

# **PAY EQUITY HEARINGS TRIBUNAL**

## **RULES OF PRACTICE**

**MARCH 2018**

## **MISSION STATEMENT**

The purpose of the *Pay Equity Act* is to redress systemic gender discrimination in compensation. Its implementation will contribute to a fairer and more productive workplace, where both women and men may achieve equality.

The goals of the *Pay Equity Act* can best be achieved through the co-operation of employers, bargaining agents, and employees. The Pay Equity Hearings Tribunal is committed to encouraging settlement between parties, and will provide a final and binding mechanism to resolve disputes.

The Tribunal is committed to a hearing process and to decisions which balance the need to be fair, accessible and efficient. The Tribunal will engage in an active programme of outreach to the community to monitor the achievement of our goals.

The Tribunal is committed to attracting and retaining qualified, interested and capable individuals. The professional commitment of these individuals will be fostered through collegial working relationships and by the provision of a quality working life.

## **How to Use These Rules**

Subsection 29(2)(b) of the *Pay Equity Act* provides the Tribunal with the authority to make rules governing the conduct and management of its affairs and the practice and procedure to be observed in matters before it. These Rules are effective March 2018 and replace the Tribunal's Rules of Practice issued November 2002.

The Table of Contents lists the Rules by subject. Check there first to make sure you have identified all the Rules which may be applicable to your case. In addition, some words used in these Rules have specialized meanings. Before beginning you should review the list of definitions given in the first section of the Rules. For parties unfamiliar with the Tribunal, we have prepared a series of Information Bulletins (see below) which give step by step instructions and background information on our practices and procedures. Finally, copies of the Tribunal's Forms are included at the end of this document.

### **Information Bulletins**

- #1 Making An Application to the Pay Equity Hearings Tribunal
- #2 Responding to an Application to the Pay Equity Hearings Tribunal
- #3 Remaining Anonymous
- #4 The Pre-Hearing Conference
- #5 What to Expect at the Hearing
- #6 Research and Resources for Parties Before the Pay Equity Hearings Tribunal
- #7 Requests for Reconsideration

The Tribunal's Rules, Forms, and Information Bulletins are available free of charge from the Tribunal at the address and telephone numbers provided below or may be downloaded from the Tribunal's website at [www.gov.on.ca/lab/pec/peht](http://www.gov.on.ca/lab/pec/peht).

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## Definitions

“Act” means the *Pay Equity Act*;

“Applicant” means any person making an Application to the Tribunal;

“Application” means any Application filed in accordance with these Rules;

“Chair” means the Presiding Officer of the Tribunal;

“day” means working day and excludes Saturday, Sunday, a statutory holiday and any other day the Tribunal is closed;

“effective date of service” means the day on which service is deemed to have occurred as defined in these Rules;

“electronic hearing” means a part of the proceeding before the Tribunal which is conducted by telephone conference call or by some other form of electronic technology allowing persons to hear one another and the Tribunal;

“filing” means to file anything with the Tribunal;

“electronic filing” or “e-filing” means filing submitting the electronic form(s) through the Tribunal’s e-filing system. This does *not include* sending a form or other communication to the Tribunal by “e-mail”;

“panel” is the Chair or a Vice Chair and one Member representative of employees and one Member representative of employers assigned to decide all or a part of the Application;

“party” includes the Applicant(s), Respondent(s), an Agent appointed to act on behalf of a group of anonymous employees, any person named as an Affected Party who files a Response to the Application, and an Intervenor but does not include a person whom the Tribunal has decided is not a party;

“proceeding” means the proceeding before the Tribunal and commences with the filing of the Application;

“Registrar” means the Registrar of the Tribunal and includes the Deputy Registrar;

“representative” includes counsel, agent or any person representing a party in a proceeding;

“Response” means a Response to an Application filed in accordance with these Rules;

“service” means the delivery of any document which is required to be served under these Rules or by order of the Tribunal on a person or upon his/her representative .

“Tribunal” means the Pay Equity Hearings Tribunal;

“Vice-Chair” means a Deputy Presiding Officer of the Tribunal.

