

PAY EQUITY HEARINGS TRIBUNAL

BUSINESS PLAN

2025-2028



M. DAVID ROSS – PRESIDING OFFICER

PAY EQUITY HEARINGS TRIBUNAL PEHT BUSINESS PLAN 2025 - 2028

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PAY EQUITY HEARINGS TRIBUNAL BUSINESS PLAN 2025-2028

Mandate and Statutory Authority

Under the *Pay Equity Act*, the Pay Equity Hearings Tribunal (the “Tribunal”) is empowered to hear and decide pay equity disputes. Its decisions are final and conclusive for all purposes, and the Tribunal has exclusive jurisdiction to determine all questions of fact or law that arise in any matter before it.

The Tribunal’s effective delivery of adjudicative services regarding pay equity matters supports fair and harmonious workplaces, enabling employers to attract and retain workers and contributing to a business environment that attracts jobs and investment to Ontario’s economy.

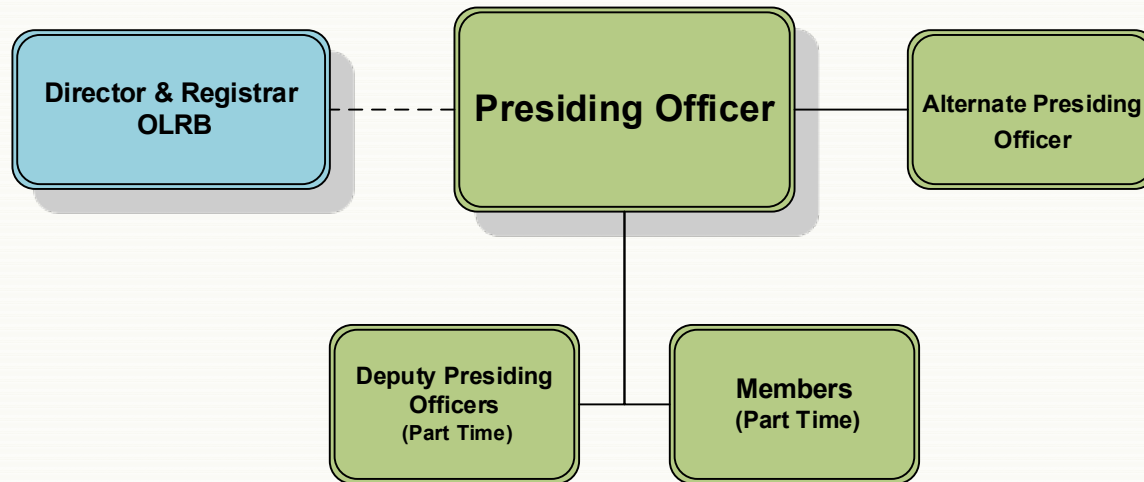
Human Resources – Organization

Support services for the Tribunal are provided by the Ontario Labour Relations Board (OLRB): Office of the Director/Registrar, Solicitors’ Office, Manager of Administration, Mediation Services, case processing, client services and adjudicative services staff. The Tribunal does not have its own staff.

The Tribunal is comprised entirely of Order-in-Council (OIC) appointments including the full-time Presiding Officer, part-time Alternate Presiding Officer/Deputy Presiding Officer (also a part-time Vice-Chair of the OLRB) and part-time Deputy Presiding Officer (who holds part-time appointments on the Canada Industrial Relations Board and the Canadian Human Rights Tribunal). There are also currently five part-time Members, one of whom is a part-time Member of the OLRB and two of whom are part-time Members of the Workplace Safety and Insurance Tribunal (“WSIAT”). One employee/trade union side Member vacancy will be filled in 2025.

The Presiding Officer’s salary is paid by the Tribunal with cost-sharing for any work done at the OLRB. (The Presiding Officer is currently completing OLRB matters on which he is seized as a former OLRB Vice-Chair). Part-time Members, the Alternate Presiding Officer/Deputy Presiding Officer and Deputy Presiding Officer are paid a per diem rate.

PAY EQUITY HEARINGS TRIBUNAL ORGANIZATIONAL CHART



Overview of Agency Programs & Key Activities:

The Tribunal has two key activities:

- Adjudication
- Mediation

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. The Tribunal holds hearings during which evidence is presented, and oral arguments are made. In appropriate circumstances, matters may be decided based on written submissions only. Pay equity issues are often complex and hearings can take multiple hearing dates 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 look for 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 resolve disputes and reduce hearing time, saving both parties, and the Tribunal, time and expense. Outside of the pre-hearing process contemplated by the Act, a mediator may be assigned to assist the parties in resolving all or some of the issues in a case. Further, the Tribunal panel assigned to hear a case, with the consent of the parties, sometimes engages in a form of mediation/adjudication which may involve the entire panel, or the Members only.

