Oct. 18, 2011	National Stakeholder Consultation Session—Legal, Winnipeg
Oct. 17, 2011	National Stakeholder Consultation Session—Aboriginal, Dene First Nation, Yellowknife, N.W.T.
Oct. 12, 2011	"Access to Justice for Canadians—Mediation as a means to Restorative Justice & the Duty to Consult," Association for Conflict Resolution, San Diego, Calif.
Sept. 22, 2011	"Human Rights in the Context of Access to Justice and Practice of Law: From the Perspective of an Administrative Tribunal," Dalhousie Law Hour, Schulich School of Law, University of Dalhousie, Halifax
Sept. 21, 2011	National Stakeholder Consultation Session—Aboriginal, Millbrook First Nation, Truro, N.S.
Sept. 20, 2011	National Stakeholder Consultation Session—Legal, Halifax
Sept. 20, 2011	National Stakeholder Consultation Session— Aboriginal, St. Mary's First Nation, Fredericton, N.B.
Sept. 19, 2011	National Stakeholder Consultation Session—Legal, Fredericton, N.B.
Sept. 19, 2011	« Accès à la justice fondée sur la justice restauratrice : Initiatives au Tribunal canadien des droits de la personne », Université de Moncton, Moncton, N.B.
Aug. 9, 2011	National Stakeholder Consultation Session—Aboriginal, Akwesasne Mohawk, Cornwall, Ont.
Aug. 4, 2011	National Stakeholder Consultation Session—Aboriginal, Tsuu T'ina Nation, Calgary
July 27, 2011	National Stakeholder Consultation Session—Aboriginal, Fort MacKay, Alta.
July 26, 2011	National Stakeholder Consultation Session— Aboriginal, Samson Tribe, Edmonton
June 17, 2011	National Stakeholder Consultation Session— Aboriginal, Shubenacadie Tribe, Nova Scotia
June 10, 2011	"Advancing Equity—The Focus on Gender," PBD Canada 2011, Indo-Canada Chamber of Commerce, Toronto
June 10, 2011	"Annual Update on Human Rights: Keeping on Top of Key Developments," Ontario Bar Association, Toronto (webcast)
June 2, 2011	« Redéfinissons Ensemble L'accessibilité : La médiation obligatoire pour améliorer à l'accès à la justice ? », panellist on Access to Justice round table with Gilles Ouimet, president of the Quebec Bar, Annual Quebec Bar Conference, Gatineau, Que. http://congres2011.barreau.qc.ca/coulisses/03
May 25, 2011	National Stakeholder Consultation Session—Legal, Montréal
May 16–17, 2011	"Access to Justice and the Charter: A 'Dialogue' between Administrative Tribunals, Courts and Parliament," Advanced Training on Charter and Constitutional Law and Litigation conference, co-chair with Hon. Justice Pierre Blais of the Federal Court of Appeal, Canadian Institute, Ottawa, Ont.
May 9, 2011	National Stakeholder Consultation Session—Legal, Toronto
April 15, 2011	National Stakeholder Consultation Session—Aboriginal, Musqueam Tribe, Vancouver
April 14, 2011	National Stakeholder Consultation Session—Legal, Edmonton
April 13, 2011	National Stakeholder Consultation Session—Legal, Calgary
March 11, 2011	"Human Rights in the Context of Access to Justice and Practice of Law", Public Interest Day, Osgoode Hall Law School, Toronto
March 10, 2011	National Stakeholder Consultation Session—Legal, Vancouver

Stakeholder Outreach

The Chairperson also shared our access to justice vision broadly with the national and international community. Building on prior meetings with the Human Rights Bureau, Ministry of Justice of Japan in 2011, she continued meetings with the South African Ambassador to Canada. She also continued meetings with provincial human rights tribunals and communities, including the Ontario Human Rights Tribunal, the B.C. Human Rights Tribunal, the Alberta Human Rights Commission, and various deans of law faculties and law schools. She spoke at a number of legal conferences where she shared our vision and received input.

In addition to these meetings and dialogues, the Chairperson made presentations at numerous conferences and professional development events to outline our vision and explain the functioning of the Tribunal's new model for complaint resolution.

Meetings with Other Government Agencies

The Chairperson engaged in meetings and discussions with various Deputy Heads and representatives of central agencies to seek assistance and guidance with respect to corporate capacity issues and risk management.

Staff Appreciation

In closing, the Chairperson wishes to acknowledge and thank all members of the Tribunal staff who have worked with dedication and patience to serve Canadians to the best of their abilities.

