

PAY EQUITY HEARINGS TRIBUNAL

BUSINESS PLAN

2021-2024



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PAY EQUITY HEARINGS TRIBUNAL PEHT BUSINESS PLAN 2021 - 2024

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PAY EQUITY HEARINGS TRIBUNAL BUSINESS PLAN 2021-2024

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 and contributing to a business environment that attracts jobs and investment to Ontario's economy.

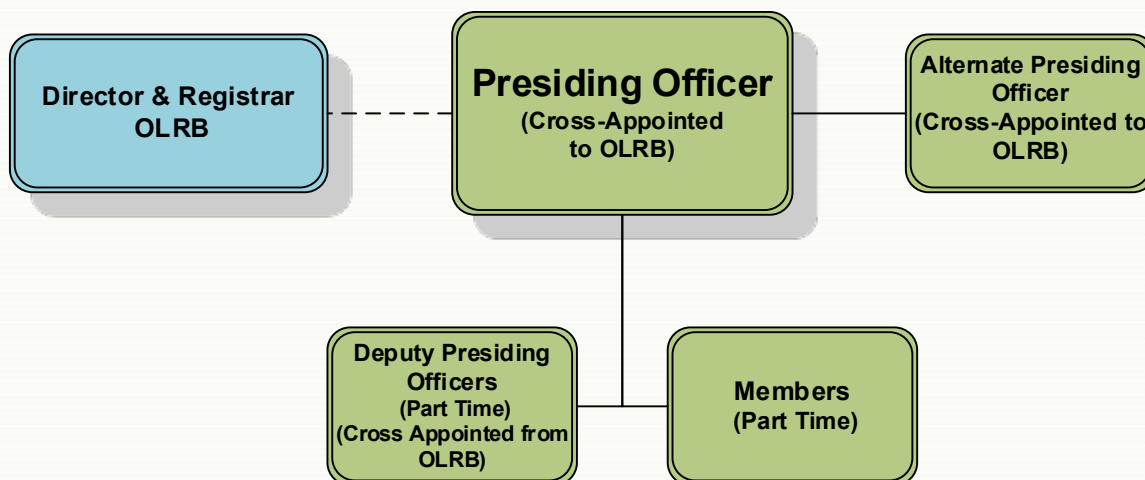
Human Resources – Organization

Support services for the Tribunal are provided by the Ontario Labour Relations Board: 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), Alternate Presiding Officer, Deputy Presiding Officers (two are cross-appointed on a part-time basis from the OLRB and one position is currently vacant) and seven part-time Members (five of whom are cross-appointed from the OLRB and two of whom are cross-appointed from the Workplace Safety and Insurance Tribunal where they are also part-time OICs).

Full time OICs are paid an annual salary with the cost shared between the Tribunals to which they are appointed. Part-time members 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. 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. Where the parties consent, matters may be decided based on written submissions only. 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). 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. Shared service agreements are in place with the 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 officers, all of whom are cross-appointed from the OLRB, possess expertise in collective bargaining, broader public-sector restructuring, and labour relations generally, which makes them well-qualified to hear these disputes.

In recent years, 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. There is a potential for an increase in applications in years where employers are bound by compensation restraint legislation as pay equity adjustments made pursuant to the *Pay Equity Act* are exempt.

Several applications filed with the Tribunal involve how an employer that established its pay equity plan using the proxy method complies with its obligation to maintain pay equity. Several applications have been adjourned at the request of the parties pending the outcome of a judicial review proceeding. 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 parties to the proceeding were granted leave to the Court of Appeal. That appeal was heard before a five-judge panel in October 2020. The Court of Appeal's decision is under reserve. If the Divisional Court's decision is upheld, it is expected that a substantial (possibly exponential) increase to the number of applications to review services will be filed with the Pay Equity Commission, and as a result, an increase in the number of applications to review those orders.