## General

1. The Tribunal may exercise any of its powers under these Rules on its own initiative or at the request of a party. The Tribunal may relieve against the strict application of these Rules.
2. All filings with the Tribunal must be made in accordance with these Rules, but a defect or other irregularity in form shall not render the proceeding invalid.
3. Where matters are not provided for in these Rules, the practice shall be determined by analogy to them.

## Calculating Time

4. In calculating time periods under these Rules:

(a) where there is a reference to a number of days between two events, the count shall exclude the day on which the first event happens;

(b) where the time for doing anything required by the Rules of the Tribunal expires on a day which is not a working day as defined by these Rules, the act may be done on the next working day.

### **Extending or Abridging Time**

5. The Tribunal may, upon such terms as it considers advisable, extend or abridge the time periods set out in these Rules.

### **Representative Withdrawing from Proceeding**

6. When a representative ceases to act on behalf of a party, the representative or the party must immediately notify the Tribunal and all other parties in writing providing the name, address, phone and facsimile numbers of the representative's replacement or, where there is no replacement, confirm the name, address, phone and facsimile numbers of a contact person for the party.

### **French Language Services**

7. The Tribunal provides services in both French and English. An Application will be processed and the hearing conducted in the language in which the Application is filed, unless any party indicates that it requires some or all services in the other language.

### **Accommodation Services**

8. Any party seeking services in languages other than French or English must notify the Registrar as soon as possible. Where a party intends to call a witness to testify in a language other than French or English, the party must arrange for a translator acceptable to the Tribunal to attend at the hearing. Payment for the translator's services is the responsibility of the party.

9. The Registrar must be notified as soon as possible where services to accommodate the disability of a party, its representative, or a witness are required. These services may include, but are not limited to: sign language interpretation; services for the visually impaired; wheelchair accessible facilities.

### **Applications**

10. Any person wishing to confirm, vary, or revoke a Review Officer's Order or seeking a hearing pursuant to a Notice of Decision must complete an Application (Form 1) containing all the information required in Rule 12.

11. Where the Pay Equity Office refers a Review Officer's Order to the Tribunal pursuant to ss.24(5) of the *Act*, it must complete an Application (Form 1). The Referral will be treated as if it is an Application.

12. A completed Application must:

- (a) provide the full name of the Applicant, name of a contact person, address, e-mail, telephone, facsimile numbers of the Applicant and all Respondent(s) named in the Review Services Order or Notice of Decision;
- (b) provide the name, address, e-mail, telephone, and facsimile numbers of any representative of the Applicant and Respondent(s);
- (c) identify any other person(s) the Applicant thinks may be affected by the proceeding and provide their address, e-mail, telephone, and facsimile numbers, the name of a contact person and the name, address, e-mail, telephone, and facsimile numbers of their representative, if any;
- (d) in consecutively numbered paragraphs set out the issues in dispute, the reasons for making the Application, identify the sections of the *Act* which relate to the Application, and provide a clear and concise statement of the facts and events upon which the Applicant relies;
- (e) describe the remedy or order which the Applicant wishes from the Tribunal; and,
- (f) where applicable, provide a copy of the Review Services Order.

13. Except with the Tribunal's permission, and subject to Rule 21, no Applicant will be allowed to raise any issue, fact, or event which the Tribunal considers was not set out in the Application.

14. The completed Application must be served on all Respondents.

15. One copy of the Application, together with a Certificate of Delivery (Form 3), must be filed with the Tribunal no later than five (5) days after the effective date of service on the Respondent(s).

## **Responses**

16. Any person served with and wishing to respond to an Application must complete a Response (Form 2) containing all the information required in Rule 17.

17. The completed Response must:

- (a) confirm the Respondent's address, e-mail, phone and facsimile numbers and provide the name of a contact person and the name, address, e-mail, telephone, and facsimile numbers of the Respondent's representative, if any;
- (b) identify any person not already named in the Application whom the Respondent believes has rights or interests which may be affected by the Application and provide the address, e-mail, telephone, and facsimile numbers of a contact person for that person;
- (c) in consecutively numbered paragraphs indicate those facts contained in the Application with which the Respondent agrees and, where the Respondent disagrees or relies on facts which are different from those set out in the Application, provide a concise summary of those facts; and

- (d) describe the Respondent's position with respect to the remedy sought by the Applicant.

