

# **Public Service Staffing Tribunal**

**2008–2009**

**Performance Report**

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The Honourable James Moore, P.C., M.P.  
Minister of Canadian Heritage and Official Languages





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# Chairperson's Message



One of my main objectives, as Chair of the Public Service Staffing Tribunal (PSST), has been to ensure that the parties to a complaint before the PSST are offered several opportunities to resolve their differences before proceeding to an oral hearing.

This approach is in keeping with the spirit and intent of the *Public Service Employment Act* (PSEA) to promote effective dialogue which is the basis of most, if not all, successful alternative dispute methods. Throughout my experience as an adjudicator and mediator, I have found that a solution arrived at by the parties involved in a dispute is always preferable to one imposed by a third party.

Communication and sustained dialogue between employees and managers will ultimately build effective labour relations and thus strengthen the ability of the public service to serve the Canadian public. In this context, I believe that the PSST has contributed to a modern public service by helping the parties to a complaint come to a resolution of the complaint without an oral hearing.

Statistics for the year 2008–2009 bear this out. During the year, the Tribunal dealt with a total of 1,214 case files – 821 new complaints were received, while 393 were carried over from the previous year. In cases where the Tribunal lacked jurisdiction to consider a complaint, a complaint was untimely or a formal hearing was not required, the Tribunal was able to proceed quickly on the basis of written submissions from the parties. The Tribunal issued 166 final decisions in such cases.

The vast majority of the remaining cases were resolved at various other steps in the process – for example, during the exchange of information or after a pre-hearing conference. Only 34 cases proceeded to an oral hearing and thus to Reasons for Decision by the Tribunal.

It is my sincere hope that parties to a complaint before the Tribunal will continue to take advantage of the numerous opportunities provided to them both within their own organizations and during the Tribunal's complaint process in order to resolve their differences themselves, thereby helping to improve labour relations and ensure that Canada's public service embodies fair, transparent employment practices, respect for employees and effective dialogue.

Guy Giguère  
Chairperson and Chief Executive Officer





**SECTION I**  
*Departmental Overview*

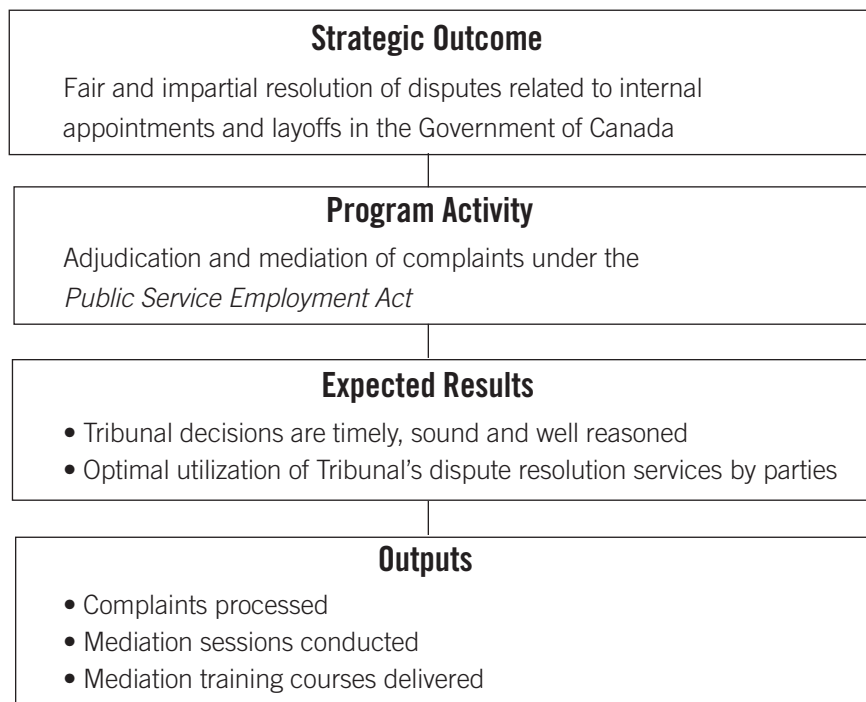
## Raison d'être

The Public Service Staffing Tribunal is an independent, quasi-judicial body established under the *Public Service Employment Act* (PSEA) to deal with complaints related to internal appointments and lay-offs in the federal public service. The Tribunal conducts hearings and provides mediation services in order to resolve complaints.