Administration

The Tribunal receives administrative and other support from the Ontario Labour Relations Board. The OLRB provides a range of services including: case processing, scheduling, finance, human resource functions, mediation, information technology services, library, research and legal services.

The benefits of the OLRB providing these services include: an efficient use of resources, consistency of process and outcome and the ability to maintain and monitor quality control practices. These objectives are accomplished while at the same time safeguarding the particular and unique expertise of the Tribunal. Shared service agreements are in place among the Tribunal, OLRB and WSIAT for printing/copying and mailroom services. In addition, the three tribunals share the cost of the Ontario Workplace Tribunals Library.

Communication

The Tribunal will continue to communicate with its community and stakeholders through the posting of its annual reports, its website, decisions as posted on the Canlii database, consultation papers where appropriate and participation at conferences.

Environmental Scan

External Scan:

The Tribunal expects to continue to receive a caseload that is largely focused on unionized broader public-sector employers. The Presiding Officer, Alternate Presiding Officer and Deputy Officer possess expertise in collective bargaining, broader public-sector restructuring, and labour relations generally, which makes them well-qualified to hear these disputes.

Several applications filed with the Tribunal involve how an employer, which established its pay equity plan using the proxy method, complies with its obligation to maintain pay equity. The Divisional Court overturned a key finding in the Tribunal's decision and directed the Tribunal to prescribe a procedure that does not yet exist but will apply to all 55 classes of "seeking employers" and "potential proxy employees" as set out in Ontario Regulation 396/93. The Court of Appeal upheld the Divisional Court's decision that the proxy method must apply to pay equity maintenance. It is expected that this will result in a substantial (possibly exponential) increase in the number of applications filed with the Pay Equity Commission-Review Services and, as a result, an increase in the number of applications to the Tribunal to review resulting orders.

The Tribunal's forms, in English and French, allow for electronic submission of applications, responses, correspondence and other documents using the OLRB's e-filing system and provide greater access to the Tribunal's processes. The Tribunal's website is modernized to enhance access to services and information. An electronic summons to witness is available for parties to use. Hearings and pre-hearing conferences continue to take place by video as the default method. No in-person hearings have been held since early 2020. Requests for in-person hearings will be considered on a case-by-case basis, and access to justice is a primary consideration in these determinations.

The Tribunal's experience is that the change from paper files and in-person hearings to an electronic format has been incredibly efficient and successful. However, the Tribunal will continue to monitor and respond to new challenges and changes in conditions in order to continue to provide service excellence to meet the diverse needs of its stakeholders. New processes may be developed and updates to the community, adjudicators and OLRB staff will be provided. All OICs have been issued laptops to allow for electronic access to files and the ability to conduct video hearings. At this time, OLRB staff work in the office on a hybrid basis.

The Tribunal is subject to the *Tribunal Adjudicative Records Act, 2019* ("TARA") under which it may receive requests for access to and copies of documents within its files.

Internal Scan:

Given the relatively small number of cases currently heard by the Tribunal each year, the Tribunal uses part-time Deputy Presiding Officers and Members and employs single Presiding Officer decision-making wherever permitted under the *Statutory Powers Procedure Act*, both of which have proven to be cost effective.

The OLRB's electronic filing, case management and Sharepoint systems include the Tribunal's forms and files and provide greater efficiency in case processing. The Tribunal's modernized website is updated and maintained by the OLRB's IT staff. Improvements to the OLRB's electronic case management system, which includes the Tribunal's cases, continue as required to ensure efficient delivery of services including improvements to enhance the ability to report on performance. A major overhaul of the case management system, now over 10 years old, may be required in the near future. Significant costs have historically been incurred when developing case management systems and the Tribunal expects to take part in cost-sharing.

The Tribunal expects to benefit from the OLRB's recent upgrade to Power BI which provides access to detailed data in real time. The OLRB continues to migrate data as part of a multi-year project to build the statistical data and reporting capabilities on the Power BI platform for the OLRB as well as the PEHT.

