



PAY EQUITY HEARINGS TRIBUNAL ANNUAL REPORT 2016-2017

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1 PRESIDING OFFICER'S MESSAGE

I am pleased to present the 2016-17 Annual Report for the Pay Equity Hearings Tribunal.

Previously, I had noted that the Tribunal faced recruitment and retention challenges with respect to its part-time appointees because they are drawn from the same pool as Ontario Labour Relations Board appointees but were paid a significantly lower per diem rate. I am extremely pleased to report that parity in per diem rates as between the appointees of the two agencies was finally achieved in 2016-17. I want to acknowledge the support of the Minister of Labour, Deputy Minister and their staff in achieving this result.

The Tribunal endeavours in its Annual Reports to provide meaningful information about its performance. Never has it been more evident than in reporting on 2016-17 activities that a simple summary of applications received, applications pending, and applications disposed of during the year cannot provide that. Such data does not take account of the nature of different applications. In particular, the Tribunal's disposition rate is distorted by the impact of multiple applications relating to the same matter, and by sine die adjournments of matters to facilitate settlement. The result is to create the appearance of an accumulation at year-end of a large number of cases and disputes that does not in fact exist. If 20 applications relating to the same matter are listed together for hearing, a single decision will issue in respect of all of them. It may be misleading when they are reported as if they were 20 separate and distinct applications, each requiring adjudication.

The Tribunal regularly adjourns sine die applications in which the Pay Equity Office

refers a Review Officer's Order for enforcement. Often those orders (particularly the ones arising out of audits by the Pay Equity Office), are premised on a conclusion that an employer has done nothing to comply with the Act. Their referral to the Tribunal for enforcement often motivates the employer to work cooperatively with the Review Officer to achieve compliance, but the establishment and maintenance of pay equity can be a complex and time-consuming exercise. Such files may remain open or pending for a significant period of time. It may again be misleading when such applications are reported as if they pose an adjudicative demand on the Tribunal. If the matter proceeded to a hearing, the only question that the Act permits the Tribunal to determine is whether the employer complied with the Order.

As a result of the concerns of the Tribunal about the picture that can result from the type of statistical reporting that the Tribunal has historically offered, the Tribunal is exploring the possibility of developing a reporting model that can more accurately reflect the Tribunal's caseload and performance by perhaps breaking down applications into particular categories. This will necessarily involve the case management system, which was developed by the Ontario Labour Relations Board, and is an important part of the administrative and institutional support provided to the Tribunal.

Finally, in tandem with the Ontario Labour Relations Board, the Tribunal has taken steps to develop and implement e-filing. New forms have been created, and the Tribunal's Rules of Practice are under review.

Mary Anne McKellar

2 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.

3 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.

4 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.

5 APPOINTEES AND TERMS OF APPOINTMENTS

NAME	CROSS-APPOINTED	POSITION	FIRST APPOINTED	TERM EXPIRES
McKellar, Mary Anne	OLRB+	Presiding Officer	August 7, 2013	August 12, 2019
Kelly, Patrick	OLRB+	Alternate Presiding Officer	July 22, 2015	May 16, 2018
Kelly, Patrick	OLRB+	Deputy Presiding Officer	May 17, 2008	May 16, 2018
Rowan, Caroline	OLRB+ & HRTO*	Deputy Presiding Officer	June 2, 2010	September 16, 2019
McGilvery, Roslyn	OLRB+	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+	Part-Time Member (Employee)	August 15, 2012	September 16, 2017
McManus, Shannon	OLRB+	Part-Time Member (Employee)	September 11, 2013	September 10, 2018

+ Ontario Labour Relations Board * Human Rights Tribunal of Ontario

6 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 2016-17 fiscal year amounted to 46 cases, which was a combination of 25 pending cases carried over from the previous year plus 21 new applications.

