

The Pay Equity Hearings Tribunal



**Annual Report
2022-2023**

PEHT Annual Report 2022-2023

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Message from the Presiding Officer

I am pleased to present the 2022-23 Annual Report for the Pay Equity Hearings Tribunal. The 2022-23 year was a fantastic year for the Tribunal. This year the Tribunal resolved 71% of all outstanding cases, which includes the eleven new or reopened files that came to the Tribunal.

The Tribunal continues to operate remotely and the Tribunal has not experienced any issues with technological issues. No hearings were canceled or adjourned because of technological issues, and the Tribunal's experience is that managing the large volume of documents that are typical in a PEHT file is much easier using the electronic filing system as compared to requiring multiple hard copies of multiple volumes of documents to be filed with the Tribunal. Based on this experience, the Tribunal has provided notice to the community that it will continue hearing cases electronically for the foreseeable future.

In 2022-23, the Tribunal also underwent a review as it does every six years pursuant to the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*. This process provided the Tribunal with the opportunity to review its processes to ensure it continues to operate efficiently and transparently. In 2023-2024, the Tribunal expects to continue to receive increased case load as a result of the Court of Appeal's direction to the Tribunal to determine how parties are to use the proxy method in their maintenance processes.

Overview

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 purpose of the *PEA* 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 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 (Appendix A).

The Tribunal deals exclusively with issues arising under the *PEA*. The Tribunal has exclusive jurisdiction to determine all questions of fact or law that arise in any matter before it. Tribunal decisions are based on the evidence presented and submissions received and on the panel's interpretation of the facts in dispute, legislation and jurisprudence. The Tribunal is committed to a hearing process that balances the need to

be fair, accessible, economical and efficient. It deals as expeditiously and fairly as reasonably possible in processing, settling or adjudicating all matters that come 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. The Tribunal encourages co-operation among employers, bargaining agents and employees and is committed to encouraging settlement among the parties.

The Tribunal is entitled to determine its own practices and procedures and has the authority to make rules and forms governing its practices and the conduct of those appearing before it. The Tribunal's Rules, Forms and Information Bulletins are available on its website at <http://www.peht.gov.on.ca> or from its offices at 505 University Avenue, 2nd Floor, Toronto, Ontario, M5G 2P1.

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 is currently cross-appointed to the OLRB, the Alternate Presiding Officer, Deputy Presiding Officer and one member are cross-appointed from the OLRB and two of the current Members are cross-appointed from another tribunal ensuring that the Tribunal is staffed with experienced decision-makers at a cost that is shared with other tribunals (full-time appointments only). (Appendix A)

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, mail services and common library services.

Operations During the Pandemic

OLRB staff returned to the office in May 2022, working a combination of remote and in-office days. Front desk staff are now available for in-person filing as well as continuing to take calls and provide information to the public and stakeholders.

PEHT adjudicators and members continued to hear cases remotely. All hearings and pre-hearings in 2022/23 were held by video or teleconference where appropriate and no in-person hearings took place. The PEHT notified the community that video conference will continue to be the presumptive method of hearing. Parties may write to the Tribunal to request an alternative to video hearing and such requests will be considered on a case by case basis. Electronic filing of applications, responses and all other material remains available and the space size for documents was increased to allow for increased accessibility. Some of the other changes which took effect during the pandemic remain in place, and include:

- Changes to how parties may deliver documents to each other, namely, delivery by email with confirmation provided so that the email can be relied upon for effective notice;

- An electronic summons to hearing form;
- The filing of a large volume of documents through the use of a third party cloud tool (such as Drop Box, Google Drive or Microsoft OneDrive).

Tribunal Processes

Upon receipt of an application, the Tribunal sends a Confirmation of Filing 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.

With respect to the adjudication of disputes, the Tribunal continues to encourage the parties to resolve their disputes without the need for adjudication. Once the response has been filed, 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 hearings 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.

Key Activities

The Tribunal's key activities are adjudication and dispute resolution in the area of Pay Equity. These two functions are the foundation for the Tribunal's objective of adjudicative and dispute resolution excellence.

