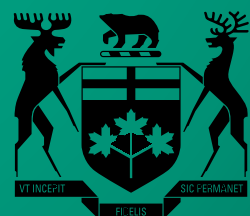


PAY EQUITY HEARINGS TRIBUNAL ANNUAL REPORT 2017-2018



Ontario

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1 MESSAGE FROM THE PRESIDING OFFICER

I am pleased to present the 2017-18 Annual Report for the Pay Equity Hearings Tribunal.

The Tribunal has made significant improvements to the services it provides to the people of Ontario in two different ways in 2017-18. The first is through the cross-appointment of a number of part-time members who were already appointed to the Ontario Labour Relations Board, providing the Tribunal with some much needed flexibility in the scheduling of the hearings. I am very pleased to welcome William Cook, Heino Neilsen, and Lori Bolton to the Tribunal. The second is the introduction of electronic filing, which was accompanied by modified Rules of Practice and more streamlined forms, with the aim of improving access.

The Tribunal received seven new applications in the fiscal year 2017-18 and disposed of four of them (or 57%) on or before March 31, 2018. There were of course cases that remained pending at the commencement of the fiscal year, and including those in the calculation, the Tribunal disposed of 43.4% of all active cases in 2017-18.

The historical data summarizing the Tribunal's annual caseload over the last several years shows a perplexing situation. The number of applications this year was the fewest we have seen for a decade. Because

the Tribunal is a second-level decision maker, and does not have originating jurisdiction to deal with issues of compliance with the Act, a variety of factors can affect its caseload in any given year. Parties in collective bargaining relationships may seek to address some of them outside of the enforcement processes contemplated in the Act, for example through bargaining or interest or rights arbitrations. A fluctuation in the caseload of the Pay Equity Office, or an increase/decrease in cases settled or in compliance with orders may impact it. Whatever the cause, the dramatic swings in the numbers of applications filed from one year to the next makes planning for the future extremely difficult, but also highlights the wisdom of the continuing shared services and cross-appointment arrangements between the Tribunal and the Ontario Labour Relations Board, which permits us to maintain the same level of service within the same financial parameters on an ongoing basis.



Mary Anne McKellar
Presiding Officer,
Pay Equity Hearings Tribunal

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 four 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 MICHAEL	OLRB+	Alternate Presiding Officer	July 22, 2015	May 16, 2018
KELLY, PATRICK MICHAEL	OLRB+	Deputy Presiding Officer	May 17, 2008	May 16, 2018
ROWAN, CAROLINE	OLRB+ & HRT0*	Deputy Presiding Officer	June 2, 2010	September 16, 2019
MCGILVER, ROSLYN	OLRB+	Deputy Presiding Officer	August 25, 2015	August 24, 2020
BOLTON, LORI	OLRB+	Part-Time Member (Employer)	September 13, 2017	September 12, 2019
BURKE, ANN		Part-Time Member (Employer)	April 4, 2012	April 3, 2022
COOK, WILLIAM S.	OLRB+	Part-Time Member (Employer)	September 13, 2017	September 12, 2019
HARRIS, IRENE		Part-Time Member (Employee)	December 21, 2012	December 20, 2022
NIELSEN, HEINO	OLRB+	Part-Time Member (Employee)	September 13, 2017	September 12, 2019
ZABEK, CARLA		Part-Time Member (Employer)	April 4, 2012	April 3, 2022
PHILLIPS, CAROL	OLRB+	Part-Time Member (Employee)	August 15, 2012	September 16, 2022
MCMANUS, SHANNON R.B.		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. In March 2018, the Tribunal launched new and updated forms which can be filed electronically with the Tribunal, together with updated Rules of Practice.

The total caseload for the 2017-18 fiscal year amounted to 44 applications, which was a combination of 37 pending applications carried over from the previous year plus 7 new applications.

During the 2017-18 fiscal year, the Tribunal disposed of 13 applications. Four applications were granted, two were dismissed, two were terminated and five settled. Four of the seven applications (57%) filed in the 2017-18 fiscal year were disposed of in that year.

