

The Pay Equity Hearings Tribunal



Ontario

**Annual Report
2021-2022**

PEHT Annual Report 2021-2022

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Message from the Presiding Officer

I am pleased to present the 2021-22 Annual Report for the Pay Equity Hearings Tribunal. This report is once again being presented after a full year in which the Tribunal operated entirely remotely. The Tribunal is pleased that not a single hearing date had to be adjourned or cancelled because of technological issues, and it appears that the community has adapted to filing documents electronically and having their hearings held electronically.

In the 2021-22 year, we welcomed Lindsay Lawrence as a Deputy Presiding Officer. Lindsay is a terrific addition to our adjudicative roster as she previously served as the Tribunal's legal counsel.

In the 2021-22 year, we received nine new applications, which is higher than the previous year, and more in line with the last pre-pandemic fiscal year of 2019-20. We continue to expect an influx of applications in the next two fiscal years because the Supreme Court denied leave to appeal in the *Participating Nursing Homes*, 2021 ONCA 149 (CanLII) decision in October 2021. We anticipate, as a result of this decision, a higher number of applications being filed with Review Services in 2021-22 and 2022-23, which would likely result in a higher number of applications to the Tribunal in the following years.

In 2022-23, the Tribunal also anticipates that it will have to determine how employers that established their pay equity plans using the proxy method will continue to use the proxy method in the maintenance process as directed by the Court of Appeal.

Overview

The Pay Equity Commission (the “Commission”) was established by section 27 of the *Pay Equity Act, 1987*, c.34 and is continued by subsection 27(1) of the *Pay Equity Act*, R.S.O. 1990, c.P.7 as amended (the “*PEA*”). The Commission consists of two separate, independent parts: the Pay Equity Hearings Tribunal (the “Tribunal”) and the Pay Equity Office. The purpose of the *PEA* is to redress systemic gender discrimination in compensation for work performed by employees in female job classes. Its implementation contributes to a fairer and more productive workplace.

The Tribunal is an adjudicative agency of the Government of Ontario responsible for adjudicating disputes that arise under the *PEA*. Pursuant to section 28(1) of the *PEA*, the Tribunal is a tripartite board, composed of the Presiding Officer, Alternate Presiding Officer, a number of Deputy Presiding Officers and Members, representative of employers and employees (Appendix A).

The Tribunal deals exclusively with issues arising under the *PEA*. The Tribunal has exclusive jurisdiction to determine all questions of fact or law that arise in any matter before it. Tribunal decisions are based on the evidence presented and submissions received and on the panel’s interpretation of the facts in dispute, legislation and jurisprudence. The Tribunal is committed to a hearing process that balances the need to be fair, accessible, economical and efficient. It deals as expeditiously and fairly as reasonably possible in processing, settling or adjudicating all matters that come before it. The decision of the Tribunal is final and conclusive for all purposes. Decisions of the Tribunal cannot be appealed but may be judicially reviewed. The Tribunal encourages co-operation among employers, bargaining agents and employees and is committed to encouraging settlement among the parties.

The Tribunal is entitled to determine its own practices and procedures and has the authority to make rules and forms governing its practices and the conduct of those appearing before it. The Tribunal’s Rules, Forms and Information Bulletins are available on its website at <http://www.peht.gov.on.ca> or from its offices, when open, at 505 University Avenue, 2nd Floor, Toronto, Ontario, M5G 2P1.

Organizational Structure

The Ontario Labour Relations Board (the “OLRB”) provides administrative and institutional support to the Tribunal. The Tribunal benefits from the OLRB’s sophisticated administrative and legal support, as well as information technology and the potential to take advantage of the expertise of its mediators. While the Tribunal has its own complement of Deputy Presiding Officers and Members, the Tribunal Presiding Officer, Alternate Presiding Officer, all of the Deputy Presiding Officers and four of the current Members are cross-appointed to other tribunals ensuring that the Tribunal is staffed with experienced decision-makers at a cost that is shared with other tribunals (full-time appointments only). (Appendix A)

The Tribunal also participates in a broader, shared-services arrangement with the OLRB and the Workplace Safety and Insurance Appeals Tribunal. These adjudicative agencies share printing and production, mail services and common library services.