During the 2016-17 fiscal year, the Tribunal disposed of 13 applications. Three applications were granted, two were terminated and eight settled. Thirty-seven remained pending on March 31, 2017. Cases which have adjourned sine die, often as a result of a settlement or to facilitate settlement discussions, are not included in the number of cases disposed of until the adjourn sine die period has expired. Those cases show as pending. In addition, in 2016-17, many of the cases pending at the end of the year arose from one order of the Pay Equity Office. Thus, the number of actual disputes before the Tribunal was less than the caseload numbers suggest. The final disposition rate in 2016-17 was 28%.

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 pre-hearing conference dates scheduled (14) and held (11), hearings scheduled (30) and held (17), mediations held (1) and number of written decisions issued this year (50), in respect of the active files (46). 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. Many cases which involve more than a single party are 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 routinely 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.

7 CASELOAD STATISTICS

FISCAL YEAR	CROSS-APPOINTED			DISPOSED OF					PENDING MARCH 31
	TOTAL	PENDING APRIL 1	RECEIVED FISCAL YEAR	TOTAL DISPOSED	GRANTED	DISMISSED	TERMINATED	SETTLED	
2016-17	46	25	21	13	3	0	2	8	37
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:

- Granted means that the application was, in whole or in large part, successful.
- Dismissed means that the application was, in whole or in large part, not successful.
- Terminated means that the application was not granted, dismissed or settled but was terminated at the parties' request or abandoned.
- 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.

8 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 \$ 173,500. 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 thousands

Account	Final Allocation*	Year-End Actual Expenditures**	Variance	% Variance
Salaries & Wages	175.1	173.5	1.6	0.9%
Benefits	14.7	14.5	0.2	1.4%
ODOE:				
Transportation & Communication	15.0	8.2	6.8	45.3%
Services (incl. Lease)	117.5	73.9	43.6	37.1%
Supplies & Equipment	1.0	0.6	0.4	40.0%
Total ODOE	133.5	82.7	50.8	38.1%
GRAND TOTAL	323.3	270.7	52.6	16.3%

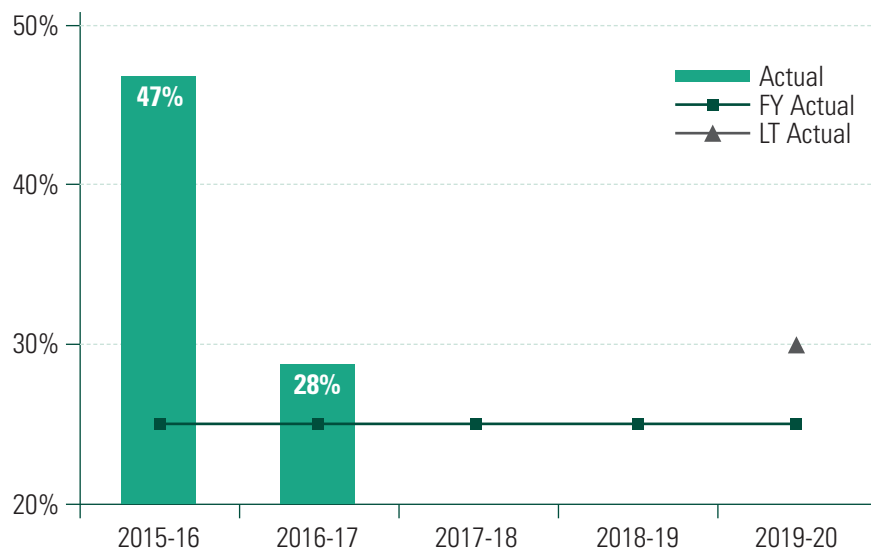
*Final Allocation = Printed Estimates +/- TBO, re-alignment of funds by standard account.

** Year-end Actual Expenditures including office lease cost

9 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.



2016-2017 COMMITMENTS

- 25% of cases disposed of during the year.
- Actual disposal rate 28%

10 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. In addition, a number of cases may arise out of the same Order or be otherwise related which will also impact on the disposal rate.

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:** www.peht.gov.on.ca

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