Members of the Tribunal

Biographies

Full-time Members

SHIRISH P. CHOTALIA, Q.C.
Chairperson

Shirish P. Chotalia, Q.C., was appointed Chairperson of the Canadian Human Rights Tribunal effective November 2, 2009. Ms. Chotalia obtained her Bachelor of Arts in 1983, her J.D. in 1986 and her Master of Laws in 1991 from the University of Alberta. She was admitted to the Bar of Alberta in 1987.

Ms. Chotalia practised with the law firm of Pundit & Chotalia LLP in the areas of immigration, human rights and employment litigation. She successfully litigated many high-profile cases. Some of Ms. Chotalia's cases include successfully arguing, before the Federal Court and the Federal Court of Appeal, in favour of religious accommodation for a turbaned Sikh Canadian RCMP officer *(Grant et al. v. Canada)*. Her submissions were specifically acknowledged by Madam Justice Reed in the judgment as "turning the plaintiff's arguments of unconstitutionality and discrimination on their head." She also successfully argued in 2008 before the Alberta Court of Appeal that a woman seeking to become a surface rights administrator was discriminated against on the basis of gender and was retaliated against *(Walsh v. Mobil Oil)*.

Ms. Chotalia has dedicated years of legal service to Aboriginal women and Filipino women struggling for fair treatment, often providing service on a *pro bono* basis or with minimal compensation. For example, she took up the cause of a Filipino woman who had contracted breast cancer in Canada to successfully prevent her removal on the alleged basis of medical inadmissibility. In another case, she assisted an Aboriginal woman alleging sexual harassment.

She was a Commissioner with the Alberta Human Rights Commission from 1989 to 1993, an adjudicator with the Canadian Human Rights Tribunal from 1999 to 2005 and served as an elected Bencher, Law Society of Alberta, from 2008 until her appointment to the Tribunal.

Ms. Chotalia was an instructor at the University of Alberta's Law Faculty since 1995, intermittently, teaching courses in Human Rights Law as well as Terrorism and the Law, and was also appointed as a Special Advocate in 2008 to address terrorism cases. She has written several books and many articles about human rights law and immigration law. For example, she wrote *The Annotated Canadian Human Rights Act 1994,* Carswell Thompson Professional Publishing, Scarborough, Ont. (updated and annotated text for the years 1996, 1997, 1998, 1999 and 2000) and *Human Rights Law in Canada, 1996,* Carswell Thompson Professional Publishing, Scarborough, Ont. (updated to 2000).

Other professional service included Chair of the Canadian Bar Association Immigration Section, Northern Alberta, and Member, Selection Advisory Board of Canada. Ms. Chotalia speaks several languages including French, Hindi, Marathi and Gujarati.

Ms. Chotalia has received numerous service and professional recognition awards, including Professional Female of the Year, Indo-Canada Chamber of Commerce, "Woman of the Year" and the Red Cross Community Service Recognition Award.

SUSHEEL GUPTA
Vice-Chairperson

Mr. Gupta obtained his Bachelor of Arts at the University of Waterloo in 1993, his J.D. from the University of Ottawa in 1998 and was called to the Ontario Bar in February 2000. He has served most of his career in the Public Service with the agency now named Public Prosecution Service of Canada, as a prosecutor and computer crime advisor, special advisor at the Canadian Air Transport Security Authority, and as counsel in the Crimes Against Humanity and War Crimes section of the Department of Justice. Mr. Gupta is currently an employee of the Public Prosecution Service of Canada, on leave without pay for a three-year term.

As a community member and public servant, Mr. Gupta has been the recipient of the Government of Canada Youth Award for Excellence, the Deputy Minister of Justice Humanitarian Award and most recently the Ontario Justice Education Network Chief Justice Lennox Award. Mr. Gupta commenced his responsibilities on August 3, 2010.

SOPHIE MARCHILDON
Full-time Member

Ms. Sophie Marchildon was appointed in 2010 to a three-year term as a full-time Member of the Canadian Human Rights Tribunal. She completed her Bachelor of Laws at the Université du Québec à Montréal. She completed her Master's Degree in International Law and International Politics at the Université du Québec à Montréal and was the recipient of the 2006 Award of Excellence for Best Student in the International Human Rights Law Clinic. She is a member of the Quebec Bar.

