

# **PAY EQUITY HEARINGS TRIBUNAL**



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**PEHT BUSINESS PLAN 2019 - 2022**

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# PAY EQUITY HEARINGS TRIBUNAL BUSINESS PLAN 2019-2022

## Mandate and Statutory Authority

Under the Pay Equity Act, the Pay Equity Hearings 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, contributing to a business environment that attracts jobs and investment to Ontario's economy.

## 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. All of the presiding officers have cross-appointments with at least one other adjudicative agency. The Tribunal holds hearings where evidence is presented and oral arguments are made. Pay equity issues are often complex; hearings can take multiple days to complete. Tribunal decisions are issued in writing and posted on accessible websites ([www.canlii.org](http://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 consultation 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 reduce hearing time, saving both parties and the Tribunal time and expense.

Outside of the pre-hearing process contemplated by the Act, 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 Board provides a range of services including case processing, scheduling, budgeting, human resource functions, information and information technology services, library and research, and legal services. The benefits of the Board 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.

## 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 officers, all of whom are cross-appointed to the OLRB, possess expertise in collective bargaining, broader public-sector restructuring, and labour relations generally, which makes them well-qualified to hear these disputes.
- The Tribunal has received an increasing number of applications by the Pay Equity Office, seeking to enforce the Orders issued by Review Officers.
- Several cases filed recently involve disputes arising out of the negotiation of amended pay equity plans where workplace circumstances have changed since the original plan was posted. Given some of those original pay equity plans were posted more than twenty years ago, there exists a significant potential for more disputes of this nature to be raised with the Tribunal.
- Several applications filed with the Tribunal relate to maintenance issues relating to proxy pay equity plans, but they have been adjourned at the request of the parties pending the outcome of a judicial review proceeding (scheduled to be heard in February 2019). This is in respect of a tribunal decision involving two separate unions and more than 200 employers. The outcome of the judicial review proceeding has the potential to significantly impact the Tribunal's caseload, not merely in terms of number of cases, but because the hearing into any of them would likely involve multiple days.

### Internal Scan:

- Given the relatively small number of cases heard by the Tribunal each year, the Tribunal uses part-time 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 Ontario Labour Relations Board recently implemented an e-filing system which includes the PEHT. The Tribunal's Forms and Rules were modernized as part of the e-filing project and parties are now able to electronically submit forms, documents and other material which allows for greater accessibility to

the PEHT. Subject to expenditure restraints, the PEHT website will be reviewed and modernized in 2019/20 to better assist its community and to meet AODA requirements as of 2021.

## 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 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 hearing that has to take place through case management tools: agreed statement of facts, witness “will say” statements, etc.

The Act prescribes that a three person panel constitutes a quorum of the Tribunal. There are currently four part-time members representative of employers and three part-time members representative of employees. The Tribunal’s ability to constitute a quorum, either at all, or in a timely fashion, is seriously impacted by the illness or other unavailability of a member, or where a member has a conflict of interest. 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.

Pay equity is a very complicated and specialized area. The specialized area and low case load make it difficult to attract part-time members to the Tribunal, and even more difficult to secure a panel for the number of days required to hear a lengthy case. Cross-appointing members from the OLRB has been helpful in easing this pressure. All of the Tribunal presiding officers or neutrals are cross-appointed to the OLRB and are paid a full-time salary so there are no anticipated difficulties with ensuring their availability for hearings.

There is some risk associated with the possibility that a party seeks 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 Tribunal hearings, the additional costs could be significant and a pressure on the Tribunal’s financial resources.

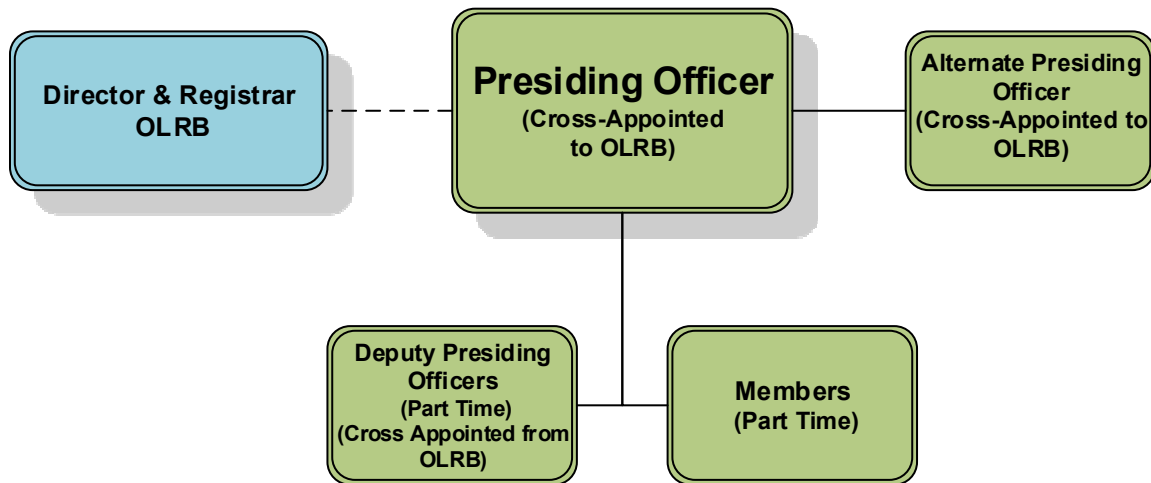
The number of applications filed with the Tribunal may not be an accurate predictor of hearing resources required. Due to the small sample size and the considerable variation in hearing time required to dispose of matters, it is almost meaningless to speak of an “average length of hearing”.

