

Pay Equity Hearings Tribunal

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Tribunal de l'équité salariale

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**PAY EQUITY HEARINGS TRIBUNAL
PROCEDURES ON ACCESS TO DOCUMENTS
AND EXHIBITS CONTAINED IN TRIBUNAL ADJUDICATION¹ FILES**

(APPLICABLE TO PROCEEDINGS COMMENCED BEFORE JUNE 30, 2019)

Background

The Tribunal collects and maintains adjudication files solely for the purpose of resolving pay equity related disputes through mediation or litigation. The Tribunal's jurisdiction is derived from the *Pay Equity Act*.

Legal Framework

Documents² and exhibits contained in Tribunal adjudication files may be subject to some or all of the following legal considerations: the implied undertaking rule; specific orders of the Tribunal (e.g., directing that the documents may only be used for the purposes of the litigation); provisions of the *Pay Equity Act*; orders of a court; and other statutes addressing information (e.g., the *Freedom of Information and Protection of Privacy Act* and the *Personal Health Information Protection Act*).

¹ An important distinction is made between adjudication files and institutional files (records not collected for the purpose of litigation before the Tribunal, but for general administrative/institutional reasons). Requests for records from institutional files are handled pursuant to the *Freedom of Information and Protection of Privacy Act*.

² "Documents" includes applications, responses and interventions.

The *Tribunal Adjudicative Records Act, 2019* applies to all proceedings commenced on or after June 30, 2019. The Tribunal will continue to follow this Procedure in respect of requests for documents contained in files commenced prior to June 30, 2019.

Principle of Open Hearings

Because of its mandate and the nature of its proceedings, the Tribunal maintains an open justice policy to foster transparency in its processes, accountability and fairness in adjudication. Tribunal hearings are public except where the Tribunal is of the opinion that “matters involving public security may be disclosed” or “intimate financial or personal matters or other matters” exist such that the desirability of avoiding disclosure outweighs the desirability of adhering to the principle that hearings be open to the public (see s. 9, *Statutory Powers Procedure Act*). However it does not necessarily follow that because a hearing is open to the public, access to any specific document or exhibit will be granted.

Procedure for access to Tribunal adjudication files

Requests for access to documents are not treated as confidential by the Tribunal. Depending on the request, the fact that a request has been made, the party making it and the nature of the request may be noted in a decision of the Tribunal or brought to the attention of the parties to the Tribunal File.

A. Requests from parties involved in the proceeding before the Tribunal

Information from the Tribunal’s file may be provided to the following parties in the litigation before the Tribunal:

- A party to the proceeding;
- A lawyer or paralegal representing one of the parties;
- An agent with written authorization to represent a party.

A letter should be sent to the Registrar requesting the specific information that is missing. The Solicitors’ Office will address these requests.

B. Requests from parties seeking to intervene in a matter

A party seeking to intervene should request the documents from the applicant and/or respondent. If this is unsuccessful then a request should be made to the Registrar to put the matter before a Deputy Presiding Officer for a decision.

C. Requests from third parties (not involved in the adjudication)

(i) Active Adjudication files

Requests for documents in active adjudication files will be determined by a Deputy Presiding Officer. The Deputy Presiding Officer may seek submissions from the parties to the adjudication and will determine whether to provide access, and to what extent, after considering the following factors:

- The implied undertaking rule;
- Any order of the Tribunal that may have issued addressing document production;
- The open court principle;
- The purposes underlying freedom of information and privacy legislation;
- Any other statutes or factors deemed appropriate by the Deputy Presiding Officer.

(ii) Closed or inactive Adjudication files

Requests for documents from closed or inactive adjudication files, depending on the nature of the case and documents requested, will be determined by the Presiding Officer or a Deputy Presiding Officer (pursuant to the factors set out above) or by the Head pursuant to FIPPA. The Presiding Officer, in consultation with the Solicitors, will decide whether these requests will be addressed by the Presiding Officer or a Deputy Presiding Officer or by the Head, pursuant to *FIPPA*.

If it is determined that the request for documents will be determined by the Presiding Officer or a Deputy Presiding Officer, the Presiding Officer or Deputy Presiding Officer *may* advise the parties in the Tribunal file of the request **(including the identity of the requester)** and *may* provide an opportunity for those parties to provide submissions. Whether or not the Presiding Officer or Deputy Presiding Officer requests submissions, all parties to the Tribunal file in which a request for documents is made will be advised of the Tribunal's determination of the request.