Operations During the Pandemic

The Tribunal continued to operate during 2021/2022 with all OLRB staff and PEHT adjudicators working remotely, for almost the entire year. The Tribunal continued to require electronic filing of applications, responses and submissions. Front desk staff were equipped with cell phones to take calls remotely and provide information to the public and stakeholders while the offices were closed.

All hearings and pre-hearings in 2021/2022 were held by video or teleconference where appropriate and no in-person hearings took place. Parties may write to the Tribunal to request an alternative to video hearing and such requests will be considered on a case by case basis. Some of the other changes which took effect at outset of the pandemic in 2021/2022 remain in place, and include:

- Changes to how parties may deliver documents to each other namely delivery by email with confirmation provided so that the email can be relied upon for effective notice;
- A new electronic summons to hearing form;
- The Tribunal began accepting the filing of a large volume of documents through the use of a third party cloud tool (such as Drop Box, Google Drive or Microsoft OneDrive).

Tribunal Processes

Upon receipt of an application, the Tribunal sends a Confirmation of Filing to the parties confirming that the application has been filed, providing the Tribunal file number and advising the parties of the date by which a response must be filed.

With respect to the adjudication of disputes, the Tribunal continues to encourage the parties to resolve their disputes without the need for adjudication. Once the response has been filed, many cases which involve more than a single party are scheduled for a Pre-Hearing Conference with the Presiding Officer, Alternate Presiding Officer or Deputy Presiding Officer where one of the objectives is to explore with the parties opportunities to settle all or a part of the dispute.

In order to increase its efficiency and reduce the parties' costs, the Tribunal continues its efforts to reduce the number of days it takes to adjudicate a matter. The Tribunal proactively identifies preliminary issues and directs the parties to address them, and encourages the parties to raise any issues they may identify well in advance of the hearing with a view to determining these matters on the basis of written submissions. The Tribunal continues to use Pre-Hearing Conferences and/or case management hearings to organize and streamline the issues in dispute so that a matter can be adjudicated as efficiently as possible. In addition, parties are routinely asked to exchange detailed submissions and documents well in advance of a hearing in order to make better use of available hearing time. It has been the Tribunal's experience that requiring the exchange

of detailed submissions and documents in advance of the hearing not only serves to reduce hearing time but also facilitates the parties' ability to resolve some or all of the dispute.

In the past, the parties frequently agreed to extend the time limits for the filing of submissions and/or agreed to adjourn set hearing dates. This practice led to applications remaining outstanding for unacceptable periods of time. The Tribunal now discourages adjournments except where compelling circumstances arise and requires parties to offer substitute dates within 72 hours.

Key Activities

The Tribunal's key activities are adjudication and dispute resolution in the area of Pay Equity. These two functions are the foundation for the Tribunal's objective of adjudicative and dispute resolution excellence.

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 have cross-appointments with at least one other adjudicative agency. The Tribunal holds hearings where evidence is presented and oral arguments are made. Pay equity issues are often complex; hearings can take multiple days to complete. Tribunal decisions are issued in writing and posted on accessible websites (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 conference 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 explore 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 time and expense for both parties and the Tribunal..

IT Initiatives and Electronic Filing

The Tribunal's forms, in French and English, are available electronically on its website and are hosted by Ontario Shared Services. A total of seven forms are currently available to be submitted electronically, and parties can file correspondence, submissions and other material electronically . In 2021/2022, 98.8% of the total number of forms and submissions filed with the Tribunal were filed electronically as electronic filing became mandatory during the pandemic.

Caseload Processing

The total caseload for the fiscal year 2021/2022 amounted to 31 applications, which was a combination of 20 pending applications carried over from the previous year, 2 files re-opened and 9 new applications. 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

During the 2021/2022 fiscal year, the Tribunal disposed of eight applications. Two applications were granted, one was dismissed, two were terminated, and three were settled.