## Key Activities with Stakeholders

The Tribunal will communicate with its community of client/ stakeholder groups by outreach sessions and applicable conferences and seminars.

## Human Resources – Organization

Support services for the Tribunal are provided by the OLRB: Office of the Director/Registrar, Solicitors Office, Manager of Administration, Mediation Services, case processing, client services and adjudicative services staff. The Tribunal is comprised entirely of Order-in-Council (OIC) appointments including the Presiding Officer (cross appointed to the OLRB), the alternate Presiding Officer and two part-time Deputy Presiding Officers (all cross-appointed to the OLRB), and seven part-time Members (four of whom are cross-appointed to the OLRB). Full time OICs are paid an annual salary with the cost shared between the Tribunals to which they are appointed. The part-time members are paid a per diem rate.



## Information Technology Plan

All information technology support, including maintenance of the Tribunal web site, is provided by the Board. In addition, the Board recently implemented an e-filing system which included the Tribunal and its forms.

## Communications Plan

The Tribunal will continue to communicate with its community of users through the use of its website, decisions as posted on the CANLII database and regular participation in conferences and committees.

## Appendix A – Financial: PEHT Multi-Year from 2019 - 2022

FY 2019/20										
Program/Region	FTE	Salaries & Wages	Benefits	Transp. & Comm.	Services	Supplies & Eqpmt.	Total ODOE	Sub-Total	Recoveries	TOTAL
Pay Equity Hearings Tribunal	2.0	275.1	39.7	15.0	135.6	1.0	151.6	466.4		466.4
							-			
Program Sub-total	2.0	275.1	39.7	15.0	135.6	1.0	151.6	466.4	0.0	466.4
Lease					31.7		31.7	31.7		31.7
<b>Grand Total</b>	<b>2.0</b>	<b>275.1</b>	<b>39.7</b>	<b>15.0</b>	<b>167.3</b>	<b>1.0</b>	<b>183.3</b>	<b>498.1</b>	<b>0.0</b>	<b>498.1</b>
FY 2020-21 (\$000)										
Program/Region	FTE	Salaries & Wages	Benefits	Transp. & Comm.	Services	Supplies & Eqpmt.	Total ODOE	Sub-Total	Recoveries	TOTAL
Pay Equity Hearings Tribunal	2.0	275.1	39.7	15.0	135.5	1.0	151.5	466.3		466.3
							-			
Program Sub-total	2.0	275.1	39.7	15.0	135.5	1.0	151.5	466.3	0.0	466.3
Lease					31.7		31.7	31.7		31.7
<b>Grand Total</b>	<b>2.0</b>	<b>275.1</b>	<b>39.7</b>	<b>15.0</b>	<b>167.2</b>	<b>1.0</b>	<b>183.2</b>	<b>498.0</b>	<b>0.0</b>	<b>498.0</b>
FY 2021-22 (\$000)										
Program/Region	FTE	Salaries & Wages	Benefits	Transp. & Comm.	Services	Supplies & Eqpmt.	Total ODOE	Sub-Total	Recoveries	TOTAL
Pay Equity Hearings Tribunal	2.0	275.1	39.7	15.0	135.5	1.0	151.5	466.3		466.3
							-			
Program Sub-total	2.0	275.1	39.7	15.0	135.5	1.0	151.5	466.3	0.0	466.3
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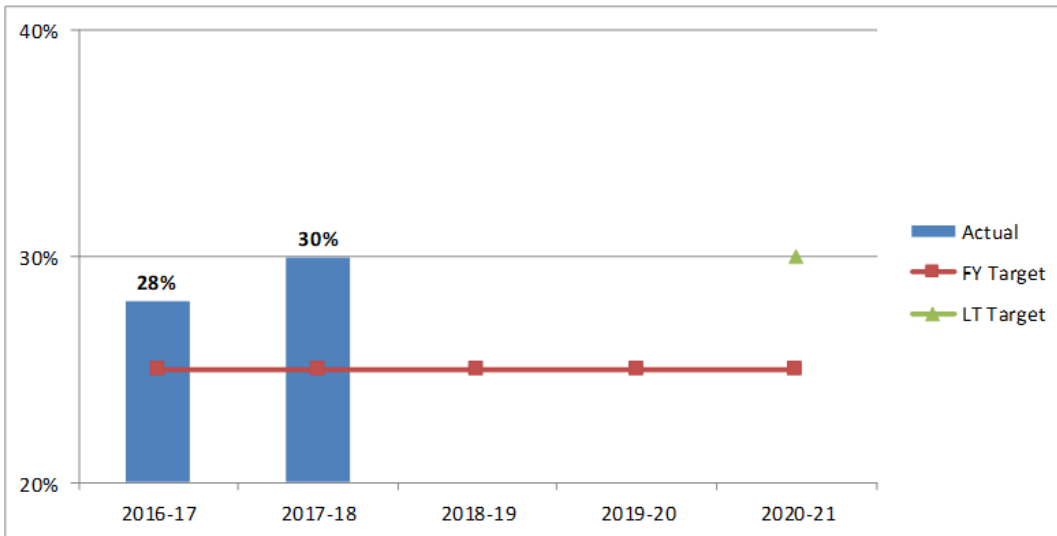
**2019-22 Agency Business Plan  
Baseline by Compensation Group  
Multi-year FTE Cap**

