

# **PAY EQUITY HEARINGS TRIBUNAL**

## **BUSINESS PLAN**

### **2023-2026**



**M. DAVID ROSS – PRESIDING OFFICER**

# **PAY EQUITY HEARINGS TRIBUNAL PEHT BUSINESS PLAN 2023 - 2026**

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# PAY EQUITY HEARINGS TRIBUNAL BUSINESS PLAN 2023-2026

## Mandate and Statutory Authority

Under the *Pay Equity Act*, the Pay Equity Hearings Tribunal is empowered to hear and decide pay equity disputes. Its decisions are final and conclusive for all purposes, and the Tribunal has exclusive jurisdiction to determine all questions of fact or law that arise in any matter before it.

The Tribunal's effective delivery of adjudicative services regarding pay equity matters supports fair and harmonious workplaces, enabling employers to attract and retain workers and contributing to a business environment that attracts jobs and investment to Ontario's economy.

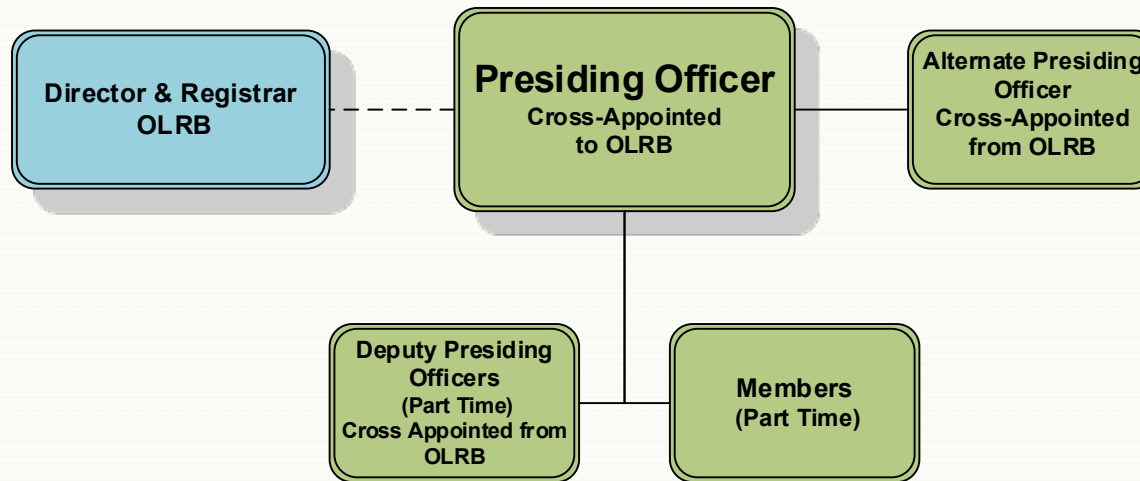
### Human Resources – Organization

Support services for the Tribunal are provided by the Ontario Labour Relations Board (OLRB): Office of the Director/Registrar, Solicitors Office, Manager of Administration, Mediation Services, case processing, client services and adjudicative services staff.

The Tribunal is comprised entirely of Order-in-Council (OIC) appointments including the full-time Presiding Officer (currently cross-appointed to the OLRB), Alternate Presiding Officer (cross-appointed on a part-time basis from the OLRB), Deputy Presiding Officers (cross-appointed on a part-time basis from the OLRB) and six part-time Members (one of whom is cross-appointed from the OLRB and two of whom are cross-appointed from the Workplace Safety and Insurance Tribunal where they are also part-time OICs).

Full time OICs who are cross-appointed on a part-time basis to the PEHT are paid an annual salary with the cost shared between the Tribunals to which they are appointed. The Presiding Officer salary is paid by the PEHT with cost-sharing for any work done at the OLRB. Part-time members are paid a per diem rate.

# PAY EQUITY HEARINGS TRIBUNAL ORGANIZATIONAL CHART



## Overview of Agency Programs & Key Activities:

The Tribunal has two key activities:

- Adjudication
- Mediation

### Adjudication

The Tribunal is tripartite in nature, comprised of neutral presiding officers and member representatives of employers and employees/trade unions. The members are expected to bring the perspective and concerns of their community to the task of adjudication. All of the presiding officers currently have cross-appointments with at least one other adjudicative agency. The Tribunal holds hearings where evidence is presented, and oral arguments are made. Where the parties consent, matters may be decided based on written submissions only. Pay equity issues are often complex; and hearings can take multiple days to complete. Tribunal decisions are issued in writing and posted on accessible websites ([www.canlii.org](http://www.canlii.org)). Parties are encouraged to seek independent legal advice before coming to the Tribunal.

