

Office of the Commissioner for Federal Judicial Affairs

Performance Report

**For the
period ending
March 31, 2004**

The Honourable Irwin Cotler
Minister of Justice and
Attorney General of Canada

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Section I: Commissioner's Message

I am pleased to submit the Performance Report for the Office of the Commissioner for Federal Judicial Affairs for the period ending March 31, 2004.

Effective July 1, 2003, amendments to legislation resulted in the appointment of a new Chief Administrator for the Federal Court of Appeal, the Federal Court and the Tax Court of Canada; these amendments remove the reporting relationship between these courts and the Office.

As well, our restructuring process continues to proceed and it is expected that changes in service delivery mechanisms will result in a lighter, more flexible, but highly effective organization. In line with government-wide initiatives, the Office is upgrading its core administration management system and has instituted modern comptrollership.

We continue to strive toward optimal support for federal judicial activities through three priorities: serving our clients; improving our systems and procedures, and enhancing security; and restructuring our organization. These priorities are entrenched in our mission statement and are represented in the strategic outcome and performance measurement strategies of the Office.

David Gourdeau
Commissioner for Federal Judicial Affairs

Section II: Context

Organizational Overview

Mandate/Mission

The Office of the Commissioner for Federal Judicial Affairs (FJA) was created in 1978, by way of an amendment to the *Judges Act*, to safeguard the independence of the judiciary and to put federally appointed judges at arm's length from the administration of the Department of Justice. It exists to promote the better administration of justice and focuses its efforts on providing sound administrative support to the federal judiciary.

Along with its key associates, the Canadian Judicial Council and the National Judicial Institute, FJA continues with its role of promoting the better administration of justice. These institutions help maintain the distance between the government and the judiciary in such areas as, the better administration of justice, overseeing the professional conduct of judges, continuing education for judges and coordination and liaison amongst the judiciary.

Results for Canadians

Under the Canadian constitution, the judiciary is independent from the executive and legislative branches of government. Judicial independence is intended to ensure that judges make decisions free of influence, based solely on the facts and the law. Once appointed, a judge is eligible to serve on the bench until retirement (age 75 for federally appointed judges). Judges must also receive proper remuneration in such a manner that does not leave them in a position of dependence or subject to pressure. In Canada, governments cannot change judges' salaries or benefits or remove judges from office without going through an appropriate, independent procedure.

Jurisdiction

FJA is responsible for the administration of Part I of the *Judges Act*, by providing judges of the Federal Court of Appeal, the Federal Court of Canada, the Tax Court of Canada and federally appointed judges of superior courts in the provinces and territories with salaries, allowances, and annuities and survivor benefits, in accordance with the *Judges Act*. The Office also prepares budgetary submissions for the requirements of the Canadian Judicial Council and provides administrative services for staffing and other requirements.

The Commissioner for Federal Judicial Affairs is responsible for the administration of the Federal Judicial Appointments Process on behalf of the Minister of Justice. The Judicial Appointments Secretariat of FJA provides administrative support for 16 Advisory Committees, representing all ten provinces and three territories, consisting of 166

committee members appointed by the Minister to independently assess all applicants for judicial appointment.

FJA is responsible for the publication of the Federal Courts Reports, which are the official bilingual reports of decisions of the Federal Court of Appeal and of the Federal Court.

The Office also promotes professional development of the federal judiciary, offering English- and French-language training programs to both federally and provincially appointed judges. These courses are designed to improve proficiency in the other official language at several levels of proficiency in the judicial and legal context. They are provided through group sessions in various parts of Canada, and are reinforced with private courses.

In addition, FJA is responsible for other services as the Minister of Justice may require in connection with any matters falling, by law, within the Minister's responsibilities for the proper functioning of the judicial system in Canada. It has developed and maintains a private computer network for the sole and confidential use of federally appointed judges. Training sessions are held throughout Canada. In coordination with the National Judicial Institute, FJA also provides individual judges with computer training.

FJA is also involved in promoting the rule of law in developing countries, identifying and facilitating participation of Canadian judges in international cooperation projects. As executing agent, it continues to be accountable to CIDA for the sound management of two judicial reform projects -- one in Russia and the other in Ethiopia.