23 applications remained pending on March 31, 2022. Ten of them relate to a single Order of the Pay Equity Office and were filed on the same day in 2016. These should properly be counted as a single case, bringing the pending number as of March 31, 2022 down to 14.

The Tribunal has made a practice in its Annual Report of providing caseload data of the kind set out in the preceding paragraphs and in the Caseload Statistics table. These numbers alone do not always provide a meaningful picture of the demand that those cases place on adjudicative resources, principally because that demand varies significantly from one application to another. A more nuanced understanding emerges from statistics relating to the number of pre-hearing conference dates scheduled (11) and held (7), hearings scheduled (5) and held (3), and number of written decisions issued this year: interim decisions (21) and final decisions (6). Even then, of course, there is considerable variation in the complexity of the decisions and the amount of time required to generate the reasons.

Caseload Statistics

Fiscal Year	Caseload			Re-Opened	Disposed of							Pending March 31
	Total	Pending April 1	Received Fiscal Year		Total Disposed	Granted	Dismissed	Terminated	Settled	Pending Other Case		
2021-22	31	20	9	2	8	2	1	2	3	0	23	
2020-21	27	21	6	-	7	1	4	1	1	0	20	
2019-20	39	29	10	-	18	1	13	0	1	3	21	
2018-19	36	31	5	-	8	3	0	2	3	-	29	
2017-18	44	37	7	-	13	4	2	2	5	-	31	
2016-17	46	25	21	-	13	3	0	2	8	-	37	
2015-16	45	13	32	-	21	5	3	1	12	-	25	
2014-15	30	18	12	-	17	3	2	2	10	-	13	
2013-14	31	20	11	-	14	5	2	4	3	-	18	
2012-13	35	21	14	-	11	0	4	4	3	-	23	
2011-12	39	21	18	-	21	3	4	3	11	-	21	
2010-11	35	13	22	-	16	4	3	5	4	-	21	
2009-10	50	28	22	-	37	8	4	1	24	-	13	
2008-09	48	25	23	-	20	0	4	0	16	-	28	
2007-08	34	12	22	-	9	2	1	0	6	-	25	
2006-07	25	10	15	-	13	3	4	0	6	-	12	
2005-06	16	5	11	-	6	3	2	0	1	-	10	
2004-05	5	0	5	-	0	0	0	0	0	-	5	

In 2021-22, two matters were settled and a final decision was issued on September 16, 2021. Those matters were reopened solely for the purpose of granting an extension for the parties to comply with the settlement and decision. Those matters were re-closed on May 9, 2022.

Definition of Terms:

- 1) Granted means that the application was, in whole or in large part, successful.
- 2) Dismissed means that the application was, in whole or in large part, not successful.
- 3) Terminated means that the application was not granted, dismissed or settled but was terminated at the parties' request or abandoned.
- 4) Settled includes all cases where the parties, either with or without the assistance of the Tribunal, settled the dispute, as well as cases that were adjourned.

Key Decisions

Pay equity – Maintenance – Employer purchased facilities out of receivership in 2011 – Employer thereby inherited pay equity in place – “\$1.50 plan” was common in industry but did not use a gender-neutral comparison system (“GNCS”) to evaluate job classes under the *Pay Equity Act* (the “Act”) – As a result, there was no mechanism to determine whether there had been changes in the relative value of male and female job classes – Pay Equity Office ordered, among other things, that \$1.50 plan be amended to stipulate a GNCS – Employer submitted that it could not comply with orders because it could not obtain necessary information for period of time between 2005 and 2011 when it purchased the facilities – Employer noted that pay equity issue was not raised until 2016 when Pay Equity Office contacted Employer as part of its monitoring program – Starting point of analysis is purpose of the Act: “to redress systemic gender discrimination in compensation for work performed by employees in female job classes” – No record-keeping obligation in the Act – Employer had no forewarning that its pay equity obligations would be challenged going back to 2005 – Procedurally unfair and inherently prejudicial to employer because it cannot produce records to respond to the application – Delay has caused impossibility to comply with the PEO’s order back to 2005 – Important consideration was that the employer was not present at all in these facilities prior to 2011 – Employer has no independent information about how the facilities operated from 2005 to 2011 and there is no indication that it can get reliable information for that period – As a result, temporal scope of PEO’s order revised to begin in 2011 instead of 2005 – Tribunal noted extraordinary nature of circumstances and that generally the mere passage of time will not affect an employer’s obligations under the Act.