Inventory of Uses of Artificial Intelligence In accordance with the disclosure obligation under s.6.3 of the Responsible Use of AI Directive (December 1, 2024), the Tribunal does not use artificial intelligence in the development or delivery of, or decision-making for any Tribunal-specific policy, program, or service.

Should numerous requests be filed under *TARA* for access to the Tribunal's files and the documents held therein, a pressure may arise due to the time-consuming and legal nature of the work which falls necessarily to the OLRB solicitors.

Strategic Plan Implementation and Risk Assessment

The Tribunal will hear and decide cases through an accessible and fair hearing process, timely scheduling of hearings, and timely and thoughtful decisions. The Tribunal has conducted hearings by video since early 2020. It is anticipated that video hearings will continue to be held as this increases access, eliminates travel time, especially where a three-member panel hears an application, and minimizes the associated costs. The Tribunal has found electronic hearings to be more efficient and able to successfully manage the large volume of documents which form part of most files. Use of e-filing is expected to continue while other methods still remain available for accessibility to the Tribunal's processes.

The Tribunal will continue to employ a case management strategy that utilizes its adjudicative and mediation resources to resolve the issues between the parties. Where cases do not settle, the Tribunal will work on finding ways to streamline any hearings through case management tools such as agreed statements of facts, witness statements and other methods. In addition, the parties are expressly asked on the forms whether they consent to the use of a single adjudicator rather than a panel. These strategies assist in improving the hearing process by allowing for hearings based on written submissions or more efficient scheduling. The *Pay Equity Act* prescribes that a three-person panel constitutes a quorum of the Tribunal. While the *Statutory Powers Procedure Act* permits one person to constitute a quorum of the Tribunal when dealing with the merits of a case, this is conditional upon consent of the parties.

In addition to the Presiding Officer, there is currently an Alternate Presiding Officer/Deputy Presiding Officer who also holds a part-time Vice-Chair appointment on the OLRB and one part-time Deputy Presiding Officer, who holds part-time appointments on the Canada Industrial Relations Board and Canadian Human Rights Tribunal. Three part-time Members are representative of employers, two part-time Members are representative of employees and the Tribunal expects to recruit a third Member in 2025. Two Members also hold part-time appointments with WSIAT and one is appointed on a part-time basis to the OLRB. Pay equity is a very complicated and specialized area. The specialized area, current smaller case load, the 10 year rule for appointments and low compensation rate make it extremely difficult to attract qualified part-time Members and Deputy Presiding Officers to the Tribunal, and even more difficult to secure a panel for the number of days required to hear a lengthy case. Recent court decisions may cause a significant caseload for the Tribunal in future. Appointing Deputy Presiding Officers and Members from the OLRB and WSIAT has been helpful in the past in easing this pressure and the Tribunal will continue to pursue this measure where possible, as well as posting positions when they are vacant. The Tribunal will continue to raise the issue of compensation and an exemption from the 10 year rule may be requested where appropriate.

The statutory requirement for a panel of three to hear cases, the factors described above and the difficulty in making cross-appointments and/or part-time appointments constitute a moderate operational risk as well as some risk to stakeholder/public perception of the Tribunal's performance and reputation if cases cannot be scheduled in a timely manner because of availability. The Tribunal may engage support from the Ministry for timely approvals of OICs. A statutory amendment that permits hearings to be conducted by a sole presiding officer or deputy presiding officer, consistent with what is found in the *Labour Relations Act* and as recommended in the seven year review conducted in 1998, would mitigate this risk entirely.

The Tribunal also regularly reviews its fiscal targets, caseload and times for processing, considers the need to case manage or streamline processes and sets performance measures. It also considers investments in case management technologies and other electronic systems to ensure cost effective and time saving solutions. These strategies and others ensure that the risk of stakeholder perceptions regarding performance or legislated targets not being met do not damage the Tribunal's reputation, result in political risk to the Ministry or legislated timelines not being met by the Tribunal. As OICs may be part or full-time with appointments to other tribunals and varying lengths of tenure, the degree to which they are aware of the restrictions and responsibilities inherent in being an OIC appointee can vary. The Tribunal communicates with its OIC complement to ensure they are aware of all policies and directives. A database of potential conflicts is maintained and the case management system prevents such identified conflicts from occurring. OICs are encouraged to raise any questions they have with their Ethics Executive. They receive an annual memo from the Presiding Officer reminding them of their obligations under the *Public Service of Ontario Act, 2006* and ATAGAA to report suspected conflicts of interest.