Results for Canadians

There are 1,049 judges in Canada who are appointed by the federal government to the superior courts in the provinces and territories and to specialized courts such as the Federal Court of Appeal, the Federal Court and the Tax Court of Canada. These courts play a vital role in protecting citizens' rights and ensuring governments adhere to the rules of law and justice. FJA ensures an independent judiciary and provides language and computer training that enhance the capabilities of the judiciary.

FJA publishes the Federal Courts reports, which are the official, bilingual reports of decisions, or parts of decisions, that are considered to be of sufficient significance to warrant publication for an informed public.

FJA facilitates an efficient and effective appointments process. The Secretariat received and processed 485 applications and arranged for 58 advisory committee meetings. The Advisory Committees assessed a total of 484 candidates, the results of which were certified by the Judicial Appointments Secretary and provided to the Minister.

Promoting the principles of judicial independence, and efficient and transparent court systems internationally ensures protection of Canada's interests abroad and enhances Canada's visibility in an international forum.

Organizational Structure

The Commissioner for Federal Judicial Affairs is assisted by a Deputy Commissioner, who is responsible for corporate services and language training. Other senior officials reporting directly to the Commissioner include the Judicial Appointments Secretary, responsible for administering the judicial appointments process on behalf of the Commissioner, the Executive Editor, responsible for editing the *Federal Courts Reports* and the Executive Director and General Counsel of the Canadian Judicial Council, who is responsible for the management of the Council Office.

Strategic Outcome

FJA has one strategic outcome: to protect and promote the independence and efficiency of the federal judiciary by providing a full line of administrative support services, as provided under the *Judges Act*.

These services consist of three separate components funded from three distinct sources. Statutory funding is allocated for payments pursuant to the *Judges Act* (judges' salaries, allowances, and annuities and survivor benefits). Voted appropriations are provided in two separate votes: one to support the administrative activities of the Office of the Commissioner and the other to fund the activities of the Canadian Judicial Council.

In accordance with the *Judges Act*, the Federal Court of Appeal, the Federal Court and the Tax Court of Canada each administer a separate budget voted by Parliament. In August 2003, the reporting relationship between the Commissioner and the administration of the Federal Court of Canada and the Tax Court of Canada was eliminated with the creation of the Chief Administrator for the Courts Administration Service.

Strategic Priorities

The activities of the Office of the Commissioner for Federal Judicial Affairs are guided by the strategic priorities of:

- Serving our Clients;
- Improving our Systems and Procedures, Enhancing Security; and
- Restructuring our Organization.

Key Activities in Support of the Strategic Outcome

Payments Pursuant to the *Judges Act*

A total of 1,049 judges and 683 pensioners and survivors received timely and accurate entitlements pursuant to Part I of the *Judges Act*. These entitlements include activities related to new appointments; in 2003-04, 32 judges retired and 55 new judges were appointed. In addition, there were a total of 75 other appointments, including those made to the Court Martial Appeal Court, the Competition Tribunal, the Pension Appeal Board, as deputy judges or as replacements for judges on study leave. Other types of activities included transfers, elevations, relocations of judges and elections to become supernumerary judges. (In recognition of the long service required of members of the judiciary, and as an option to retirement, the *Judges Act* permits federally appointed judges who have attained the age of 65 and who have served at least 15 years in judicial office, or who have attained the age of 70 and continued in judicial office for at least 10 years, to elect supernumerary status. Judges who do so must hold themselves available to perform judicial duties assigned to them by the Chief Justice of the court of which they are members. Supernumerary judges are for all intents and purposes *puisne* judges of the court, and are entitled to the same salary, allowances and benefits as any other judge.)

FJA also responds to a large number of varying requests from judges, pensioners and survivors.

Three pre-retirement seminars were held with presentations that provided judges with information on their entitlements; there were 45 new beneficiaries of pensions. Four active judges and 18 retired judges passed away

The Commissioner attended meetings in each of the jurisdictions across Canada, at which members of the judiciary expressed satisfaction with the services provided. The Office received a minimal number of complaints throughout the fiscal year. Each complaint was treated as efficiently and effectively as possible.

FJA is confident in stating that judges, pensioners and their survivors are receiving timely and accurate entitlements.