18. Except with the Tribunal's permission, and subject to Rule 21, no Respondent will be permitted to raise any issue, fact, or event which the Tribunal considers was not set out in the Response.

19. The completed Response must be served on all parties within 10 days of the effective date of service of the Application.

20. One copy of the completed Response must be filed with the Tribunal, together with a Certificate of Delivery (Form 3), no later than five (5) days after the effective date of service of the Response.

## **Reply**

21. Any party may file a Reply addressing new facts, issues, or events raised in a Response. No Form is required. A Reply must be served on the Applicant(s) and all parties who have filed a Response within five

(5) days of the effective date of service of the Response.

22. One copy of any Reply must be filed with the Tribunal, together with a Certificate of Delivery (Form 3), within five (5) days of the effective date of service of the Response.

## **Service and Filing**

23. With the exception of the Application, and unless directed otherwise by the Tribunal, service of all documents is to be made on the party's representative. Where a party is not represented, service is to be made on the individual Applicant(s) and Respondent(s) or the contact person named in the Application or Response.

24. Documents may be served on a party in any of the following ways:

- (a) by hand;
- (b) by regular mail;
- (c) by courier;
- (d) by facsimile transmission; or
- (e) any other way agreed upon by the parties.

24.1 Documents may be filed with the Tribunal in any of the following ways:

- (a) by hand;
- (b) by regular mail;
- (c) by courier;
- (d) by facsimile transmission; or
- (e) by e-filing.

25. If delivered before 5 p.m., the effective date for service of documents delivered by hand or facsimile transmission is the date of delivery. If delivered after 5 p.m. the effective date of service is the next day.

26. The effective date of service for documents delivered by regular mail is five (5) days after mailing.

27. The effective date of service for documents delivered by courier is the day after the documents are given to the courier, unless a party serving indicates that next day courier delivery to that location is unavailable. In that case, the effective date of service is two days after the documents are given to the courier.

28. A Certificate of Delivery (Form 3) must be completed for each person on whom a document was served. The Certificate of Delivery must be filed with the Tribunal and a copy sent to each person served.

### **Anonymous Employees**

29. An employee or employees wishing to remain anonymous pursuant to subsection 32(4) of the *Act* must appoint an Agent. The Agent becomes a party to the proceeding, is named in the style of cause, and assumes the rights and responsibilities of the employee or employees under the *Act* and these Rules.

30. The Agent must complete a Certificate of Appointment as Agent on Behalf of Anonymous Employee(s) (Form 5) which provides the following:

- a) confirming the Agent is authorised to act on behalf of the anonymous employee(s) and to enter into binding settlements;
- b) confirming the Agent has provided the anonymous employee(s) with a copy of the Application and the Tribunal's Information Bulletin # 3 "Remaining Anonymous"; and
- c) providing the name, address, e-mail and telephone number of the anonymous employee or employees as Appendix A to the Certificate.

The Certificate, **not including Appendix A**, must be served with the Application or, where the Agent is a Respondent to an Application, served on all parties to an Application as soon as possible and, in any event, no later than five (5) days after the Agent is appointed.

31. The Certificate, including Appendix A, and Certificate of Delivery (Form 3) must be filed with the Application. Where the Agent is a Respondent the Certificate, including Appendix A, and Certificate of Delivery (Form 3) must be filed Tribunal as soon as possible and, in any event, no later than five (5) days after the date of effective service of the Certificate. Appendix A will be sealed by the Registrar and will not be disclosed to the parties except with the consent of the Agent or by Order of the Tribunal.

## **Intervenors**

32. Any person may, with leave of the Tribunal, intervene in all or part of the proceeding on such conditions as the Tribunal considers appropriate.

33. Leave to intervene (there is no Form) including a description of the grounds on which intervention is sought, the role the intervenor proposes to play in the proceeding, Affidavits (if any) and any legal decisions relied upon must be served on all parties to the Application and filed with a Certificate of Delivery (Form 3) with the Tribunal as soon as possible after the intervenor becomes aware of the Application. One copy of the intervention and supporting materials, excluding the legal decisions, must be filed, with a Certificate of Delivery (Form 3), with the Tribunal. Three (3) copies of the legal decisions must be filed with the Tribunal.