## **Mediation**

Almost every case is scheduled for a pre-hearing consultation before a presiding officer, other than the one who will hear the case. The goal of the pre-hearing is to identify and narrow the issues in dispute, organize the litigation to ensure that it is ready for hearing and look for opportunities to settle some or all of the issues. Pre-hearings are more informal than a hearing and provide an opportunity for parties to ask questions about the Tribunal's hearing procedures. Pre-hearings reduce hearing time, saving both parties and the Tribunal time and expense.

Outside of the pre-hearing process contemplated by the Act, the Tribunal panel assigned to hear a case, with the consent of the parties, sometimes engages in a form of mediation/adjudication which may involve the entire panel, or the members only.

## **Administration**

The Tribunal receives administrative and other support from the Ontario Labour Relations Board. The Board provides a range of services including case processing, scheduling, finance, human resource functions, information and information technology services, library and research, and legal services.

The benefits of the Board providing these services include an efficient use of resources, consistency of process and outcome and the ability to maintain and monitor quality control practices. These objectives are accomplished while at the same time safeguarding the particular and unique expertise of the Tribunal. Shared service agreements are in place among OLRB, PEHT and WSIAT for printing/copying and mailroom services. In addition, the three tribunals share the cost of the Ontario Workplace Tribunals Library.

## **Communication**

The Tribunal will continue to communicate with its community and stakeholders through the posting of its annual reports, its website, decisions as posted on the Canlii database, consultation papers where appropriate and participation at conferences.

# **Environmental Scan**

## **External Scan:**

The Tribunal expects to continue to receive a caseload that is largely focused on unionized broader public-sector employers. The presiding officers, all of whom are currently cross-appointed either to or from the OLRB, possess expertise in collective bargaining, broader public-sector restructuring, and labour relations generally, which makes them well-qualified to hear these disputes.

Several applications filed with the Tribunal involve how an employer which established its pay equity plan using the proxy method complies with its obligation to maintain pay equity. The Divisional Court overturned a key finding in the Tribunal's decision and directed the Tribunal to prescribe a

procedure that does not yet exist but will apply to all 55 classes of “seeking employers” and “potential proxy employees” as set out in Ontario Regulation 396/93. The Court of Appeal upheld the Divisional Court’s decision that the proxy method must apply to pay equity maintenance and, it is expected that there will be a substantial (possibly exponential) increase in the number of applications to review services filed with the Pay Equity Commission, and as a result, an increase in the number of applications to review those orders to be handled by the Tribunal.

The Tribunal’s forms, in English and French, allow for electronic submission of forms and other documents using the OLRB’s e-filing system and provide greater access to the Tribunal’s processes. The PEHT website is modernized to enhance access to services and information. An electronic summons to witness is available for parties to use. Throughout the pandemic, the Tribunal responded to new challenges and changes in conditions by developing new processes and providing regular updates to the community, staff and adjudicators. The Tribunal has remained open throughout the pandemic as all forms, documents and submissions are filed using the electronic filing system and hearings have continued virtually. As a result, the Tribunal was able to respond quickly to the pandemic to ensure continued access to administrative justice.

The OLRB provides administrative and IT support and facilities for the PEHT. At this time, staff have returned to the office on a hybrid basis and the mailroom and front desk are open. Electronic filing of all PEHT applications, responses, correspondence and other material became mandatory during the pandemic and hearings are conducted by video. The availability upon request of in-person hearings was revised a number of times during the pandemic as the situation changed. No in-person hearings have taken place during the pandemic to date but parties may write to the Tribunal to request an alternative to video hearing which will be considered on a case by case basis. The Tribunal will continue to monitor and respond to changing conditions and provide service excellence in an electronic format, meeting the diverse needs of our stakeholders.

#### **Internal Scan:**

Given the relatively small number of cases heard by the Tribunal each year, the Tribunal uses part-time members and employs single presiding officer decision-making wherever permitted under the *Statutory Powers Procedure Act*, both of which have proven to be cost effective.