Thirty-one applications remained pending on March 31, 2018. Twenty-two of them relate to a single Order of the Pay Equity Office – eleven applications by the Pay Equity Office to enforce an Order, all of which have been held in abeyance pursuant to the Act because a further 11 applications objecting to the same Order were subsequently filed. These should properly be counted as a single case, bringing the pending number as of March 31, 2018 down to 10. The pending number also includes applications adjourned *sine die* often as a result of a settlement or to facilitate settlement discussions, which are not included in the number of cases disposed of until the adjourn *sine die* period has expired, even though historically no further adjudicative action has been required in respect of them. There were two such applications shown as pending on March 31, 2018. Thus, the number of actual disputes pending before the Tribunal on March 31, 2018 is significantly lower than suggested by the number of applications that remain open. The final disposition rate in was 29.5%, if all

applications (including all 22 related ones) are included, but 43.4% if those 22 are counted as constituting a single matter.

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 (5) and held (3), case management hearings scheduled and held (1), hearings scheduled (35) and held (21), and number of written decisions issued this year (44), in respect of the active files (44). 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 COURT ACTIVITY

During the 2017-2018 fiscal year, there was one new application for judicial review of a Tribunal decision filed with the Divisional Court.

On April 1, 2017, there were two matters pending before the Courts,

both at the Divisional Court level.

One of the matters, *Corporation of the City of Windsor v. Moor* was heard in Divisional Court on March 29, 2018.

That Application was dismissed on April 25, 2018.

8 CASELOAD STATISTICS

FISCAL YEAR	Caseload			Disposed of					PENDING MARCH 31
	TOTAL	PENDING APRIL 1	RECEIVED FISCAL YEAR	TOTAL DISPOSED	GRANTED	DISMISSED	TERMINATED	SETTLED	
2017-18	44	37	7	13	4	2	2	5	31
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.

9 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 \$208,600. 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.

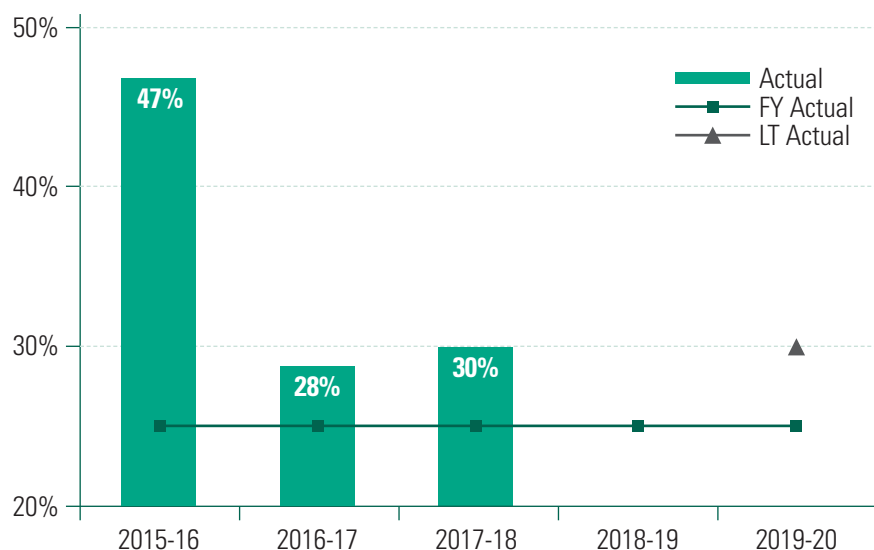
ALL FIGURES IN \$000.0 THOUSANDS

ACCOUNT	2017-18 YEAR-END BUDGET	2017-18 YEAR-END ACTUALS	VARIANCE	% VARIANCE
Salaries & Wages	215.1	208.6	6.5	3.0%
Benefits	29.7	16.0	13.7	46.0%
ODOE:				
Transportation & Communication	15.0	6.3	8.7	58.2%
Service (including Lease)	137.5	125.3	12.2	8.8%
Supplies & Equipment	1.0	0.4	0.6	61.8%
TOTAL ODOE	153.5	132.0	21.5	14.0%
GRAND TOTAL	398.3	356.7	41.6	10.5%

*Final Allocation = Printed Estimates +/- TBO, re-alignment of funds by standard account.
 ** Year-end Actual Expenditures including office lease cost

10 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.



2017-18 COMMITMENTS

■ **25%** of cases disposed of during the year.

■ Actual disposal rate **29.5%**

11 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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