Glen Hill Terrace Christian Homes Inc., Applicant v Canadian Union of Public Employees (CUPE) Locals 2225-06/12 and 5110, Respondent – PEHT Case No. 2001-18-PE (November 23, 2021) - 2021 CanLII 126444

Pay equity – Maintenance – Applicants asserted that the employer had not maintained pay equity in accordance with the *Pay Equity Act* (the “Act”) – Pay equity plan was deemed approved pursuant to section 15(8) of the Act – Employer had been directed by the Review Officer to review its pay equity plan, re-evaluate the job classes and to make any pay equity adjustments that were required – Review Officer reviewed results of employer’s re-evaluation and agreed that no pay equity adjustments were required – Tribunal noted that deemed approved pay equity plans are given deference because the job evaluation process is not an exact science – In order to establish a violation of the Act in this case, the applicants must demonstrate that the job evaluation system either failed to apply one of the statutory criteria or excluded important job information related to any of them – Evidence and submissions were clear that the applicants disagreed with the evaluation of their jobs but there was no evidence to establish that any of the statutory criteria were

ignored or that job evaluation excluded important job information related to any of the statutory criteria – Application dismissed

Kristine Kiviaho, and Cynthia Farquhar v **Huron Lodge Community Service Board Inc.**, 2263-20-PE (November 5, 2021) - 2021 CanLII 115304

Court Activity

On September 21, 2021, the Divisional Court issued its decision in *Ontario Nurses' Association v. 10 Community Care Access Centres*, 2021 ONSC 5348. In this decision, the Divisional Court upheld the Tribunal's decision which held that unlike when an employer establishes a pay equity plan, a trade union has no statutory role in negotiating pay equity maintenance. Leave to appeal this decision to the Court of Appeal was dismissed on February 22, 2022.

Performance Measures

Efficient Case Processing

2021/2022 Commitments

- 75% of new files opened within two business days after an application is filed in accordance with the Tribunal's Rules of Practice.
- 75% of confirmations of filing of applications sent to parties within four business days of application filed in accordance with the Tribunal's Rules of Practice.
- 75% of files closed within two business days following final decision.

2021/2022 Achievements

- 100% of new files opened within two days after an application is filed in accordance with the Tribunal's Rules of Practice.
- 85.5% of confirmations of filing of applications sent to parties within four days of application filed in accordance with the Tribunal's Rules of Practice.
- 100% of files closed within two business days following final decision.