Agency: [Pay Equity Hearings Tribunal](#)

Compensation Group	2019-20						2020-21						2021-22					
	Regular		Fixed Term		Total		Regular		Fixed Term		Total		Regular		Fixed Term		Total	
	FTEs	Funded Vacancies	FTEs	Funded Vacancies	FTEs	Funded Vacancies	FTEs	Funded Vacancies	FTEs	Funded Vacancies	FTEs	Funded Vacancies	FTEs	Funded Vacancies	FTEs	Funded Vacancies	FTEs	Funded Vacancies
SMG / ITX					0.00	0.00					0.00	0.00					0.00	0.00
MCP					0.00	0.00					0.00	0.00					0.00	0.00
Excluded					0.00	0.00					0.00	0.00					0.00	0.00
OPSEU					0.00	0.00					0.00	0.00					0.00	0.00
AMAPCEO					0.00	0.00					0.00	0.00					0.00	0.00
PEGO					0.00	0.00					0.00	0.00					0.00	0.00
ALOC					0.00	0.00					0.00	0.00					0.00	0.00
OCAA					0.00	0.00					0.00	0.00					0.00	0.00
PSAT					0.00	0.00					0.00	0.00					0.00	0.00
AOPDPS					0.00	0.00					0.00	0.00					0.00	0.00
OPPA					0.00	0.00					0.00	0.00					0.00	0.00
Minister's Staff					0.00	0.00					0.00	0.00					0.00	0.00
OIC	2.00	2.00			2.00	2.00	2.00	2.00			2.00	2.00	2.00	2.00			2.00	2.00
To be Determined					0.00	0.00					0.00	0.00					0.00	0.00
Students					0.00	0.00					0.00	0.00					0.00	0.00
<b>Total</b>	<b>2.00</b>	<b>2.00</b>	<b>0.00</b>	<b>0.00</b>	<b>2.00</b>	<b>2.00</b>	<b>2.00</b>	<b>2.00</b>	<b>0.00</b>	<b>0.00</b>	<b>2.00</b>	<b>2.00</b>	<b>2.00</b>	<b>2.00</b>	<b>0.00</b>	<b>0.00</b>	<b>2.00</b>	<b>2.00</b>
		<b>TOTAL with Funded Vacancies</b>				<b>2.00</b>		<b>TOTAL with Funded Vacancies</b>				<b>2.00</b>		<b>TOTAL with Funded Vacancies</b>				<b>2.00</b>

## Appendix C – Performance Measures (Public): PEHT 2019 - 2022

### Percent of cases disposed of during the year.



#### 2019 Commitments

- ▶ 25% of cases disposed of during the year.

#### Long-term Target

- ▶ 35% of cases disposed of during the year.

#### What does the graph show?

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

Note: Almost all cases are decided only after lengthy hearings. In general, the same counsel represents the parties in pay equity cases and the scheduling of hearings is further extended by the availability of counsel as well as presiding officers who are cross-appointed to other Tribunals.