In recent years, the Tribunal's forms, in English and French, were modernized to allow for electronic submission of forms and other documents, using the OLRB's new e-filing system, and provide greater accessibility to the Tribunal's processes. Other methods of filing were still available such as fax, mail and courier. Improvements to the OLRB's modernized electronic case management system, which includes PEHT cases, continue as required to ensure efficient delivery of services including improvements to enhance the ability to report on performance. A project to modernize the PEHT website is currently underway to provide greater access to its services and information. As a result of the recent technological improvements outlined above, the Tribunal was able to respond quickly to the pandemic to ensure continued access to administrative justice. The Tribunal has remained open throughout the pandemic to date as all forms, documents and submissions are filed using the electronic filing system and hearings have continued virtually.

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. The electronic filing system ensured the Tribunal was able to remain open and continued to operate throughout the pandemic to date. The PEHT website is currently being modernized in 2020/21 to better assist its community and to provide greater accessibility. The project was slightly delayed due to the challenges presented by the pandemic but is now underway and expected completion is early 2021.

As noted above, the OLRB provides administrative and IT support and facilities for the PEHT. In March 2020, the OLRB was advised that all staff were to be sent home to work remotely and that the mailroom shared with the Tribunal would be closed. The Tribunal notified its community that electronic filing of all applications, responses, correspondence and other material would now be mandatory. Hearings would now be conducted by video or teleconference where appropriate. The OLRB also then worked to ensure that its premises, which are used by the Tribunal, were equipped to be safe for a limited number of in-person hearings and/or the return of staff where appropriate or required in the future. An assessment was conducted by the Public Services Health and Safety Association and the required equipment, supplies and signage and PPE were procured to equip a limited number of hearing rooms as well as the internal administrative floors. Protocols, policies and updates were provided to the community and to all staff and adjudicators. Throughout the pandemic, the Tribunal has responded to new challenges and changes in conditions by developing new processes and providing regular updates to its community, staff and adjudicators. The availability upon request of in-person hearings has been revised a number of times during the pandemic as the situation has changed. No in-person hearings have taken place yet during the pandemic but parties may write to the Tribunal to request an alternative to video hearing which will be considered on a case by case basis.

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 been conducting hearings by video as a result of the continuing pandemic. It is anticipated that video hearings will continue to be held in appropriate cases as it reduces travel time and associated costs and increases access to the Tribunal. However, it is to be noted that the Tribunal's cases are often document-heavy which can make video hearings more difficult and less efficient in some cases and therefore, in-person hearings could be more appropriate. Electronic filing became mandatory during the pandemic and enabled the Tribunal to continue operating. It is anticipated that after the pandemic, greater use of e-filing will be made by the Tribunal's stakeholders based on its success to date.

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. In addition, the parties are expressly asked on the

forms whether they consent to the use of a single adjudicator rather than a panel. This assists in improving the hearing process by allowing for hearings based on written submissions or more efficient scheduling.

The 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 and a part-time Deputy Presiding Officer appointed. Four part-time members are representative of employers and three part-time members representative of employees.

Pay equity is a very complicated and specialized area. The specialized area, low case load and low compensation rate 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 the past in easing this pressure. In order to appoint more members to ease this pressure, the Tribunal has expanded the scope of adjudicative tribunals that it will consider for a cross-appointment in order not to preclude qualified adjudicators who are appointed elsewhere pursuant to OICs from being considered. For example, two part-time members were appointed in 2019 who are also appointed to the Workplace Safety Insurance Appeal Tribunal.

The Tribunal's Presiding Officer is cross-appointed to the OLRB and is paid a full-time salary so there are no anticipated difficulties with ensuring his availability for hearings. There is currently a vacancy for an additional Deputy Presiding Officer. Given the small number of appointments, the vacant deputy presiding officer position, the statutory requirement for a panel of three to hear cases, the low compensation rate and the difficulty in making cross-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.

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 Tribunal has mitigated against this risk by ensuring that it has appointed an Alternate Presiding Officer and Deputy Presiding Officer who are bilingual and can conduct hearings in both English and French.

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".