34. Any party served with the intervention may respond in writing to support or oppose it. The response, any supporting documents, and any legal decisions relied upon must be served on the intervenor and all other parties to the Application. One copy of the response and supporting materials excluding the legal decisions must be filed, with a Certificate of Delivery (Form 3), with the Tribunal seven (7) days after the effective date of service of the intervention. Three copies of the legal decisions must be filed but need not include copies of decisions already filed by the intervenor.

35. Any reply to the response must be served on all parties. One copy of the reply must be filed with a Certificate of Delivery (Form 3) with the Tribunal two (2) days after the effective date of service of the response.

36. The Tribunal will ordinarily decide interventions in writing. Where the Tribunal decides to hear the intervention in person or by telephone conference call, the Registrar will set the date for hearing.

## **Notice**

37. The Registrar may require any employer to post notices in its workplace, and may specify the extent, form, place of posting, and the length of time the notices must remain posted. The Registrar may further direct that notice be posted in the languages of the workplace.

38. The Registrar may require any person to mail or give notice in any other form (other than that specified in Rule 37) to employees or former employees who may be affected by the proceeding.

39. The person directed to give notice under Rules 37 or 38 shall inform the Tribunal of the date on which such notice was given by immediately completing and filing a Statement of Posting (Form 6).

## **Pre-Hearing Conferences**

40. The Tribunal may direct the parties to attend one or more Pre-Hearing Conferences prior to or during the proceeding. A Pre-Hearing Conference is intended to assist the parties to prepare for the hearing and to address case management issues. All discussions which occur during the Pre-Hearing Conference are considered off the record". They may not be referred to or relied upon in the hearing unless reduced to writing in the form of a Pre-Hearing Conference Memorandum.

41. During a Pre-Hearing Conference, with consent of all parties, parties may discuss settlement of some or all the issues in dispute.

42. The Chair/Vice-Chair who presides at a Pre-Hearing Conference where settlement is discussed shall not preside at the hearing unless all parties consent. The Chair/Vice-Chair cannot be compelled to give testimony or produce documents in the proceeding before the Tribunal or in a civil proceeding with respect to matters that come to his/her knowledge where conducting or facilitating settlement discussions at the Pre-Hearing. Notes or records made by the Chair/Vice-Chair in the course of conducting or facilitating settlement discussions during the Pre-Hearing are not admissible in a civil proceeding.

43. The Tribunal may direct that a party which fails to attend a Pre-Hearing Conference after receiving proper notice and without an explanation acceptable to the Tribunal:

- (i) is not entitled to further notice of the hearing or any other steps in the proceeding;
- (ii) will not be permitted to request an adjournment of the hearing except on consent or in a true emergency.

44. Once a date has been set for a Pre-Hearing Conference, it may not be adjourned without the Tribunal's permission. Except in the event of an unexpected medical or other emergency where the provisions of Rule 77 apply, a party seeking to adjourn the Pre-Hearing Conference must comply with the requirements of Rule

74. Where a party opposes the adjournment, they must provide their reasons to the Registrar in accordance with Rule 75. In deciding whether to grant or refuse the adjournment the Tribunal may consider any of the alternatives set out in Rule 76.

## **Mediation**

45. Where all parties consent, the Tribunal may convene a mediation session for the purpose of attempting to resolve some or all the issues in dispute.

46. The mediation session may be conducted by the Chair, a Vice-Chair, Member, or staff of the Tribunal.

47. No person conducting a mediation shall be compelled to give testimony or produce documents in the proceeding before the Tribunal or in a civil proceeding with respect to matters that come to his/her knowledge while exercising his/her duties as a mediator. Notes or records kept by the mediator are not admissible in a civil proceeding.