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 to or from 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). 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 conference is to identify and narrow the issues in dispute, organize the litigation to ensure that it is ready for hearing and explore 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 time and expense for both parties and the Tribunal. In addition, in March 2023, the Tribunal initiated a pilot project to explore the use of mediators in resolving or narrowing issues in the litigation as a further means of improving the efficiency and dispute resolution excellence for the parties and the Tribunal. Experienced mediators with the Ontario Labour Relations Board will be engaged as part of the pilot project.

IT Initiatives and Electronic Filing

The Tribunal's forms, in French and English, are available electronically on its website and are hosted by Ontario Shared Services. A total of seven forms are currently available to be submitted electronically, and parties can file correspondence, submissions and other material electronically. In 2022/23, 97.4% of the total number of forms and submissions filed with the Tribunal were filed electronically as electronic filing became mandatory during the pandemic.

All OLRB staff and PEHT presiding officers and deputy presiding officers were issued laptops and VPNs at the beginning of the pandemic. Members too were given laptops and VPN during the pandemic to allow them electronic access to files while working remotely.

The OLRB has begun to build its statistical data and reporting capabilities on a Power BI platform allowing for future access to real-time data, which the PEHT may also access.

Caseload Processing

The total caseload for the fiscal year 2022/23 amounted to 34 applications, which was a combination of 23 pending applications carried over from the previous year, 2 files re-opened and 9 new applications. 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.

During the 2022/23 fiscal year, the Tribunal disposed of 24 applications. Six applications were granted, two were dismissed, 11 were terminated, and three were settled. Two were closed pending the disposition of other cases for a total of 10 files pending at year-end.

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 (11) and held (7), hearings scheduled (5) and held (3), and number of written decisions issued this year: interim decisions (28) and final decisions (12). Even then, of course, there is considerable variation in the complexity of the decisions and the amount of time required to generate the reasons.

Caseload Statistics

	Caseload				Disposed of						
Fiscal Year	Total	Pending April 1	Received Fiscal Year	Re-Opened	Total Disposed	Granted	Dismissed	Terminated	Settled	Pending Other Case	Pending March 31
2022-23	34	23	9	2	24	6	2	11	3	2	10
2021-22	31	20	9	2	8	2	1	2	3	0	23
2020-21	27	21	6	-	7	1	4	1	1	0	20
2019-20	39	29	10	-	18	1	13	0	1	3	21
2018-19	36	31	5	-	8	3	0	2	3	-	29
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:

- 1) Granted means that the application was, in whole or in large part, successful.
- 2) Dismissed means that the application was, in whole or in large part, not successful.
- 3) Terminated means that the application was not granted, dismissed or settled but was terminated at the parties' request or abandoned.
- 4) 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.

Key Decisions

Objection to pay equity plan – Respondent did not create pay equity plan in accordance with *Pay Equity Act* because it believed it did not have enough employees to require one – Respondent informed by Pay Equity Commission in 2013 that it had to create a plan – Plan completed in 2020 – incomplete plan was filed with the Tribunal which was missing fundamental information such as identification of comparators or method of comparison – Evidence and documentation supporting plan unclear – Plan only implemented pay equity back to 2016, apparently based on information from Review Officer – Respondent could not explain many of the key elements of the plan, such that Applicants had discharged their onus to demonstrate that the plan did not comply with the *Pay Equity Act* – Tribunal concluded that proxy method of comparison was appropriate and that Respondent should have filed a Notice of Inability to Achieve Pay Equity – No basis for concluding at this point that pay equity obligations prior to 2016 could not be met based on documentation that was available to the Respondent – No delay or abuse of process by Applicants in this case – Tribunal ordered that a Review Officer prepare a pay equity plan for Respondent pursuant to section 25(2)(a) of the Act

Suzanne Piché, Denise Dumais and Clarice Wilcox, Applicants v **Kapuskasing Indian Friendship Centre**, Respondent; Tribunal File Nos. 0841-21-PE, 0957-21-PE and 0972-21-PE; November 15, 2022 (2022 CanLII 113148)