Adjudication and Disposition

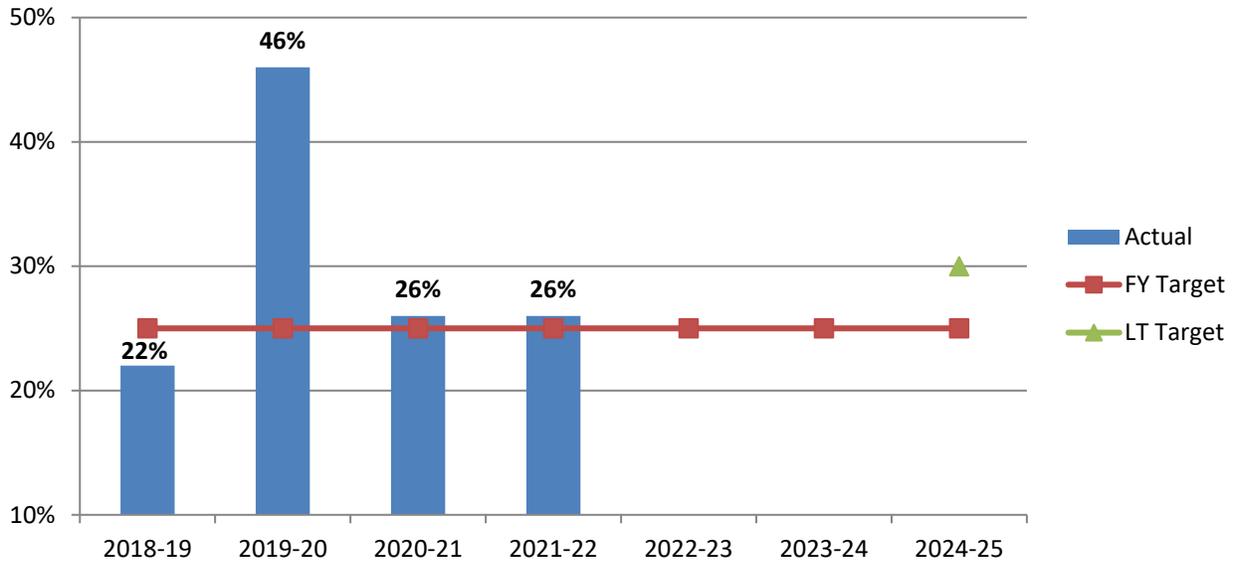
2021/2022 Commitments

- 90% of files reviewed by Presiding Officer or Deputy Presiding Officer within two weeks of response date.
- Where a case management hearing is held, in 50% of those cases at least one issue is resolved.
- 25% of outstanding cases disposed of during the year.

2021/2022 Achievement

- 100% of files reviewed within two weeks of response date.
- Where a pre-hearing conference was held, at least one issue was resolved in 100% of those cases. In each pre-hearing conference, the parties resolved at least one procedural or substantive issue.
- 26% of cases disposed of during the year overall

Note: The settlement rate and time to conclude cases recognizes the complex nature of pay equity disputes which results in few negotiated settlements. As a result, 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 Presiding Officers and Members who are cross-appointed to other Tribunals. In addition, a number of cases may arise out of the same Order or be otherwise related or will remain pending at the Tribunal as they work their way through the courts on judicial review or appeal, which also impacts the disposal rate.



Ombudsman Review

The Ontario Ombudsman has the authority to investigate complaints about the Ontario Government and its agencies, including the Tribunal. There were no new or outstanding investigations in 2021/2022.

Information and Privacy Commissioner of Ontario

The Information and Privacy Commissioner of Ontario has the authority to investigate complaints about the Ontario Government and its agencies, including the Tribunal. There were no new or outstanding investigations in 2021/2022.

Financial Performance

In accordance with the Ministry of Labour, Training and Skills Development Delegation of Financial Authority Framework, financial authority is delegated to the Presiding Officer (Chair) of the Tribunal. The Presiding Officer is required to ensure that public funds are used with integrity and honesty. The Tribunal's operating budget is included in the Ministry's estimates and allocation process, and the Tribunal is required to report to the Ministry each quarter with respect to its expenditures and planned future financial commitments. The total annual remuneration paid by the Tribunal for OIC appointees was \$135,300. A cost-sharing of salaries with the Ontario Labour Relations Board is in place.

The PEHT's financial performance for the 2021/22 fiscal year resulted in a savings for the Tribunal. Salaries and wages were comparable to the prior fiscal. Savings in transportation/communications were also comparable to the previous fiscal and were due to travel suspension as a result of the pandemic. Services expenditures were underspent due to lower part-time per diem costs and the reduction of SLA costs with WSIAT as a result of the pandemic. Supplies and equipment expenses were not incurred this fiscal as the Tribunal was able to operate with existing equipment and supplies.