## **Notice of Constitutional Question**

48. Where a party intends to raise a question about the constitutional validity or applicability of legislation, a rule of common law, or where a party claims a remedy only available pursuant to subsection 24(1) of the *Charter of Rights and Freedoms*, the party must serve formal Notice of Constitutional Question, in substantially the same form as Form 4F of the Rules of Civil Procedure, on the other parties, the Tribunal, and the Attorneys General for Ontario and Canada as soon as the circumstances requiring Notice become known and, in any event, at least fifteen (15) days before the question is to be argued.

## **Summons**

49. The Tribunal will provide a signed Summons to Witness in blank to any party upon request to the Registrar. A party may require a witness to bring any documents or other things listed on the Summons to the hearing. Summonses are available from the Tribunal's offices.

50. The party is responsible for ensuring that the Summons is served properly. An Affidavit of Personal Service must be sworn by the individual who served the Summons. The Tribunal may require the Affidavit to be filed at the hearing.

51. The Summons must be served in person together with the correct amount of conduct money no later than two (2) days before the date when the witness is required to testify. Conduct money must be paid in cash or by certified cheque. The amount of conduct money is equivalent to the personal allowance paid to a witness for attendance in the Superior Court of Justice as set out in Tariff A of the *Rules of Civil Procedure*.

## **Witnesses**

52. The Tribunal may order a party to serve a list of witnesses and a brief summary of their potential evidence on all other parties to the Application.

53. A party which intends to rely on an expert witness must serve a statement containing the expert's name, address, *curriculum vitae*, and a summary of the expert's proposed evidence on all other parties not less than fourteen (14) days before the commencement of the hearing on the merits of the Application. One copy of the Statement must be filed with the Tribunal together with a Certificate of Delivery (Form 3).

54. Except with the Tribunal's permission, a party will not be permitted to introduce expert evidence at the hearing without having complied with Rule 53.

55. A party which intends to rely on a formal expert's report must serve the report on all other parties and file one copy, together with a Certificate of Delivery (Form 3), with the Tribunal as soon as possible and, in any event, no later than twenty (20) days before the expert is scheduled to testify.

56. Except with the Tribunal's permission, a party will not be permitted to introduce an expert's report without having complied with Rule 55.

## **Disclosure and Production of Documents**

57. No later than thirty (30) days before the Pre-Hearing Conference or the commencement of the hearing, whichever is earlier, every party shall serve on all other parties, a list (there is no Form) identifying all documents or things in their custody or control which are arguably relevant to the issues in dispute on the Application and identifying those documents or things for which privilege is claimed.

58. Where a party fails to comply with Rule 57, the Tribunal may take any action it considers appropriate. This may include refusing to allow the party to rely on the document or thing in the proceeding.

59. Where a written request is made, the party with custody or control of the requested document(s) or thing(s) shall, within ten (10) days, produce a copy(ies) to the requesting party or, if it cannot be copied, make it available for inspection.

60. No later than ten (10) days before the commencement of the hearing on the merits the parties shall exchange lists of all documents upon which they intend to rely before the Tribunal.

61. At any time before or during the hearing the Tribunal may require a party to disclose or produce further information, documents or things that, in the opinion of the Tribunal, are arguably relevant to the issues in dispute. Any party seeking to introduce a document in evidence before the Tribunal must provide four (4) copies: one for each member of the panel and a witness copy.

## **Hearings**

62. The Registrar shall set the time and place of hearing.

63. Where any party properly served with a Notice of Hearing fails to attend the hearing, the Tribunal may proceed in that party's absence without further notice and, where appropriate, may dispose of the Application.

64. A hearing shall be open to the public unless otherwise directed by the Tribunal.

65. Where appropriate, the Tribunal may direct the parties to exchange lists of the legal decisions on which they intend to rely. The Tribunal may also direct that the list and three (3) copies of the decisions be filed with the Tribunal.

66. The Registrar may combine two or more Applications for hearing together where the requirements of subsection 22(3) of the *Act* are met.

## **Written and Electronic Hearings**

67. The Tribunal may conduct the part of the proceeding where it determines procedural issues as a written hearing or as an electronic hearing.

68. The Tribunal may conduct all or any other part(s) of the proceeding as a written hearing where it considers it appropriate in the circumstances. In determining appropriateness the Tribunal will consider

whether any party asserts a good reason for not holding a written hearing.

