

The Pay Equity Hearings Tribunal



**Annual Report
2014-2015**

PEHT Annual Report 2014-2015

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Message from the Chair

I was appointed Presiding Officer of the Pay Equity Hearings Tribunal on August 12, 2014. Prior to that I served on an interim basis in the same role, after serving in the capacity of Deputy Presiding Officer for many years. I am pleased to provide this Annual Report for the Tribunal.

All of the Tribunal's members are appointed on a part-time *per diem* basis. All Deputy Presiding Officers are also part-time appointees to the Tribunal, however, they are cross-appointed to the Ontario Labour Relations Board, which provides administrative services and space to the Tribunal on a cost-shared basis.

Because the Tribunal is mandated by the *Pay Equity Act* to constitute tripartite decision-making panels, the change from full-time to part-time members poses some scheduling challenges, particularly where procedural or non-contentious issues need to be determined by decision on an expedited basis. It is difficult to constitute a panel of three to be available on short notice on an expedited basis to deal with a matter that will occupy less than a full day, especially since most of the members earn a much higher daily rate working elsewhere.

The Tribunal's response to the challenge noted above has been a proactive one. In almost every case, the Presiding Officer or a Deputy Presiding Officer reviews an application when it is filed with the Tribunal and again when pleadings have closed to identify any procedural or case management issues that it appears to raise, and then avails him or herself of the authority under the *Statutory Powers Procedure Act* to sit as a panel of one to issue a decision directing the parties as to how to proceed. This is illustrated in a much higher ratio of decisions: hearing dates (48:19) than in 2013/14 (48/50). This early proactive intervention, born of necessity, seems to have contributed to the more expeditious resolution of applications filed with the Tribunal, and it is of course very cost-effective.

I would be remiss if I did not recognize that the new case management system implemented by the Board and utilized for the Tribunal as well has made it much easier for me and for the Deputy Presiding Officers to undertake the kind of case reviews I described above.

Another measure that has contributed to the expeditious resolution of applications filed with the Tribunal is the adoption of a more stringent practice respecting adjournments *sine die*. In many cases parties seek to adjourn because they are hopeful that their pay equity disputes might be resolved by further negotiations or settlement discussions, or might be impacted by ongoing collective bargaining negotiations. In the past such adjournments were routinely granted for a period of 12 months, and were also routinely extended. In 2014-15, the Tribunal began granting initial adjournments *sine die* for a period of 9 months

only, and demanding a rationale for why an extension of that period should be granted whenever it was sought. It is too early to tell for sure, but it appears so far that parties are managing to resolve their issues within the 9-month period as there have been few extension requests.

Although the Tribunal is fortunate that all of its appointees whose terms were set to expire in 2014-15 consented to being re-appointed, retaining and recruiting qualified appointees is a constant concern for the Tribunal. The Pay Equity Act is a very complicated and specialized piece of legislation, and the Tribunal does not have a huge caseload. There is very little opportunity for “on-the-job” learning, and the Tribunal really needs members and Deputy Presiding Officers that can step right into their roles. Anyone who is qualified and has the expertise to do this work can earn much more elsewhere. The 40% discrepancy between the *per diem* rate that the members are paid when they sit on a Tribunal matter as compared to the rate paid to Ontario Labour Relations Board members (some of whom are cross-appointed to the Tribunal) continues to be a source of extreme dissatisfaction. I am working with the Ministry in an effort to resolve this issue.

It has been a satisfying year for the Tribunal, and one in which performance targets were met or exceeded. In large part that is attributable to the support the Tribunal received from the Registrar and staff, and I want to acknowledge and thank them for their efforts. I particularly want to thank Peter Gallus, who retired in the autumn of 2014 after a long and distinguished career in the public service in which he served two lengthy terms as Registrar of the Tribunal. I look forward to 2015-16.