There is some risk to efficiency associated with the possibility that a party will seek to participate in a hearing in French. Consecutive oral interpretation doubles the hearing time and normal hearing costs, even without factoring in the interpreter and translation fees. Given the length of hearing time involved, the additional costs could be significant and a pressure on the Tribunal's financial resources. The Tribunal has mitigated against this risk for some time by ensuring that it has appointed an Alternate Presiding Officer/Deputy Presiding Officer who is bilingual and can conduct hearings in both English and French. However, this will continue to be a risk in future recruitment efforts.

The number of applications filed with the Tribunal may not be an accurate predictor of hearing resources required. The small sample size, the complex fact-specific nature of the applications and the varied experience of counsel and self-represented applicants make it almost meaningless to speak of an "average length of hearing".

TARA may create demands for access to the Tribunal's files and the documents contained therein. Considerable time would be spent by the Presiding Officer and Deputy Presiding Officer, as well as solicitors and staff, in reviewing files, documents and submissions in detail and determining whether documents will be released. The Tribunal has published policies on its website to guide the public on how to make requests and explain the Tribunal's process. If necessary, more administrative or template decisions may be used to alleviate pressure on staff, solicitors and adjudicators. A request for an additional resource would be made, if necessary. Risk is anticipated to remain low at this time.

Service Delivery

All information technology support, including updates and maintenance of the Tribunal's website, is provided by the OLRB. The OLRB utilizes an e-filing system which includes the Tribunal, its forms and submissions. All forms may now be completed online and electronically filed, with attachments. Other methods of filing such as courier and hand-delivery remain available for accessibility. Members of the public may attend video hearings on request. An access terminal is also available at the Tribunal's offices to permit those without access to technology to participate in a zoom hearing or mediation. Should an in-person be held in future, the OLRB hearing rooms have been equipped with new audio capabilities for the hearing impaired and to allow for witnesses or parties to attend remotely and documents to be shared electronically.

The Tribunal's modernized website makes all forms, Information Bulletins and Rules of Practice available and provides assistance and access to its community.

Decisions of the Tribunal are posted on Canlii, a public database, and are also held at the Ontario Workplace Tribunals Library. As such, they are fully available to the public.

Appendix A – Financial: PEHT Multi-Year from 2025 – 2028

| FY 2025-26 (\$000) | | | | | | | | | | | |
|------------------------------|------------|------------------|-------------|-----------------|--------------|-------------------|--------------|------------------|--------------|------------|--------------|
| Program/Region | FTE | Salaries & Wages | Benefits | Transp. & Comm. | Services | Supplies & Equip. | Total ODOE | Transfer Payment | Sub-Total | Recoveries | TOTAL |
| Pay Equity Hearings Tribunal | 1.0 | 275.8 | 39.7 | 14.9 | 134.9 | 1.0 | 150.8 | - | 466.3 | 0.0 | 466.3 |
| Program Sub-total | 1.0 | 275.8 | 39.7 | 14.9 | 134.9 | 1.0 | 150.8 | - | 466.3 | 0.0 | 466.3 |
| Lease | | | | | | | - | | - | | - |
| Grand Total | 1.0 | 275.8 | 39.7 | 14.9 | 134.9 | 1.0 | 150.8 | - | 466.3 | 0.0 | 466.3 |

| FY 2026-27 (\$000) | | | | | | | | | | | |
|------------------------------|------------|------------------|-------------|-----------------|--------------|-------------------|--------------|------------------|--------------|------------|--------------|
| Program/Region | FTE | Salaries & Wages | Benefits | Transp. & Comm. | Services | Supplies & Equip. | Total ODOE | Transfer Payment | Sub-Total | Recoveries | TOTAL |
| Pay Equity Hearings Tribunal | 1.0 | 275.8 | 39.7 | 14.9 | 134.9 | 1.0 | 150.8 | - | 466.3 | 0.0 | 466.3 |
| Program Sub-total | 1.0 | 275.8 | 39.7 | 14.9 | 134.9 | 1.0 | 150.8 | - | 466.3 | 0.0 | 466.3 |
| Lease | | | | | | | - | | - | | - |
| Grand Total | 1.0 | 275.8 | 39.7 | 14.9 | 134.9 | 1.0 | 150.8 | - | 466.3 | 0.0 | 466.3 |