All figures in \$000.0 thousand

Account	Expenditure Estimates	In-year Board Approvals	Year-end Budget	Year-end Actuals	Variance	% Variance
Salaries & Wages	275.8	(125.0)	150.8	126.2	24.6	16.3%
Benefits	39.7		39.7	12.4	27.3	68.8%
ODOE:						
Transportation & Communication	14.9		14.9	0.5	14.4	96.6%
Services (Including Lease)	134.9	(75.0)	59.9	32.2	27.7	46.2%
Supplies & Equipment	1.0		1.0	-	1.0	100.0%
Total ODOE	150.8	(75.0)	75.8	32.8	43.0	56.8%
Grand Total	466.3	(200.0)	266.3	171.3	95.0	35.7%

Appendix A

Order in Council Appointments

The Tribunal’s adjudicators (Presiding Officer, Alternate Presiding Officer, Deputy Presiding Officer and Members) are all appointed by the Lieutenant Governor in Council as Order in Council appointments (OICs), for a fixed term. The following is a chart of OICs working in 2021/2022, their appointment terms and remuneration:

Name	First Appointed	Term of Appointment	Annual Remuneration
Presiding Officer			
Ross, David	August 13, 2019	April 1, 2022	\$173,588.00
Alternate Presiding Officer			
Rowan, Caroline	August 6, 2020	August 5, 2022	\$38,886.00
Deputy Presiding Officer			
Cave, Johanne	October 31, 2019	October 30, 2021	\$0.00
Lawrence, Lindsay	February 17, 2022	February 16, 2024	\$4,206.00
P/T Members (Employer)			
Bolton, Lori	September 13, 2017	September 25, 2022	\$1,329.75
Burke, Ann	April 4, 2012	April 3, 2022	\$0.00
Greenside, Patricia	November 21, 2019	November 20, 2024	\$2,462.50
Zabek, Carla	April 4, 2012	April 3, 2022	\$0.00
P/T Members (Employee)			
Harris, Irene	December 21, 2012	December 20, 2022	\$2,487.13
Phillips, Carol	August 15, 2012	September 16, 2022	\$2,758.00
Roth, Stephen	December 12, 2019	December 11, 2024	\$0.00

* The PEHT utilizes a cost sharing agreement with the OLRB which allows the Tribunal to capitalize on cost efficiencies. Remuneration for full-time appointees to the Tribunal is determined by a Directive issued by Management Board of Cabinet. Full-time appointees of the PEHT who are cross-appointed with the OLRB are paid 25% of their salaries for Deputy Presiding Officers and 50% of the salary for the Presiding Officer of the Tribunal, with the remaining salaries paid by the OLRB. The remuneration actually paid to an individual appointee may be less than the maximum set by the Management Board Directive due to individual circumstances such as a change in term of appointment during the year, sick leave, unpaid leave of absence or time spent by an appointee cross-appointed to another tribunal. Remuneration for part-time appointees to the Tribunal is based on a per diem rate established by Management Board of Cabinet. As a result, annual remuneration set out in the chart above is reflective of actual monies received by an individual part time appointee.

Accountability Statement

The Tribunal's Annual Report for the fiscal year ending March 31, 2022 was prepared under my direction for submission to the Minister of Labour, Training and Skills Development in accordance with the Agencies and Appointments Directive as issued by Management Board of Cabinet.

The Public Accounts of Ontario are the annual financial statements that are prepared in accordance with the accounting principles for governments issued by the Public Sector Accounting Board (PSAB). The Public Accounts consist of the financial report of the Government of Ontario and the financial reports of each ministry. In accordance with the Ministry's Delegation of Financial Authority Framework, financial authority is delegated to the agency. Each year the Tribunal verifies that all its transactions are reflected accurately and completely in the Public Accounts through the execution of a Certificate of Assurance.

As an agency of the Ministry of Labour, Training and Skills Development, the Tribunal's Annual Report is subject to the minimum reporting requirements established in the Agencies and Appointments Directive, including:

- Financial statements that have been audited or subject to the appropriate level of external assurance;
- Analysis of operational performance;
- Analysis of financial performance;
- Names of appointees, term of appointments and remuneration;
- Performance measures, targets achieved/not achieved and action to be taken.

This report covers the fiscal year April 1, 2021 to March 31, 2022.

For More Information

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Hearing Impaired (TTY): 416-212-7036

Hours of Operation: 8:30am – 5:00pm

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