## Responsibilités

The Public Service Staffing Tribunal was established with the coming-into-force of the new PSEA on December 31, 2005 as part of the new arrangements for staffing recourse. The legislative mandate of the Tribunal is to consider and dispose of complaints dealing with lay-offs, revocation of appointments, internal appointments and the failure of corrective action. Under the Act, the Tribunal is also authorized to provide mediation services at any stage of a proceeding in order to resolve a complaint.

## Strategic Outcome and Program Activity Architecture (PAA)







## Summary of Performance

The Tribunal's financial resources had a direct impact on its ability to achieve its Strategic Outcome and deliver its activities. The following sections will highlight the Tribunal's performance and demonstrate linkages between resources and results.

At the outset of the 2008–2009 fiscal year, the Tribunal's planned spending was \$5.0 million. Through Main Estimates and Supplementary Estimates, the Tribunal was allocated total authorities of \$5.5 million and its actual spending was \$4.8 million. This increase in authorities came from funding for the operating budget carry-forward and for wage increases.

### 2008–2009 Financial Resources (\$ thousands)

2008–2009		
Planned Spending	Total Authorities	Actual Spending
4,968	5,489	4,810

### 2008–2009 Human Resources (FTEs)

2008–2009		
Planned	Actual	Difference
35	34	1

## Performance Summary

**Strategic Outcome:** *Fair and impartial resolution of disputes related to internal appointments and lay-offs in the Government of Canada*

Performance Indicators	Targets	2008–2009 Performance
Percentage of complaints referred to judicial review on the grounds that the Tribunal failed to observe a principle of natural justice, procedural fairness or other procedure	3%	The Tribunal exceeded its target in 2008–2009 as 1.4% of the decisions issued by the Tribunal in 2008–2009 were referred to judicial review. Of the 210 final decisions (44 with Reasons for Decision and 166 letter decisions) issued, three applications to the Federal Court for judicial review were made on the grounds that the Tribunal failed to observe a principle of natural justice, procedural fairness or other procedure.

Program Activity	2007–2008	2008–2009				Alignment to Government of Canada Outcomes
	Actual Spending (\$ thousands)	Main Estimates (\$ thousands)	Planned Spending (\$ thousands)	Total Authorities (\$ thousands)	Actual Spending (\$ thousands)	
Adjudication and mediation of complaints filed under the <i>Public Service Employment Act</i>	4,304	4,968	4,968	5,489	4,810	The PSST contributes to the achievement of the Government of Canada's "Government Affairs" Outcome by supporting an effective human resources management and a highly effective and competent public service.
<b>Total</b>	<b>4,304</b>	<b>4,968</b>	<b>4,968</b>	<b>5,489</b>	<b>4,810</b>	



## Contribution of Priorities to Strategic Outcome

Given its very specific mandate, the Tribunal's two main operational priorities are directly related to both its Strategic Outcome and Program Activity.

Operational Priorities	Type	Status	Linkages to Strategic Outcome
1. Consider and dispose of complaints	Ongoing	<p><b><i>Exceeded expectations</i></b></p> <p>Out of a total of 1,214 complaints processed during the year, only 210 final decisions (including both Reasons for Decision and letter decisions) were issued. Of the 210 final decisions issued, only three applications to the Federal Court for judicial review were made on the grounds that the Tribunal failed to observe a principle of natural justice, procedural fairness or other procedure.</p>	<p>The fair and impartial resolution of complaints submitted to the Tribunal is achieved as informally and as expeditiously as possible through the various opportunities offered by the Tribunal for alternative dispute resolution and an effective internal review process.</p>
2. Provide mediation services	Ongoing	<p><b><i>Exceeded expectations</i></b></p> <p>Of the 175 mediation sessions held, 158 – or 90% – resulted in a withdrawal of the complaint. The Tribunal's target for the percentage of complaints settled by mediation is 70%.</p>	<p>A settlement arrived at by the parties with the assistance of a Tribunal mediator is a “win-win” solution. With the help of a mediator, the parties themselves determine the outcome of the process and are more likely to be satisfied with the process in general, and the results in particular.</p>

<b>Management Priorities</b>	<b>Type</b>	<b>Status</b>	<b>Linkages to Strategic Outcome</b>
1. Strengthen corporate services	Ongoing	<p><b>Met</b></p> <p>The Tribunal has put in place policies and procedures in the following areas: security and finance. Significant progress was made during the year on the development and implementation of the Tribunal's information system.</p>	Having a solid infrastructure in place provides a foundation for the Tribunal to be able to fulfill its mandate.
2. Strengthen human resources management	Ongoing	<p><b>Met</b></p> <p>The Tribunal developed an integrated human resources and business plan, an employee assistance policy and learning and development program for its staff.</p>	A satisfied workforce and healthy workplace lead to greater productivity and thus contribute to the accomplishment of the Tribunal's objectives.