Administrative Activities of FJA

FJA is transforming its judges administration management system, including the core finance and personnel information technology systems for judges. These changes are needed because the present system's core software is no longer supported by the vendor. This change offers an opportunity to further the priority of creating efficiencies through the use of technology. The original project which had commenced in 2001 was placed on hold due to problems in the delivery of a functioning system. FJA has decided to undertake a "Transformation Initiative" to review all business processes. The primary objective will be to develop a business case for the implementation of the suggested solutions to our infrastructure issues.

The Federal Court of Appeal, the Federal Court, and the Tax Court of Canada and the Canadian Judicial Council Secretariat

The current Federal Court of Appeal, the Federal Court and the Tax Court of Canada were involved in a lengthy process to amalgamate the administrative services of the courts and to appoint a new Chief Administrator. As part of this process, the *Federal Court Act*, the *Tax Court Act* and the *Judges Act* were amended to remove the reporting relationship between these courts and FJA. This amalgamation has now been implemented. Since July 2003, the funding issues relating to the administration of the courts are the responsibility of the Chief Administrator, Courts Administration Service.

In 2000, the Canadian Judicial Council (CJC) established a Special Committee on Future Directions. The mandate of the Committee was to examine the structures and processes of the CJC in order to ensure the Council continued to be relevant and effective. The result was a study released in 2002 called *The Way Forward*, which examined every system and procedure at the Canadian Judicial Council in light of future obligations and opportunities, especially in the area of communications and professional development.

The committee found that many of the structures and processes already in place could continue to serve the cause of justice very effectively with only minor enhancements. Their recommendations included:

- more active and efficient committees of Council, able to take on more work
- greater leadership and oversight by the Council's Executive Committee
- greater involvement of judges who are not members of Council.

The Way Forward (2002) is considered to be CJC's roadmap into the future. The central task of 2003-04 has been responding to recommendations made by the Special Committee on Future Directions - for example, seeking and gaining new resources from Parliament, hiring new staff and elaborating ambitious work plans. As a result of the accomplishments of 2003-04, the Council is now well positioned for 2004-05 and is ready to move on a whole range of new activities in the service of Canadian justice.

Issues/Challenges

FJA recognizes that it operates within a sophisticated, technology-driven world economy where unforeseen demands and constraints are part of the landscape, and where the government sets national priorities for management and accountability.

Since September 11, 2001, the world has had to face dramatic challenges previously unimaginable. While many of the issues raised are not new, Canada's focus on and commitment to resolving these problems has intensified. An unprecedented emphasis on security is only one of the global changes to which the Government of Canada has responded by leading government-wide initiatives. Other key government priorities, such as continued development and strengthening of the government information infrastructure, international cooperation, renewed commitment to protect and promote Canada's two official languages, and renewed commitment to modern comptrollership and balanced budgets, will continue to affect our Office in the future.

Other factors that affect FJA include requests from provincial judges for services similar to the services currently being provided to the federally appointed judges and other key actors in the judicial community, as well as the numerous opportunities for judicial partnerships both within and outside Canada. New priorities or increasing demands will continue to add more pressure on FJA to perform better, to provide new and faster services, and to enhance existing support to its clients.

Senior management has been unanimous in praising the professionalism and remarkable work of the Office's employees, while acknowledging that there is room for improvement in providing staff with the right tools and creating a work environment conducive to optimal performance. Such an environment encompasses strong leadership based on effective, bilingual internal communication; clearly delineated responsibilities and expectations; staff/management training; and employees' participation in decisions that will have an impact on their jobs and on the future of this organization.

The delays in the development of the Judges Administration Management System leaves FJA vulnerable if there are any problems with the existing hardware/software. The recently announced Corporate Administrative Services Review of the Treasury Board Secretariat could result in delays in the completion of the Transformation Initiative. Any substantial delays in the implementation of the recommended solutions could put the organization into a difficult position, if there were any difficulties with the existing systems.

Section III: Performance Accomplishments

The following key targets and planned results were identified in the 2003-04 Report on Plans and Priorities:

- Serving our Clients.
- Improving our Systems and Procedures and Enhancing Security.
- Restructuring the Organization.

Departmental Performance

Serving our Clients

Training is a major component of the services FJA provides to federally appointed judges.