The Ontario Labour Relations Board’s e-filing system includes the PEHT. The Tribunal’s Forms and Rules were modernized as part of the implementation of the e-filing system and parties are able to electronically submit forms, documents and other material which allows for greater accessibility to the PEHT and greater efficiency in case processing. The electronic filing system, case management system and Sharepoint files ensured the Tribunal was able to remain open and continued to operate throughout the pandemic to date. The PEHT’s modernized website which is maintained by the OLRB’s IT staff better assists its community and provides greater accessibility. Improvements to the OLRB’s modernized electronic case management system, which includes PEHT cases, continue as required to ensure efficient delivery of services including improvements to enhance the ability to report on performance.

The Tribunal expects to benefit from the OLRB’s current project to upgrade to Power BI in order to enhance the ability to retrieve data and report on performance.

## Strategic Plan Implementation and Risk Assessment

The Tribunal will hear and decide cases through an accessible and fair hearing process, timely scheduling of hearings, and timely and thoughtful decisions. The Tribunal has been conducting hearings by video as a result of the continuing pandemic. It is anticipated that video hearings will continue to be held as this increases access, eliminates travel time, especially where a panel hears an application, and minimizes the associated costs. The Tribunal was initially concerned that the document-heavy nature of applications that come before it would make video hearings more difficult and less efficient in some cases and therefore, in-person hearings could be more appropriate. However, this has not been the experience at all and the Tribunal has found electronic hearings to be more efficient and handle the large volume of documents more effectively. Electronic filing became mandatory during the pandemic and enabled the Tribunal to continue operating. It is anticipated that after the pandemic, greater use of e-filing will be made by the Tribunal's stakeholders based on its success to date.

The Tribunal will continue to employ a case management strategy that utilizes its adjudicative and mediation resources to resolve the issues between the parties. Where cases do not settle, the Tribunal will work on finding ways to streamline any hearing that has to take place through case management tools such as: agreed statement of facts, witness statements and other methods. In addition, the parties are expressly asked on the forms whether they consent to the use of a single adjudicator rather than a panel. This assists in improving the hearing process by allowing for hearings based on written submissions or more efficient scheduling. The Act prescribes that a three-person panel constitutes a quorum of the Tribunal. While the *Statutory Powers Procedure Act* permits one person to constitute a quorum of the Tribunal when dealing with the merits of a case, this is conditional upon consent of the parties. In addition to the Presiding Officer, there is currently an Alternate Presiding Officer and two Deputy Presiding Officers (one of whom is the Alternate Presiding Officer). Three part-time members are representative of employers and three part-time members are representative of employees.

Pay equity is a very complicated and specialized area. The specialized area, low case load and low compensation rate make it extremely difficult to attract qualified part-time members to the Tribunal, and even more difficult to secure a panel for the number of days required to hear a lengthy case. Cross-appointing members from the OLRB and WSIAT has been helpful in the past in easing this pressure.

The Tribunal's Presiding Officer is full-time (currently cross appointed-to the Board) and there are no anticipated difficulties with ensuring his availability for hearings. The Alternate Presiding Officer and Deputy Presiding Officers are cross-appointed from the OLRB which will also relieve some pressure with respect to availability and the Tribunal expects to fill a vacant Deputy Presiding Officer and Member position. The statutory requirement for a panel of three to hear cases, the low compensation rate and the difficulty in making cross-appointments constitute a moderate operational risk as well as some risk to stakeholder/public perception of the Tribunal's performance and reputation if cases cannot be scheduled in a timely manner because of availability.

There is some risk to efficiency associated with the possibility that a party will seek to participate in a hearing in French. Consecutive oral interpretation doubles the hearing time, and normal hearing costs, even without factoring in the interpreter and translation fees. Given the length of Tribunal hearings, the additional costs could be significant and a pressure on the Tribunal's financial resources. The Tribunal has mitigated

against this risk by ensuring that it has appointed an Alternate Presiding Officer and two Deputy Presiding Officer Positions are filled who are bilingual and can conduct hearings in both English and French.

The number of applications filed with the Tribunal may not be an accurate predictor of hearing resources required. The small sample size, the complex fact-specific nature of the applications and the varied experience of counsel and self-represented applicants make it almost meaningless to speak of an “average length of hearing”.