## Risk Analysis

The Tribunal entered its third full year of operations without a source of permanent funding. Without the assurance that ongoing funding would be available in the future, the Tribunal was at risk of being distracted from its mandate by concerns about a serious shortage of funds.

However, in April 2008, the Prime Minister of Canada announced that six organizations with central human resources management functions – the Canada Public Service Agency, the Canada School of Public Service, the Public Service Commission, the Public Service Labour Relations Board, the Treasury Board of Canada and the Tribunal – were to complete a strategic review of their program spending by July 1<sup>st</sup> in order to ensure that their programs were being managed efficiently and effectively.

The results of the review were announced by the Prime Minister on February 6, 2009. A number of changes in the governance structure for the management of human resources in the Public Service were made, the importance of ensuring long-term funding for the Tribunal was recognized and funds were set aside in Budget 2009 for this purpose.

The greatest challenge faced by the Tribunal occurred during the second half of the fiscal year. By the end of January 2009, only two permanent members remained to issue letter decisions, conduct hearings and render decisions. Selection processes for vacant member positions were initiated through the Privy Council Office, but did not yield any results before the end of the year. The delay in the appointment of new members in order to restore the full complement of five to seven permanent members had a significant effect upon the time it took the Tribunal to issue decisions.

Other risks identified as having a possible impact on the Tribunal's operations during 2008–2009 included: an increase in the number of complaints as a result of an increasing number of collective staffing processes and limited resources in departments, agencies and bargaining agents to deal with the increased volume of complaints. In order to handle and monitor its own caseload, the Tribunal continued to fine-tune its complaint procedures and build the capacity of its case management system. With respect to the need to ensure that its stakeholders have the necessary information to handle complaints, the Tribunal updated its website regularly, developed and posted a revised Policy for Mediation and Hearing Scheduling and Requests for Postponements and continued to deliver information sessions to organizations as requested.

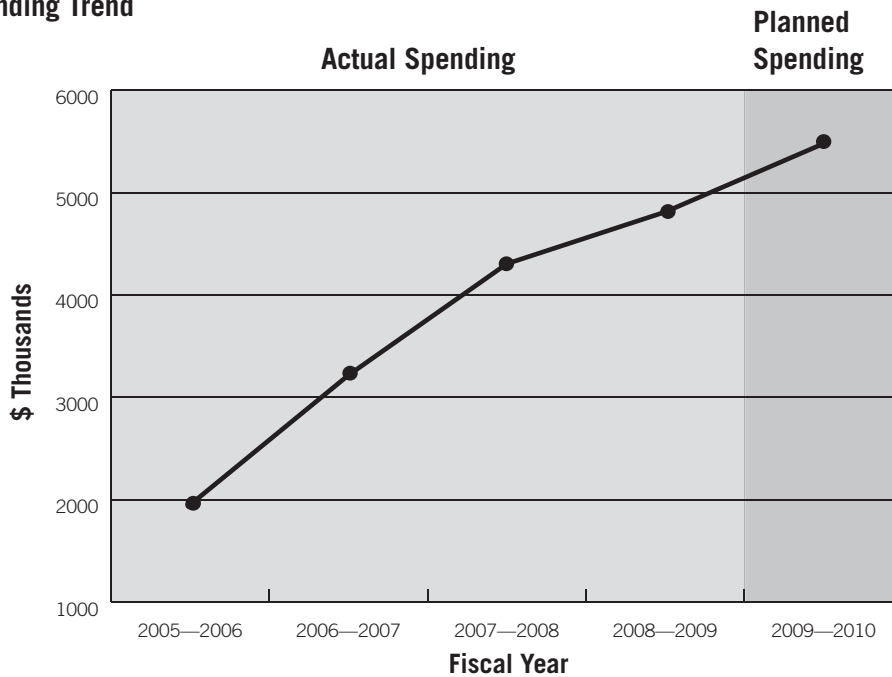
## Expenditure Profile

The Tribunal's actual spending was \$4.8 million in 2008–2009. The Tribunal's expenditures have increased since the PSEA came into force in December 2005 because the number of complaints filed with the Tribunal has risen every year since then. Since its establishment in 2005, the Tribunal has steadily built up its capacity and invested in its infrastructure to deliver its activities.

