

# **The Pay Equity Hearings Tribunal**



**Annual Report  
2015-2016**

# PEHT Annual Report 2015-2016

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## Message from the Presiding Officer

It is with great pleasure that I present the 2015-16 Annual Report for the Pay Equity Hearings Tribunal.

In this fiscal year, the Tribunal experienced its highest number of applications received and highest number of active cases in more than a decade. Much of this increased activity appears to flow from auditing/monitoring campaigns by the Pay Equity Office, which have resulted in the issuing of a number of orders and subsequent referrals to the Tribunal for enforcement. In some cases, these referrals, in turn, have led to the filing of further applications by parties objecting to the orders sought to be enforced.

We have continued with the practice of the early identification and case management of those files presenting procedural issues on which a single adjudicator (rather than a full panel) can solicit submissions and/or decide. In some cases, where matters are resolved on consent of the parties, their agreements to do so have been acknowledged by Registrar's letter rather than by a decision. Both of these practices have contributed to the more expeditious resolution of files. It bears noting that the shared services the Tribunal receives from the Ontario Labour Relations Board staff and from its file management system MOCHA have made these approaches feasible and successful.

Finally, on the subject of cases and caseload, the Tribunal released its decision in the *Group of Participating Nursing Homes* in January 2016. This case raised the issue of how pay equity is to be maintained where it has been achieved under the proxy methodology of comparison, and also involved a constitutional challenge to the *Pay Equity Act*. It is too soon to tell what impact, if any, this decision may have on the Tribunal's caseload.

The Tribunal was one of the first Ministry of Labour Agencies to have its mandate reviewed in accordance with the Agencies and Appointments Directive. While that mandate review was completed at the end of fiscal 2015-16, the resulting report has not yet been made public. Part of that mandate review considered the issue of the significantly lower part-time per diem rates paid to Tribunal members as compared to their OLRB counterparts, which I had flagged in last year's annual report as a concern in attracting and retaining appointees.

Finally, I want to recognize the contributions of two individual Tribunal members.

Patrick Kelly is an experienced Deputy Presiding Officer with the Tribunal (also cross-appointed as a Vice-Chair to the OLRB) who was appointed Alternate Presiding Officer of the Tribunal, a position for which his adjudicative and agency sector experience, legal skills, and collegiality make him eminently suited. Roslyn McGilvery is also a Vice-Chair with the OLRB, and she was cross-appointed as a Deputy Presiding Officer of the Tribunal in the summer of 2015.

The Tribunal is fortunate to be able to draw on the extensive pay equity knowledge she gained prior to joining the agency sector, when she was employed in a management side law firm that frequently advised employers on pay equity matters and appeared before the Tribunal representing them.



Mary Anne McKellar

Presiding Officer, 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 Presiding Officer, Alternate Presiding Officer, a number of Deputy Presiding Officers and Members, 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 Deputy Presiding Officers and Members, the Tribunal Presiding Officer, Alternate Presiding Officer, all of the Deputy Presiding Officers 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 <sup>+</sup>	Presiding Officer	August 7, 2013	August 12, 2016
McKellar, Mary Anne	OLRB <sup>+</sup>	Deputy Presiding Officer	September 1, 1992	January 23, 2017
Kelly, Patrick	OLRB <sup>+</sup>	Alternate Presiding Officer	July 22, 2015	May 16, 2018
Kelly, Patrick	OLRB <sup>+</sup>	Deputy Presiding Officer	May 17, 2008	May 16, 2018
Rowan, Caroline	OLRB <sup>+</sup> & HRT <sup>O*</sup>	Deputy Presiding Officer	June 2, 2010	September 16, 2019
McGilvery, Roslyn	OLRB <sup>+</sup>	Deputy Presiding Officer	August 25, 2015	August 24, 2017
Burke, Ann		Part-Time Member (Employer)	April 4, 2012	April 3, 2017
Harris, Irene		Part-Time Member (Employee)	December 21, 2012	December 20, 2017
Zabek, Carla		Part-Time Member (Employer)	April 4, 2012	April 3, 2017
Phillips, Carol	OLRB <sup>+</sup>	Part-Time Member (Employee)	August 15, 2012	September 16, 2017
McManus, Shannon R.B.	OLRB <sup>+</sup>	Part-Time Member (Employee)	September 11, 2013	September 10, 2018

<sup>+</sup> Ontario Labour Relations Board

<sup>\*</sup> 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 2015-2016 fiscal year amounted to 45 cases, which was a combination of 13 pending cases carried over from the previous year plus 32 new applications, the highest number of applications received in twelve years.