69. The Tribunal may conduct all or any other part(s) of the proceeding as an electronic hearing where it considers it appropriate in the circumstances. In determining appropriateness the Tribunal will consider whether an electronic hearing is likely to cause significant prejudice to a party.

70. Any party objecting to a written or electronic hearing must advise the Tribunal and all other parties of its reasons for objecting as soon as possible and, in any event, within five (5) of receiving notice of the written or electronic hearing.

71. Where a written hearing is held, the panel or the Registrar will set deadlines for the exchange of submissions and any documents between the parties as are appropriate in the circumstances.

## **Adjournments**

72. Once a date has been set for a hearing, it may not be adjourned except with the Tribunal's permission.
73. Upon becoming aware that an adjournment is required, a party must seek the consent of the other parties and advise the Tribunal in writing of the request and the positions of the other parties.
74. Where a party objects to a request for an adjournment, it shall provide written reasons to the Tribunal as soon as possible and in any event no later than two (2) days after receiving the request for the adjournment.
75. In deciding whether to grant or refuse the adjournment the Tribunal may:
- (a) set peremptory dates against one or all parties;
  - (b) grant a shorter adjournment than requested;
  - (c) set conditions on the adjournment;
  - (d) convert the scheduled hearing to a Pre-Hearing Conference; and
  - (e) make any other order or impose any other condition that it considers appropriate.
76. In the event that an unexpected medical or other emergency arises for a party or representative, the Registrar may grant an adjournment without seeking the positions of the other parties or requiring compliance with Rule 74.

## **Adjournments *Sine Die***

77. Where the Tribunal adjourns a matter *sine die* on the agreement of the parties, the matter will be dismissed after the expiry of one year from the date on which the adjournment is granted without further notice to the parties, unless one of the parties requests that the matter be scheduled for hearing within that period.

## **Reconsideration**

78. The Tribunal may, at any time if it considers it advisable to do so, reconsider any decision or order made by it and vary or revoke the decision or order.
79. A party seeking reconsideration shall complete a Request for Reconsideration (Form 6) setting out the reasons for the Request, and serve it on all other parties. One copy of the Request and a Certificate of Delivery (Form 3) must be filed with the Tribunal.
80. Except with the permission of the Tribunal, a Request for Reconsideration must be filed no later than twenty (20) days after the decision or order which is the subject of the request was issued by the Tribunal.
81. Any party may respond to the request for reconsideration by serving its written submissions on all parties (there is no Form). One copy of the submissions, together with a Certificate of Delivery (Form 3), must be filed with the Tribunal no later than five (5) days after the date of effective service of the Request.

82. Ordinarily, the Tribunal will decide the Request for Reconsideration on the basis of written submissions. Where the Tribunal decides to hear the Request in person or by telephone conference call, the Registrar will set the date for hearing.

### **Enforcement of Decisions**

83. Any party may request the Registrar to provide a certified copy of a decision or order of the Tribunal for filing with the Registrar of the Superior Court of Justice to be enforced as an order of the Court in accordance with the *Statutory Powers Procedure Act*.

### **Consent to Prosecute**

84. An Application for Consent to Institute Prosecution (using Form 1) for an offence under the *Act* must be personally served on the Respondent(s) together with a list of all documents or things in the Applicant's custody and control which are arguably relevant to the proceeding and identifying those documents and things over which privilege is claimed, and a list of all documents upon which the Applicant intends to rely before the Tribunal. One copy of the Application and accompanying materials must be filed with the Tribunal together with a completed Certificate of Delivery (Form 3).

85. A Respondent shall serve its Response (Form 2) and list of all documents or things in its custody and control which are arguably relevant to the proceeding and identifying those documents and things over which privilege is claimed, and a list of all documents upon which it intends to rely before the Tribunal on the Applicant and any other Respondents. One copy of the Response and accompanying materials must be filed, together with a Certificate of Delivery (Form 3), with the Tribunal within seven (7) days of the date of effective service of the Application.

86. The Registrar will set the date for the hearing on a peremptory basis. The hearing will ordinarily commence within fourteen (14) days of the effective date of service of the Application.