The Tribunal was originally established with a planned expenditures budget of \$5 million on the assumption that approximately 400 complaints would be submitted per year. This number was reached in the Tribunal's second year of operations (2006–2007). Seven hundred forty-two (742) complaints were received in 2007–2008 and 821, in 2008–2009. Despite the 10% increase in the number of complaints, the Tribunal has continued to operate within the resources that were originally allocated.

The chart below shows the Tribunal's spending trend over a five-year period including planned spending for the fiscal year 2009–2010.

### Spending Trend



Voted or Statutory Items		2006–2007	2007–2008	2008–2009	2008–2009
		Actual Spending (\$ thousands)	Actual Spending (\$ thousands)	Main Estimates (\$ thousands)	Actual Spending (\$ thousands)
90	Program expenditures	2,903.1	3,902.0	4,481.0	4,325.0
(S)	Contributions to employee benefit plans	312.8	402.0	487.0	485.0
<b>Total</b>		<b>3,215.9</b>	<b>4,304.0</b>	<b>4,968.0</b>	<b>4,810.0</b>



**SECTION II**

*Analysis of Program Activities by  
Strategic Outcome*





## Strategic Outcome

### ***Fair and impartial resolution of disputes related to internal appointments and lay-offs in the Government of Canada***

The Tribunal's Strategic Outcome is derived directly from the mandate conferred upon it by the *Public Service Employment Act* (PSEA). Subsection 88(2) of the Act reads as follows:

“The mandate of the Tribunal is to consider and dispose of complaints made under subsection 65(1) and sections 74, 77 and 83”.

Sections 65, 74, 77 and 83 of the PSEA refer to lay-offs, the revocation of an appointment, internal appointments and the failure of corrective measures respectively

In considering whether a complaint against an internal appointment or lay-off is founded, the Tribunal may interpret and apply the *Canadian Human Rights Act* (CHRA).

The PSEA also permits the Tribunal to provide mediation services at any stage of its proceeding in order to resolve a complaint.

By providing neutral, third party recourse for staffing complaints within the federal public service, the Tribunal helps to ensure that Canada and Canadians are served by a highly competent and professional public service based on merit and non-partisanship.

### **Program Activity by Strategic Outcome**

#### **Program Activity:**

#### **Adjudication and mediation of complaints filed under the *Public Service Employment Act***

2008–2009 Financial Resources (\$ thousands)			2008–2009 Human Resources (FTEs)		
Planned Spending	Total Authorities	Actual Spending	Planned	Actual	Difference
4,968	5,489	4,810	35	34	1

<b>Expected Results</b>	<b>Performance Indicators</b>	<b>Targets</b>	<b>Performance Status</b>	<b>Performance Summary</b>
Tribunal decisions are timely, sound and well reasoned	Percentage of decisions where reasons are issued within two months of hearing	80%	Not met	An increase in the number of complaints received by the Tribunal and a decrease in the number of members available to render decisions resulted in the Tribunal's inability to meet its target for decisions where an oral hearing is held.
	Percentage of Tribunal decisions upheld on judicial review	95%	Met	None of the Tribunal's decisions was quashed by the Federal Court.
Optimal utilization of Tribunal's dispute resolution services by parties	Percentage of mediations resulting in withdrawal of complaint	70%	Exceeded	Of the 175 mediation sessions held in 2008–2009, 158 resulted in a withdrawal of the complaints. This represents a 90% settlement rate.

<b>Outputs</b>	<b>Performance Indicators</b>	<b>Targets</b>	<b>Performance Status</b>	<b>Performance Summary</b>
Complaints processed	Percentage of case files closed within 270 days	80%	Exceeded	Of all the 727 files closed during the fiscal year, 99% were closed within 270 days following the receipt of the complaint.
	Number of complaints processed per year	As required	A total of 1,214 complaint files were handled during the year: 393 files were carried over from the previous year and 821 new complaints were submitted.	The number of complaints continue to increase each year. In 2007–2008, there were 742 new complaints. The number of new cases this year – 821 – represents a 10% increase in the number of complaints filed in the previous year.
Mediation sessions conducted	Number of mediations held per year	140	Exceeded	With a full complement of staff mediators and four part-time members available to provide mediation services, 175 mediation sessions were held during the year.
Mediation training courses delivered	Number of mediation training courses for stakeholders given per year	6	Met	The Tribunal is able to meet the training needs of its stakeholders by providing the Interest-based Negotiation and Mediation course six times a year.