During 2003-04, the judges' computer training program, which was initiated in April 2000 as a result of a resolution of the Canadian Judicial Council, delivered over 2,644 hours of training in most major centres across Canada. More than 530 federally appointed judges were trained and, to date, 703 judges have been provided with individual training plans. These training sessions included sessions on the Judicial Affairs Information Network (JAIN), which is part of the JUDICOM Training Program, as well as basic computer literacy and personal computer training.

Enrolment of federally appointed judges in JAIN was 884 at the end of March 2004. Based on this latest data, 84 percent of all federally appointed judges are now members of JAIN. The system is being used by judges to communicate with other judges and to assist them in fulfilling their judicial duties.

By means of the Judges' Language Training Program, our Office continues to offer specialized courses designed for Canadian judges, including proficiency in legal terminology, in French and English as a second language. During 2003-04, the main activities offered were immersion sessions, two intensive sessions of 2 ½ days each in regions, private tutoring and pedagogical assistance to judges participating in the program for the revision of judgments written in their second language. Approximately 400 registrations have been received for the different training activities. A full review of the Program was undertaken by Consulting and Audit Canada in December 2003 and completed in June 2004. All of these activities have been accomplished without any increase of the total budget allocated.

The Judicial Counselling Program is a joint federal/provincial program made available to all judges and their families across Canada, with the provinces paying an annual fee for each judge. FJA continued to deliver this important service to all participants. Many judges and their family members made use of this service, which is a benefit to the judges' health and security.

There has been a delay in implementation of the upgraded Judges Administration Management System, which is used to maintain Human Resources and financial information on federally appointed judges. This delay has left us dependent on our existing system, which operates on an older platform and is difficult to maintain and support. This system is crucial for the day-to-day operation of the Office. It had been expected that the new system would substantially improve online access for judges and other clients, but with this delay our ability to improve online services has been impacted.

Improving Systems and Procedures and Enhancing Security

A number of policies and procedures have been implemented at FJA over the past year. The Modern Comptrollership initiative has led to the development of the Guide to Modern Management which includes a number of projects to be completed over the next number of years which will assist FJA in becoming a modern organization.

Security measures have been undertaken to ensure that the existing information systems at FJA have adequate back up and Disaster Recovery abilities. The physical security of the FJA offices have been upgraded to ensure that it meets the Level 2 security measures.

Restructuring our Organization

The restructuring of the organization continues to be a work in progress. As a result of the delays in the implementation of the new Judges Administration Management System, FJA has decided to re-examine all administrative practices and has initiated a Transformation Project within the office. A team has been identified to oversee this project and Consulting and Audit Canada has been recruited to assist with the review.

The lack of resources continues to be a concern although not as pressing as in recent history. The Transformation Initiative will assist FJA in determining the proper allocation of resources to programs based on the priorities of the Department.

Strategic Outcome:

- To protect and promote the independence and efficiency of the federal judiciary by providing a full line of administrative support services as provided under the *Judges Act*.

Key Partners:

Key partners in meeting our strategic outcome include:

- the Canadian Judicial Council, an independent organization, comprising all Chief and Associate Chief Justices of Canada's superior courts. The CJC's mandate is to foster a better administration of justice in Canada and serve as the body that oversees the professional conduct of judges. (see <http://www.cjc-ccm.gc.ca/English/index.html>);
- the National Judicial Institute (NJI), an independent non-governmental organization, which acts as the training institute for members of both the federal and provincial judiciary. FJA provides computer training to the members of the federal judiciary in partnership with NJI (see www.nji.ca/index.html); and
- the Canadian International Development Agency (CIDA), which acts as the funding agency for most of the international cooperation programs administered by FJA.

The Department of Justice also provides counsel and guidance in dealing with legal matters and questions of interpretation of provisions of the *Judges Act*.

Key Targets and Overall Results:

The following key targets and planned results were identified in the *2003-04 Report on Plans and Priorities*:

- Serving our Clients.
- Improving our systems and procedures and enhancing security .
- Restructuring our Organization.