During the 2015-16 fiscal year, the Tribunal disposed of 21 applications. Five applications were granted, three were dismissed, one terminated and twelve settled; the highest number settled in six years. Twenty-five remained pending on March 31, 2016. As a result of a new case management system introduced during the previous fiscal year, cases which have adjourned sine die, often as a result of a settlement, are not included in the number of cases disposed of until the adjourn sine die period has expired. Those cases now show as pending. The disposal rate was 47%.

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 (23) and held (12) and number of written decisions issued which increased significantly this year (71), in respect of the active files (45). 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 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 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.

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.

## Caseload Statistics

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

### 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 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 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 \$ 175,100. 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

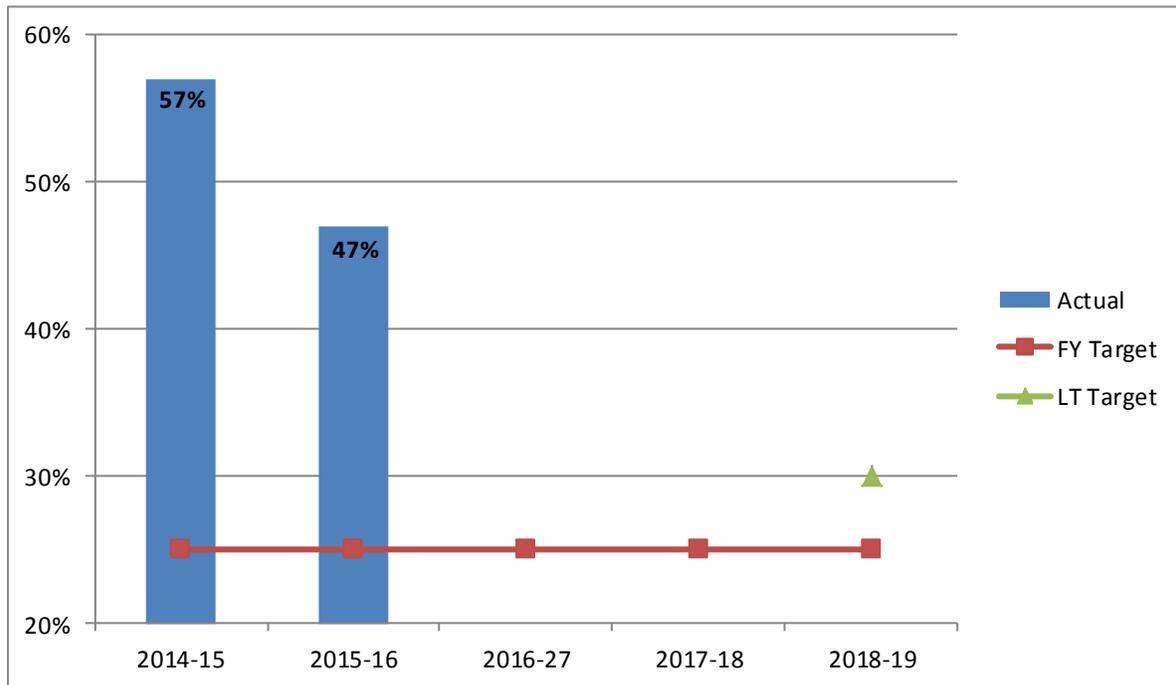
Account	Final Allocation*	Year-end Actual Expenditures**	Variance	% Variance
Salaries & Wages	175.1	158.2	16.9	9.7%
Benefits	39.7	12.6	27.1	68.3%
ODOE:				
Transportation & Communication	15.0	9.2	5.8	38.7%
Services (incl. Lease)	117.5	67.6	49.9	42.5%
Supplies & Equipment	1.0	34.4	(33.4)	-33.4%
<b>Total ODOE</b>	<b>133.5</b>	<b>111.2</b>	<b>22.3</b>	<b>16.7%</b>
<b>GRAND TOTAL</b>	<b>348.3</b>	<b>282.0</b>	<b>66.3</b>	<b>19.0%</b>

\* 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.



### 2015-2016 Commitments

- ▶ 25% of cases disposed of during the year.
- ▶ Actual disposal rate 47%

### 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

**Website:** <http://www.peht.gov.on.ca>

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