## Program Activity

### Adjudication and mediation of complaints filed under the *Public Service Employment Act*

#### Benefits for Canadians

The PSEA was intended to modernize staffing in the public service by providing independent recourse for complaints related to internal appointments and lay-offs and also increase the availability and effectiveness of mediation in resolving complaints.

Through its efforts to both provide transparent, impartial and sound decisions to its stakeholders, and help the parties resolve complaints without a hearing, the Tribunal contributes to the effective human resources management in the public service and the protection of the integrity of the appointment process. In this way, the Tribunal provides support to a public service based on merit and capable of delivering services of the highest quality to Canadians.



## Performance Analysis

### Expected Results

1. Tribunal decisions are timely, sound and well reasoned.

The Tribunal's main objective is to render high quality decisions with respect to complaints filed under the PSEA within a reasonable time frame. An important measure of the quality of decisions is the number of applications for judicial review regarding Tribunal decisions and, of those, the number dismissed.

The indicators and targets for measuring the quality and time involved in rendering decisions are as follows:

Indicator	Target
<b>Percentage of decisions where reasons are issued within two months of hearing</b>	<b>80%</b>

The Tribunal fell short of its target with respect to the time it takes to issue the Reasons for Decision after a hearing. This is due to three main factors: the complexity of precedent-setting decisions issued, the increase in the number of complaints and the limited number of members available to conduct hearings and write decisions, both Reasons for Decision and letter decisions. The Tribunal entered the year with five permanent members whose main responsibility was to render decisions; however, by the end of the fiscal year, only two permanent members remained. Although two temporary members had begun to hold hearings by the end of the year, the remaining two permanent members were responsible for issuing all 166 letter decisions. This responsibility combined with the increasing number of complaints submitted to the Tribunal and the limited number of members to conduct hearings resulted in an increase in the time that it took the Tribunal to issue its decisions.

Indicator	Target
<b>Percentage of Tribunal decisions upheld on judicial review</b>	<b>95%</b>

Out of 210 final decisions issued in 2008–2009, only four were referred to the Federal Court for judicial review. The Federal Court rendered one decision during the same period; the application for judicial review was dismissed in this particular case. The Tribunal met its target, therefore, in that no applications for judicial review were upheld in 2008–2009.

2. Optimal utilization of Tribunal's dispute resolution services by parties.

In keeping with the spirit and intent of the *Public Service Modernization Act*, the Tribunal strives to assist the parties resolve complaints without having to proceed to an oral hearing.

The indicators and targets for measuring the quality and time involved in rendering decisions are as follows:

Indicator	Target
<b>Percentage of mediations resulting in withdrawal</b>	<b>70%</b>

Parties made effective use of the Tribunal's mediation services during 2008–2009 in that the Tribunal's target was exceeded by a full 20%. One hundred seventy-five (175) mediation sessions were held during the year and, of these, 158 resulted in a withdrawal of the complaint. This represents a 90% settlement rate.

## Outputs

1. Complaints processed

As noted in the summary table, the number of complaints filed with the Tribunal continues to rise each year. Procedures and policies have been put in place to enable the Tribunal to process complaints in a timely manner – for example, pre-hearing conferences, paper hearings and mediation. In addition, the Tribunal's case management system continues to be assessed and improved where possible.

2. Mediation sessions conducted

Under the PSEA, the Tribunal “may provide mediation services at any stage of a proceeding in order to resolve a complaint”. Accordingly, the Tribunal has placed considerable emphasis upon mediation and achieved a high rate of success. During the year, a full complement consisting of four staff mediators and four part-time members was available to provide mediation services.

3. Mediation training courses delivered

The Tribunal has offered mediation training since early 2006. As a result of the continuing interest in and demand for mediation training in the staffing context, the Tribunal is committed to offering its *Interest-based Negotiation and Mediation* training six times a year in order to meet the needs of its stakeholders.



## Lessons Learned

### ***Outreach***

The Tribunal's *Interest-Based Negotiation and Mediation* (IBNM) training along with general information sessions about the Tribunal, the complaint process and mediation services, and the information provided on the Tribunal's website have been key factors in the success of the Tribunal's dispute resolution services.

The IBNM training is delivered six times a year and general information sessions about the Tribunal are given upon request throughout the year. Between April 2008 and March 2009, a total of 17 information sessions were delivered across Canada: nine sessions were delivered in Ontario (Ottawa, Toronto), five in Quebec (Montreal, Gatineau), and three others were delivered in Alberta (Banff), Manitoba (Gimli) and British Columbia (Victoria).