Program, resources and results linkages:**Serving our clients**

Training of federally appointed judges is a major component of the services to judges. FJA offers two forms of training to judges, a language training program and computer training on the Judicial Affairs Information Network (JAIN), including basic computer literacy and personal computer training. Total expenditures on these training programs amounted to \$3,115,139.

Approximately 400 registrations of judges have been received for the different language training activities, while 530 judges received some form of computer training during 2003-04.

The Judicial Counselling Program is an employee assistance program specifically for judges. This program is administered by FJA and provides assistance to all judges and their families. Since this is a confidential program, no information is available on individual usage. However, FJA has received numerous testimonials on the importance of this program from members of the judiciary. Total spending on this program amounted to \$84,479 of which \$47,360 was recovered through a cost-sharing agreement with provincial governments.

Improving our systems and procedures and enhancing security

A number of Policies and procedures have been implemented at FJA over the past year. The Modern Comptrollership initiative has led to the development of the Guide to Modern Management. Security measures have been undertaken to ensure that the existing information systems at FJA have adequate back up and Disaster Recovery abilities.

Restructuring our organization

The restructuring of the organization continues to be a work in progress. As a result of the delays in the implementation of the new Judges Administration Management System, FJA has decided to re-examine all administrative practices and has initiated a Transformation Project within the office.

Management Practices:**Modern Comptrollership Initiative**

FJA was quick to implement Phase II of the Modern Comptrollership Initiative by establishing a modern

management office in January 2002. In addition, it was able to move quickly from the capacity check process, to a capacity check report, and then to an action plan.

During the period April 1, 2003 to March 31, 2004, the following key steps were completed:

- Guide to Modern Management was completed and posted on intranet site;
- Action plan for project identified to meet modern management activities was developed; and
- Management agreed to action plan and schedule for implementation.

The guide is the vehicle through which FJA will establish, communicate and document its modern management initiative. It will also be an important tool for training and coaching.

The guide to modern management is complete. It includes:

- the Commissioner's message;
- the introduction, consisting of background, commitment, capacity assessment overview, objectives for improvement, links to organizational priorities (mission, and vision and strategic plan), and an overview of the action plan;
- a description of the approach to management renewal, addressing the framework to be used and defining the seven elements of management addressed in the guide;
- guiding principles in relation to each of the seven elements of management; and
- policy statements on each of the seven elements of management.

In addition to work on the guide, much progress has been made in establishing a training program directed at senior and middle managers. As well, a communication program for all staff is in place.

Annex 1: Financial Performance

During fiscal year 2003-04 Supplementary Estimates were obtained for additional operating funding to address workload issues.

The following financial tables apply to the Office of the Commissioner for Federal Judicial Affairs:

Table 1: Summary of Voted Appropriations

Table 2: Planned versus Actual Spending

Table 3: Historical Comparison of Departmental Planned versus Actual Spending

Table 4: Revenues

Table 5: Statutory Payments

Table 1: Summary of Voted Appropriations
 Authorities for 2003-04
 Financial Requirements by Authority (\$ millions)

	2003-04		Actual
	Planned Spending	Total Authorities	
Office of the Commissioner for Federal Judicial Affairs (FJA)			
Vote 20 - Operating Expenditures	5.2	7.9	
Vote 25 - Canadian Judicial Council-Operating Expenditures	0.5	1.8	7.5
Statutory - Payments pursuant to the <i>Judges Act</i>	316.1	321.2	
Statutory - Contributions to employee benefit plans	0.7	0.7	1.7
			321.2
			0.7
Total Department	322.5	331.6	331.1
Total Authorities are Main Estimates plus Supplementary Estimates plus Other Authorities.			

Additional funding for Vote 20 and Vote 25 was approved through the Supplementary Estimates process as a result of a Departmental Assessment which was approved in fiscal year 2002-2003.

The increased requirement for Statutory Payments pursuant to the *Judges Act* was as a result of an increased number of judges electing supernumerary status as well as an increase in the number of federally appointed judges.