Throughout her career, Ms. Marchildon has practised immigration law, human rights law and health law within various organizations. She also worked as a lawyer and co-director at the Council for the Protection of the Sick (Conseil pour la protection des malades) from 2005 to 2006, and was an assessor and member of the Quebec Human Rights Tribunal. She has volunteered on a number of clinical ethics committees from 2005 to 2010, and worked as an Ombudsman in the health care services from 2006 until her appointment to the Canadian Human Rights Tribunal in May 2010.

With a licence in mediation from the Quebec Bar, Ms. Marchildon has handled more than 200 mediations in the realm of human rights and the health care system. She was part of the Quebec Ministry of Health and Social Services' Team of Visitors, which evaluated the quality of services in nursing homes across the province of Quebec. With respect to the elderly and her professional experience, Ms. Marchildon taught the course, "Violence envers les personnes âgées Vio 2008," at the Université de Montréal in 2009.

Part-time Members

MATTHEW D. GARFIELD (ONTARIO)

Matthew D. Garfield was re-appointed in 2011 to a five-year term as a part-time Member of the Canadian Human Rights Tribunal.

Mr. Garfield is a lawyer, chartered mediator and chartered arbitrator. He is the president of ADR Synergy Inc., a firm that specializes in mediations, arbitrations, workplace investigations/assessments and the monitoring of implementation of Court/Tribunal Orders. Mr. Garfield is also an adjudicator at the Indian Residential Schools Adjudication Secretariat.

From 2000 to 2004, Mr. Garfield was the Chair of the Human Rights Tribunal of Ontario. He had joined the tribunal as Vice-Chair in 1998. He both adjudicated and mediated cases under the Ontario *Human Rights Code* involving claims of discrimination, harassment and reprisal. Prior to his appointment to the tribunal, Mr. Garfield practised law in Toronto.

Mr. Garfield 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.

WALLACE G. CRAIG (BRITISH COLUMBIA)

Wallace Gilby Craig was re-appointed in 2011 to a three-year term as a part-time Member of the Canadian Human Rights Tribunal. Former judge Wallace Craig worked in the justice system for 46 years. After 20 years in a general practice, he was promoted to the Bench in 1975.

Judge Craig resided over the Vancouver Criminal Division – Provincial Court of British Columbia from 1975 to 2001. After retirement in his hometown of Vancouver, Judge Craig became the author of *Short Pants to Striped Trousers: The Life and Times of a Judge in Skid Road Vancouver.* He had earned his LL.B. from the Faculty of Law at the University of British Columbia.

RÉJEAN BÉLANGER (QUEBEC)

Réjean Bélanger was re-appointed in 2011 to a three-year term as a part-time Member of the Canadian Human Rights Tribunal. Mr. Bélanger is a lawyer and certified mediator. He holds a Bachelor of Education from the Université de Montréal, as well as a Bachelor of Arts, a Bachelor of Commerce, a Master of Education and a Bachelor of Law from the University of Ottawa. Mr. Bélanger was admitted to the Quebec Bar in 1980 and has conducted a private practice in Gatineau, Que., principally in the areas of labour and administrative law.

He received his accreditation as a mediator in the areas of civil, commercial and family matters in 1997. He has argued before several administrative tribunals, the Superior Court of Quebec, the Court of Appeal and the Supreme Court of Canada.

Before becoming a lawyer, Mr. Bélanger served as deputy secretary of the Franco-Ontario Teachers Association and as director of the Regional Office of the Teachers Association of West Quebec. He is also an active member of the board of directors of three non-profit organizations involved in bringing aid to African countries, the Antilles (Haiti) and Central America (Honduras).

EDWARD LUSTIG (ONTARIO)

Edward Lustig was re-appointed in 2011 to a five-year term as a part-time Member of the Canadian Human Rights Tribunal.

Mr. Lustig received his Bachelor of Arts from the University of Toronto, his Bachelor of Laws from Queen's University, and was called to the Bar of Ontario with First Class Honours in 1975. He has been a member of the Law Society of Upper Canada and the Canadian Bar Association since 1975. Mr. Lustig joined the legal department of the City of Niagara Falls in 1975 and, after 27 years of dedicated service, he retired in 2002. In January 2006 he joined Broderick & Partners as counsel and carries on a general law practice with particular emphasis on municipal law, planning and development matters, commercial and real estate law and related litigation. Mr. Lustig also has experience in labour matters, including employment and pay equity.

KERRY-LYNNE FINDLAY

Ms. Findlay resigned from the Tribunal in the spring of 2011, in order to run for public office.

For Further Information

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