In addition, the Tribunal's website provides a great deal of information about the Tribunal's processes, including mediation and the decisions rendered by the Tribunal. Assistance to the parties is provided during the course of the complaint process by Tribunal staff to provide clarification on policies and procedures of the Tribunal.

In light of the success of the Tribunal's dispute resolution services, the Tribunal will continue to ensure that its stakeholders continue to receive timely and relevant information regarding Tribunal decisions, policies and procedures through its communications products and tools, training program and consultation with its stakeholders.

***Judicial Review of Tribunal Decisions***

The very small number of judicial review applications in 2008–2009 demonstrates that the Tribunal continues to issue well-reasoned and comprehensive decisions. The fact that no decision was quashed is a strong indicator that the Tribunal is fulfilling its mandate, while ensuring the right to be heard.

Given that the PSEA is still a relatively new piece of legislation, the Tribunal expects more Federal Court challenges, both to its jurisdiction and its decisions. The Tribunal will continue to strive to balance the need to consider and dispose of complaints as informally and expeditiously as possible with its duty to act fairly as a quasi-judicial administrative body.

***Timeliness of Tribunal Decisions***

A number of factors have an impact upon the time it takes to issue a decision following a hearing by a Tribunal member. These include: the number of complaints received by the Tribunal; the number of members available to conduct hearings and write decisions; the complexity of the case; the possibility of establishing a precedent; and the appointment process for Tribunal members. The Tribunal has no control over any of these factors and can only affect the length of the process by ensuring that appropriate internal mechanisms for producing and reviewing a decision within a reasonable time frame are in place. For this reason, the Tribunal continually monitors its internal processes and makes any adjustments deemed necessary.





**SECTION III**  
*Supplementary  
Information*

## Financial Highlights

The financial highlights presented within this Report are intended to serve as a general overview of PSST's financial position and operations. The Tribunal's financial statements can be found on PSST's website at: <http://www.psst-tdfp.gc.ca/article.asp?id=3494>

### Condensed Statement of Financial Position

At End of Year March 31, 2009 (in dollars)

	% Change	2009	2008
ASSETS			
<b>Total Assets</b>	-85%	21,017	129,325
<b>TOTAL</b>	-85%	21,017	146,767
LIABILITIES			
<b>Total Liabilities</b>	9%	1,352,178	1,242,452
EQUITY			
<b>Total Equity</b>	21%	(1,331,161)	(1,095,685)
<b>TOTAL</b>	<b>-85%</b>	<b>21,017</b>	<b>146,767</b>

### Condensed Statement of Financial Position

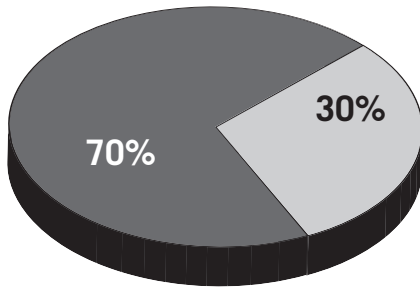
At End of Year March 31, 2009 (in dollars)

	% Change	2009	2008
EXPENSES			
<b>Total Expenses</b>	9%	5,479,579	5,035,238
REVENUES			
<b>Total Revenues</b>	-55%	5	11
<b>NET COST OF OPERATIONS</b>	<b>9%</b>	<b>5,479,574</b>	<b>5,035,227</b>



## Financial Highlights Chart

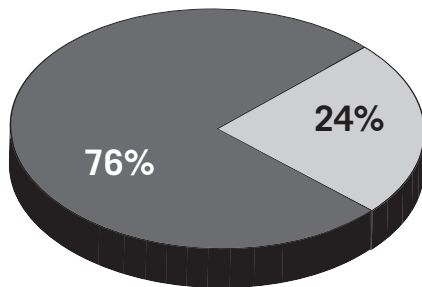
### Spending Distribution by Operational Priorities



- *Mediation Services*
- *Adjudication Services*

Based on the Tribunal's financial statements, total expenses were \$5.5 million in 2008–2009. The majority of the funds, \$3.8 million or 70%, were spent on the Adjudication Services while Mediation Services represented \$1.6 million or 30% of total expenses.

### Spending Distribution by Type



- *Other Operating Expenses*
- *Salaries and Employee Benefits*

Total expenses for the Tribunal were \$5.5 million in 2008–2009 of which \$4.1 million or 76% were spent on salaries and employee benefits. The remaining \$1.4 million or 24% were spent on other operating costs such as transportation costs, professional services fees, accommodation costs and cost for hearing and mediation facilities.