Mary Anne McKellar

A/Chair Pay Equity Hearings Tribunal

Mandate

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 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 Chair (Presiding Officer), a number of Vice-Chairs (Deputy Presiding Officers), and Members, equal in number, representative of employers and employees.

The Tribunal deals exclusively with issues arising under the *Pay Equity Act*. The Tribunal has exclusive jurisdiction to determine all questions of fact or law that arise in any matter 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.

Mission Statement

The purpose of the *Pay Equity Act* 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 goals of the *Pay Equity Act* can best be achieved through the co-operation of employers, bargaining agents and employees. The Tribunal is committed to encouraging settlement between the parties. The Tribunal is also committed to a hearing process that balances the need to be fair, accessible, economical and efficient.

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 Vice-Chairs and Members, the Tribunal Chair, all of the Vice-Chairs and two 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.

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, and common library services.

Names of Appointees and Terms of Appointments

NAME	CROSS-APPOINTED	POSITION	FIRST APPOINTED	TERM EXPIRES
McKellar, Mary Anne	OLRB ⁺	Presiding Officer	August 7, 2013	August 12, 2016
Kelly, Patrick	OLRB ⁺	Deputy Presiding Officer	May 17, 2008	May 16, 2018
Rowan, Caroline	OLRB ⁺ & HRTO [*]	Deputy Presiding Officer	June 2, 2010	June 1, 2019
Burke, Ann		Part-Time Member (Employer)	April 4, 2012	April 3, 2017
Harris, Irene		Part-Time Member (Employee)	December 21, 2012	December 20, 2014
Zabek, Carla		Part-Time Member (Employer)	April 4, 2012	April 3, 2017
Phillips, Carol	OLRB ⁺	Part-Time Member (Employee)	August 15, 2012	August 14, 2014
McManus, Shannon R.B.	OLRB ⁺	Part-Time Member (Employee)	September 11, 2013	September 10, 2015

⁺ Ontario Labour Relations Board

^{*} Human Rights Tribunal of Ontario

Operational Performance

Upon receipt of an application, the Tribunal sends a Confirmation of Filing out 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.

The total caseload for the 2014-2015 fiscal year amounted to 30 cases, which was a combination of 18 pending cases carried over from the previous year plus 12 new applications.

During the 2014-15 fiscal year, the Tribunal disposed of 17 applications, an increase from the previous year. Three applications were granted, two were dismissed, two terminated and ten settled. Thirteen remained pending on March 31, 2015. The disposal rate was 56%, an increase from the previous year of 45%.

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 hearing or pre-hearing conference dates scheduled (45) and held (19) and number of written decisions issued (48) in respect of the active files (30). Even then, of course, there is considerable variation in the complexity of the decisions and the amount of time required to generate the reasons.

With respect to the adjudication of disputes, the Tribunal continues to encourage the parties to resolve their disputes without the need for adjudication. Almost every case that involves more than a single party is scheduled for a Pre-Hearing Conference with the Tribunal Chair or a Vice-Chair 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 meetings to organize and streamline the issues in dispute so that a matter can be adjudicated as efficiently as possible. In addition, parties are increasingly being 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.

The Tribunal has also begun to address the issue of the parties frequently agreeing to extend the time limits for the filing of submissions and/or adjourn set hearing dates. When this occurs, applications remain outstanding for unacceptable periods of time. The Tribunal is attempting to discourage adjournments except where compelling circumstances arise and requires parties to offer substitute dates within 72 hours.

Caseload Statistics

Fiscal Year	Caseload			Disposed of					Pending March 31
	Total	Pending April 1	Received Fiscal Year	Total Disposed	Granted	Dismissed	Terminated	Settled	
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

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.

Financial Performance

In accordance with the Ministry of Labour's Delegation of Financial Authority Framework, financial authority is delegated to the Presiding Officer (Chair) of the Tribunal. The Chair is required to ensure that public funds are used with integrity and honesty. The Tribunal's operating budget is included in the Ministry of Labour'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 \$ 139,100. A cost-sharing of salaries with the Ontario Labour Relations Board is in place.