Table 2: Planned versus Actual Spending

Comparison of Total Planned Spending to Actual Expenditures, 2003-04 by Business Line
(\$ millions)

	2003-04		
	Planned Spending	Total Authorities	Actual
Office of the Commissioner for Federal Judicial Affairs			
FTEs	58	58	57
Operating	6.7	10.6	10.1
Capital	-	-	-
Grants and Contributions	316.1	321.2	321.2
Total Gross Expenditures	322.8	331.8	331.3
Less:			
Respendable Revenues*	0.3	0.2	0.2
Total Net Expenditures	322.5	331.6	331.1
Other Revenues and Expenditures			
Non-respendable Revenues**			
Cost of Services provided by other departments	.8	.8	.9
Net Cost of the Program	323.3	332.4	332.0

1. Operating includes contributions to employee benefit plans and minister's allowances.

* Formerly called Revenues Credited to the Vote.

** Formerly called Revenues Credited to the General Government Revenues (GGR).

Table 3: Historical Comparison of Departmental Planned versus Actual Spending (\$ millions)

Business Lines	Actual 2001-02	Actual 2002-03	2003-04		Actual
			Planned Spending	Total Authorities	
Federal Judicial Affairs	319.2	315.6	322.5	331.6	331.1
Total	319.2	315.6	322.5	331.6	331.1

Table 4: Revenues (\$ millions)

Business Lines	Actual 2001-02	Actual 2002-03	2003-04		Actual
			Planned Revenues	Total Authorities	
Respendable Revenues*					
Federal Judicial Affairs					
Office of the Umpire Service Fees	0.05	0.05	0.5	0.05	0.05
Human Rights Tribunal Service Fees	0.05	0	0	0	0
Administrative Arrangement with Canadian International Development Agency	0.105	0.100	0.100	0.084	0.084
JUDICOM Training Program	0.101	0.086	0.125	0.100	0.100
Total Respendable Revenues	0.306	0.236	0.275	0.234	0.234
Non-Respendable Revenues**					
Federal Judicial Affairs					
Judges' Contributions to Pension Fund	8.64	10.0	11.0	9.989	9.989
Total Non-Respendable Revenues	8.64	10.0	11.0	9.989	9.989
Total Revenues	8.946	10.236	11.275	10.223	10.223
* Respendable Revenues were formerly called Revenues Credited to the Vote.					
** Non-Respendable Revenues were formerly called Revenues credited to the General Government Revenues (GGR).					

Table 5: Statutory Payments (\$ millions)

Business Lines	Actual 2001-02	Actual 2002-03	2003-04		Actual
			Planned Spending	Total Authorities	
Federal Judicial Affairs					
Payments Pursuant to the <i>Judges Act</i>	311.6		316.1	321.2	321.2
Contributions to employee benefit plans	0.5	305.1	0.7	0.7	0.7
		0.9			
Total Statutory Payments	312.1	306.0	316.8	321.9	321.9

Annex 2: Special Travel Authorities

Judges are entitled to be reimbursed their travel expenses in accordance with Section 34 of the *Judges Act*, which states:

34.(1) Subject to this section and sections 36 to 39, a judge of a superior court who, for the purposes of performing any function or duty in that capacity, attends at any place other than that at which or in the immediate vicinity of which the judge is by law obliged to reside is entitled to be paid, as a travel allowance, moving or transportation expenses and the reasonable travel and other expenses incurred by the judge in so attending.

From an administrative standpoint, the intent of the Special Travel Authorities directive is followed. Judges are entitled to travel business class but they are encouraged to fly economy class and, in fact, most do. A guideline for the reimbursement of hotel accommodations and meals has been established. The maximum amount reimbursable for hotel accommodations is \$150.00 per night and the maximum amount reimbursable for meals is \$85.00 per day. In the event of special circumstances, judges will be reimbursed for expenses incurred in excess of these guidelines but this requires either prior notification or a letter explaining the special circumstances. The overall costs of travel provided to judges is comparable to those costs incurred under the authority of the Special Travel Authorities.

Annex 3: Other Information

Contacts for Further Information

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Listing of Statutory and Departmental Reports

Canadian Judicial Council Annual Report
Computer News for Judges
Federal Courts Reports
Federal Judicial Appointments Process - June 1999
Report and Recommendations of the 2000 Judicial Compensation and Benefits
Commission

Legislation Administered by the Office of the Commissioner for Federal Judicial Affairs

The Minister has sole responsibility to Parliament for the following Act:

Judges Act (R.S. C. 1985, c.J-1,s.1.) June 2001