| FY 2027-28 (\$000) | | | | | | | | | | | |
|------------------------------|------------|------------------|-------------|-----------------|--------------|-------------------|--------------|------------------|--------------|------------|--------------|
| Program/Region | FTE | Salaries & Wages | Benefits | Transp. & Comm. | Services | Supplies & Equip. | Total ODOE | Transfer Payment | Sub-Total | Recoveries | TOTAL |
| Pay Equity Hearings Tribunal | 1.0 | 275.8 | 39.7 | 14.9 | 134.9 | 1.0 | 150.8 | - | 466.3 | 0.0 | 466.3 |
| Program Sub-total | 1.0 | 275.8 | 39.7 | 14.9 | 134.9 | 1.0 | 150.8 | - | 466.3 | 0.0 | 466.3 |
| Lease | | | | | | | - | | - | | - |
| Grand Total | 1.0 | 275.8 | 39.7 | 14.9 | 134.9 | 1.0 | 150.8 | - | 466.3 | 0.0 | 466.3 |

*Multi-year numbers are based on 2025-26 Preliminary Planning Base budget allotments, which reflect the 2024-25 SPP approvals. As such, these numbers do not include realignments or funding requests made through 2025-26 SPP submissions.

Appendix B – Performance Measures: PEHT 2025 – 2028

The Tribunal's goal is to provide efficient, fair, accessible and modernized adjudicative services in a fiscally responsible manner. In addition to closely monitoring files and processes internally, it uses performance measures and targets to track and focus on outcomes. It is relevant to note again, in the context of performance measures, that the Tribunal relies solely on the OLRB's support, administrative and IT staff. Its part-time Alternative Presiding Officer/Deputy Presiding Officer, Deputy Presiding Officer, as well as a number of part-time Members are currently also appointed to other tribunals on a part-time basis. Performance measures and targets are revised or created in the event of legislative changes or changes to the Tribunal's operations. Results are published in the Tribunal's annual reports.

The OLRB's electronic case management system, which includes Tribunal files, does not currently have the capacity to automatically create every data report requested. However, given the Tribunal's current small caseload, some data can be obtained manually by reviewing each file. This approach, however, will not be possible in the event that the Tribunal's caseload increases significantly. The Tribunal may continue to undertake further analysis of current and potential data as well as considering possible changes to the case management system in this regard so that a more refined and evolved analysis can be published in future business plans and annual reports. To this end, the OLRB recently completed a project to upgrade to PowerBI, which provides interactive business intelligence capabilities and access to detailed data in real time. The OLRB continues to migrate data as part of a multi-year project to build the statistical data and reporting capabilities on the Power BI platform in order to enhance the ability to retrieve data and report on performance. This will enhance the Tribunal's ability to retrieve data and reports on its performance.

Case processing: The Tribunal efficiently processes cases when they are filed. In seventy-five percent of new applications, filed in accordance with the Rules of Practice, the Tribunal's goal is to take no more than two business days to process and open a new file from the date the application is filed in accordance with the Rules of Practice, and no more than four business days to confirm the filing of the application to the parties. In addition, the Tribunal's goal is to take no longer than two business days to close a file once the final disposition has been made, and the reconsideration period has expired, in seventy-five percent of its cases.

File review: The Tribunal's goal is for the Presiding Officer, Alternate Presiding Officer or a Deputy Presiding Officer, to review new files within two weeks of the response filing date in ninety percent of cases. The purpose of that review is to determine what measures can be taken at the outset of a file to ensure it is addressed in an efficient manner. For example, the Tribunal will consider whether the case could be disposed of through written submissions, a mediator should be assigned, preliminary issues can be decided in advance of a hearing or procedural steps should be directed before the first hearing date.

Pre-Hearing Conferences: The Tribunal's goal is that at least fifty percent of its cases will have one or more issues resolved at a pre-hearing conference, where one is held. Achieving this performance measure should reduce the number of hearing dates. Due to the nature of the cases before the Tribunal, which have already been through a mediation process at Pay Equity Commission Review Services prior to the application being filed at the Tribunal, it would be difficult to set an expected case settlement rate for pre-hearing conferences or mediations.

Percent of Cases Disposed of During the Year: 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. Where a matter proceeds to a hearing, almost all have several hearing dates. In general, the same counsel represent the parties in pay equity cases. The scheduling of hearings is further extended by the availability of counsel as well as the availability of Presiding Officers who may be cross-appointed to other Tribunals and part-time Presiding Officers and Members. The Tribunal's commitment in 2025 is for twenty-five percent of its cases to be disposed of during the year. Its long-term commitment is for thirty percent of its cases to be disposed of during the year.