Each year, the Tribunal verifies through a Certificate of Assurance, that all of its transactions are reflected accurately and completely in the Public Accounts of Ontario, which are the annual financial statements.

All Figures in \$000.0 thousand

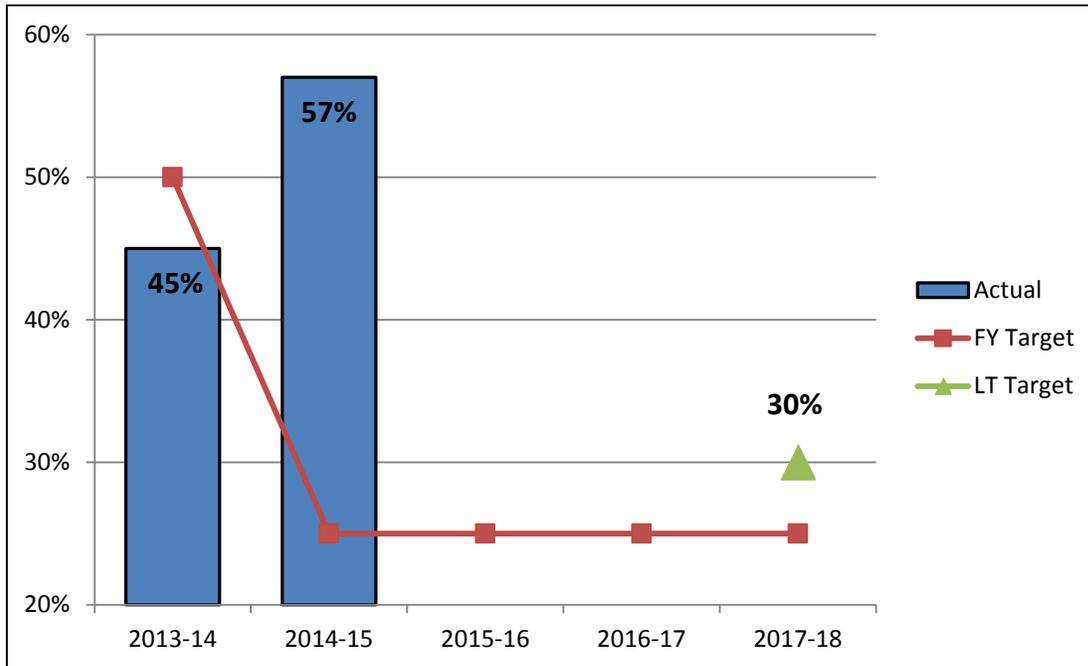
Account	Final Allocation*	Year-end Actual Expenditures**	Variance	% Variance
Salaries & Wages	147.0	139.1	7.9	5.3%
Benefits	40.0	9.6	30.4	76.0%
ODOE:				
Transportation & Communication	15.0	8.7	6.3	42.3%
Services (incl. Lease)	97.8	105.6	(7.8)	-8.0%
Supplies & Equipment	1.0	0.9	0.1	8.6%
Total ODOE	113.8	115.2	(1.4)	-1.2%
GRAND TOTAL	300.8	263.9	36.9	12.3%

* Final Allocation = Printed Estimates+/- TBO, re-alignment of funds by standard account.

** Year-end Actual Expenditures including office lease cost

Performance Measures

The Tribunal's case load 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. The graph measures how much of the Tribunal's total case load is disposed of during the year.



2014-2015 Commitments

- ▶ 25% of cases disposed of during the year.
- ▶ Actual disposal rate 56%

Long-term Target

- ▶ 30% of cases disposed of during the year.

Note: the lower 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.

For More Information

Local: 416-326-7500

Toll-Free: 1-877-339-3335

Hearing Impaired (TTY): 416-212-7036

Fax: 416-326-7531

Hours of Operation: 8:30am – 5:00pm

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