Objection to pay equity plan – Reprisal – Applicant made various inquiries concerning compensation and questioning whether her job was properly evaluated – Applicant filed an application for Review Services indicating that she did not consider her job properly evaluated – In the same year, Applicant was laid off along with several other employees – Tribunal concluded that the layoff was one of many resulting from budgetary pressures and was not motivated in any party by pay equity concerns raised by Applicant – Tribunal found no basis to conclude that Respondent had not complied with *Pay Equity Act* – Tribunal did conclude that Applicant should have been provided with her comparators in a timely fashion – Tribunal also concluded that there was no basis to conclude that pay equity had not been maintained – Respondent's process for evaluating job classes across the organization was explained in detail - Evaluation of Applicant's job complied with *Pay Equity Act* and was not unreasonable

Sandra Kendall, Applicant v **Sinai Health System**, Respondent; Tribunal File 2754-20-PE; February 17, 2023 (2023 CanLII 17263)

Creation of pay equity plan following amalgamation – Standing to bring complaint – Jurisdiction - Applicant asserted that Respondents violated the *Pay Equity Act* in that a new pay equity plan had not been finalized following amalgamation of hospitals in 2000 – Parties' process to achieve pay equity plan was ongoing - Employer took position that the Applicant had no standing to bring application and that it was premature, since Review Services had not yet addressed underlying issue of whether pay equity had been established or maintained – Union agreed that Applicant had standing, but that issue was moot since parties had agreed to a process that would lead to a pay equity plan – Tribunal held that delay in reaching new pay equity plan was unacceptable – Since pay equity plan had not yet been reached there could be no claim that the plan did not comply with the *Pay Equity Act* – Union had exclusive right to bargain pay equity plan on

behalf of employees – Application premature because process ongoing and only Union could file application with Review Services on behalf of employees in respect of achieving the pay equity plan – Applicant can file duty of fair representation complaint under section 74 of the *Labour Relations Act, 1995* if they believe they have not been fairly represented during the pay equity process – Application dismissed

Sandra Commerford, Applicant v **Niagara Health System**, and Service Employees International Union, Local 1, Respondents; Tribunal File 1248-19-PE; March 6, 2023 (2023 CanLII 22604)

Court Activity

Parties may seek judicial review of a PEHT decision to the Divisional Court. In 2022-23 there were no judicial review applications heard and none are pending.

Performance Measures

Efficient Case Processing

2022/2023 Commitments

- 75% of new files opened within two business days after an application is filed in accordance with the Tribunal's Rules of Practice.
- 75% of confirmations of filing of applications sent to parties within four business days of application filed in accordance with the Tribunal's Rules of Practice.
- 75% of files closed within two business days following final decision.

2022/2023 Achievements

- 100% of new files opened within two days after an application is filed in accordance with the Tribunal's Rules of Practice.
- 85.5% of confirmations of filing of applications sent to parties within four days of application filed in accordance with the Tribunal's Rules of Practice.
- 100% of files closed within two business days following final decision.