## **Service Delivery**

All information technology support, including maintenance of the Tribunal’s website, is provided by the OLRB. The OLRB utilizes an e-filing system which includes the Tribunal, its forms and submissions. All forms may now be completed online and electronically filed, with attachments. The available space for documents attached to the e-forms is expected to be increased in the near future to provide for greater accessibility for the parties.

The Tribunal’s website makes all forms, Information Bulletins and Rules of Practice available to its community. The Tribunal’s modernized website provides more assistance and access to its community.

Decisions of the Tribunal are posted on Canlii, a public database, and are also held at the Ontario Workplace Tribunals Library. As such, they are fully available to the public.





## Appendix B – Performance Measures: PEHT 2023 - 2026

The Tribunal's goal is to provide efficient, fair, accessible and modernized adjudicative services in a fiscally responsible manner. In addition to closely monitoring files and processes internally, it uses performance measures and targets to track and focus on outcomes. It is relevant to note again, in the context of performance measures, that the Tribunal relies solely on the OLRB's support, administrative and IT staff and that its Presiding Officer, Alternative Presiding Officer and Deputy Presiding Officers as well as a number of members are currently cross-appointed to/from other tribunals. Performance measures and targets are revised or created in the event of legislative changes or changes to the Tribunal's operations. Results are published in the Tribunal's annual reports.

Presently, the Board's electronic case management system, which includes Tribunal files, does not have the capacity to automatically create every data report requested. However, given the Tribunal's current small caseload, some data can be obtained manually by reviewing each file. This approach however will not be possible in the event that the Tribunal's caseload increases significantly. The Tribunal may continue to undertake further analysis of current and potential data as well as possible changes to the case management system in this regard so that a more refined and evolved analysis can be published in future business plans and annual reports. The Board is in the midst of a project to upgrade to PowerBI, which provides interactive business intelligence capabilities, to enhance the Board's ability to retrieve data and report on its performance. The Tribunal would also be able to engage Power BI if adopted by the Board.

The Tribunal managed to continue its operations during the pandemic despite all OLRB staff being sent home to work remotely for a significant period of time. Multiple additional steps and processes for staff and OICs are required while working remotely and conducting hearings by video which is more difficult in document-heavy cases. However, the experience has been that these processes have become more efficient since moving to the electronic filing system and electronic hearings.

**Case processing:** The Tribunal efficiently processes cases when they are filed. In seventy-five percent of new applications, filed in accordance with the Rules of Practice as required, the Tribunal's goal is to take no more than two business days to process and open a new file from the date the application is filed in accordance with the Rules of Practice, and no more than four business days to confirm the filing of the application to the parties. In addition, the Tribunal's goal is to take no longer than two business days to close a file once the final disposition has been made, and the reconsideration period has expired, in seventy-five percent of its cases.

**File review:** The Tribunal's goal is for the Presiding Officer, Alternate Presiding Officer or a Deputy Presiding Officer, to review new files within two weeks of the response filing date in ninety percent of cases. The purpose of that review is to determine what measures can be taken at the outset of a file to ensure it is addressed in an efficient manner. For example, the Tribunal will consider whether the case could be disposed of through written submissions, whether preliminary issues can be decided in advance of an in-person hearing and whether procedural steps should be directed before the first hearing date.

**Pre-Hearing Conferences:** The Tribunal's goal is that at least fifty percent of its cases will have one or more issues resolved at a pre-hearing conference. where one is held. Achieving this performance measure should reduce the number of hearing dates. Due to the nature of the cases before the Tribunal, which have already been through a mediation process at the Pay Equity Commission Review Services prior to the application being filed at the Tribunal, it would be difficult to set an expected settlement rate for pre-hearing conferences.

**Percent of Cases Disposed of During the Year:** The Tribunal’s caseload each year is made up of two parts: the cases carried over into the year from the previous year and the cases filed during the current year. Almost all cases are decided only after lengthy hearings. In general, the same counsel represent the parties in pay equity cases and the scheduling of hearings is further extended by the availability of counsel as well as the availability of presiding officers who are cross-appointed to other Tribunals and part-time presiding officers and members. The Tribunal’s commitment for 2023 is for twenty-five percent of its cases to be disposed of during the year. Its long-term commitment is for thirty percent of its cases to be disposed of during the year.