Service Delivery

All information technology support, including maintenance of the Tribunal's website, is provided by the OLRB. The OLRB recently implemented an e-filing system which included the Tribunal, its forms and submissions. All forms may now be completed online and electronically filed, with attachments, in addition to the other methods permitted under the Tribunal's Rules of Practice. The Tribunal's forms were modernized as part of the e-filing project resulting in a reduction in the number of forms. The Rules of Practice were also updated.

The Tribunal's website makes all forms, Information Bulletins and Rules of Practice available to its community. The Board expects to complete a website modernization project for the Tribunal's website in early 2021 to create greater access and provide more assistance to its community. The project was slightly delayed due to the operational and staffing challenges presented by the pandemic.

During the pandemic, the Tribunal was able to continue to operate by moving to mandatory electronic filing and the use of video hearings. While post-pandemic video hearings may continue to be scheduled in some cases, particularly for pre-hearing consultations, the Tribunal will consider whether a hearing should be done by video hearing or in-person on a case by case basis with consideration to the efficient use of resources in each case. It is anticipated that the Tribunal's stakeholders will make increased use of electronic filing following the pandemic due to its increased acceptance and success to date.

Decisions of the Tribunal are posted on Canlii, a public database, and are also available in the Ontario Workplace Tribunals Library.

Appendix A – Financial: PEHT Multi-Year from 2021- 2024

Standard Account	2021-22 Preliminary Planning Base	2022-23 Preliminary Planning Base	2023-24 Preliminary Planning Base
Salaries & Wages	\$275,100	\$275,100	\$275,100
Benefits	\$39,700	\$39,700	\$39,700
Total SWB	\$314,800	\$314,800	\$314,800
ODOE: Transportation & Communication	\$14,900	\$14,900	\$14,900
Services (Including Lease)	\$135,500	\$135,500	\$135,500
Supplies & Equipment	\$1,000	\$1,000	\$1,000
Total ODOE	\$151,400	\$151,400	\$151,400
Grand Total	\$466,200	\$466,200	\$466,200

**2021-24 Agency Business Plan
Baseline by Compensation Group
Multi-year FTE Cap**

Agency: [Pay Equity Hearings Tribunal](#)

		2021-22						2022-23						2023-24					
Compensation Group	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	
Total	2.00	2.00	0.00	0.00	2.00	2.00	2.00	2.00	0.00	0.00	2.00	2.00	2.00	2.00	0.00	0.00	2.00	2.00	
		TOTAL with Funded Vacancies				2.00		TOTAL with Funded Vacancies				2.00		TOTAL with Funded Vacancies				2.00	

Appendix C – Performance Measures: PEHT 2021 - 2024

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 and its Presiding Officer, Alternative Presiding Officer and Deputy Presiding Officer as well as a number of members are cross-appointed to/from other tribunals. 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.

Presently, the Tribunal's electronic case management system does not 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 any changes necessary 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.

The Tribunal managed to continue its operations during the pandemic despite all OLRB staff being sent home to work remotely. It took time to obtain equipment for staff and adjudicators under the OPS Service Model, the shared mailroom was closed on short notice and the Tribunal faced challenges due to the pandemic which required changes to its policies and processes which could not have been anticipated. Multiple additional steps and processes are required while working remotely and conducting hearings by video which is more difficult in document-heavy cases. In 2020/2021, while meeting all performance measures remained the goal, the achievement of this goal was affected by the staff and technological challenges presented by the pandemic at the beginning of year, and by the ever changing nature and makeup of the applications being filed over the course of the year. It is possible therefore that some or all of the performance targets will not be met for at least 2020/21 entirely due to an unforeseeable pandemic.

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 as required, 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, 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 whether measures can be taken at the outset of a file to address it in an efficient manner. For example, the Tribunal will consider whether the case could be disposed of through written submissions, whether preliminary issues can be decided in advance of an in-person hearing and whether 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 the Pay Equity Commission Review Services prior to the application being filed at the Tribunal, it would be difficult to set an expected settlement rate for prehearing conferences.

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. 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 the availability of presiding officers who are cross-appointed to other Tribunals and part-time presiding officers and members. The Tribunal's commitment for 2021 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.