Adjudication and Disposition

2022/2023 Commitments

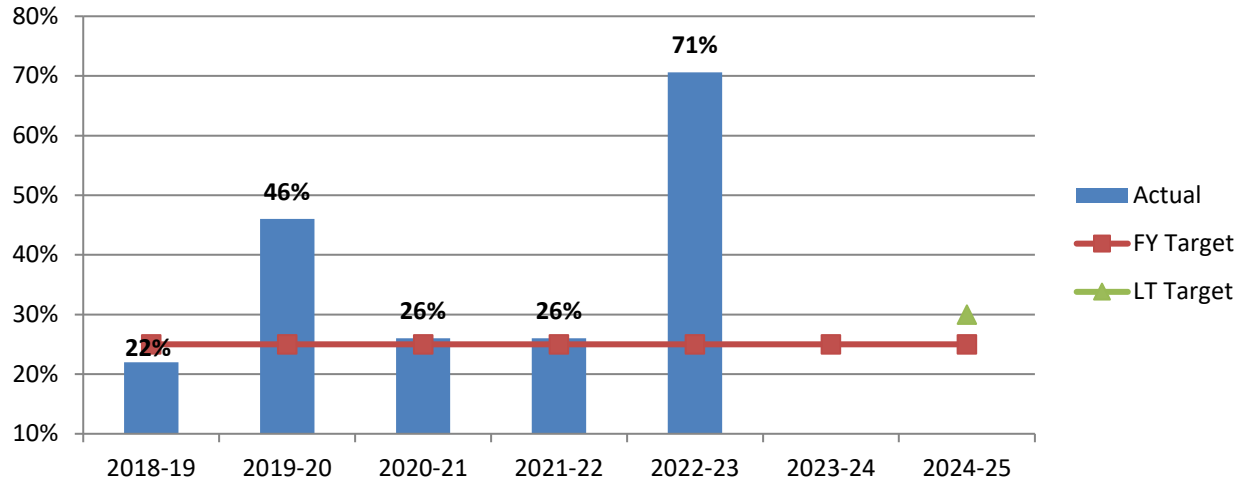
- 90% of files reviewed by Presiding Officer or Deputy Presiding Officer within two weeks of response date.
- Where a pre-hearing conference is held, in 50% of those cases at least one issue is resolved.
- 25% of outstanding cases disposed of during the year.

2022/2023 Achievements

- 100% of files reviewed within two weeks of response date.
- Where a pre-hearing conference was held, the parties resolved at least one procedural or substantive issue in every instance.
- 71% of cases disposed of during the year overall.

Note: The 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 or will remain pending at the Tribunal as they work their way through the courts on judicial review or appeal, which also impacts the disposal rate.

Cases Disposed Of



Ombudsman Review

The Ontario Ombudsman has the authority to investigate complaints about the Ontario Government and its agencies, including the Tribunal. There were no new or outstanding investigations in 2022/23.

Information and Privacy Commissioner of Ontario

The Information and Privacy Commissioner of Ontario has the authority to investigate complaints about the Ontario Government and its agencies, including the Tribunal. There were no new or outstanding investigations in 2022/23.

Financial Performance

In accordance with the Ministry of Labour, Immigration, Training and Skills Development, 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'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 \$195,379. A cost-sharing of salaries with the Ontario Labour Relations Board is in place.

The PEHT's financial performance for the 2022/23 fiscal year resulted in a savings for the Tribunal. Salaries and wages differed from the prior fiscal year as the cost recovery model was reviewed and amended to better reflect the actual expenditures of the Tribunal. Savings in transportation/communications were also comparable to the previous fiscal and were due to travel suspension as a result of the pandemic. Services expenditures were underspent due to lower part-time per diem costs. Supplies and equipment expenses were not incurred this fiscal as the Tribunal was able to operate with existing equipment and supplies.

All figures in \$000.0 thousand

Account	Expenditure Estimates	In-year Board Approvals	Year-end Budget	Year-end Actuals	Variance	% Variance
Salaries & Wages	275.8	(100.0)	175.8	174.8	1.0	0.6%
Benefits	39.7	(10.0)	29.7	16.6	13.1	44.2%
ODOE:						
Transportation & Communication	14.9		14.9	0.4	14.5	97.6%
Services (Including Lease)	134.9	(90.0)	44.9	48.2	(3.3)	-7.4%
Supplies & Equipment	1.0		1.0	-	1.0	100.0%
Total ODOE	150.8	(90.0)	60.8	48.6	12.2	20.1%
Grand Total	466.3	(200.0)	266.3	240.0	26.3	9.9%

Appendix A

Order in Council Appointments

The Tribunal's adjudicators (Presiding Officer, Alternate Presiding Officer, Deputy Presiding Officer and Members) are all appointed by the Lieutenant Governor in Council as Order in Council appointments (OICs), for a fixed term. The following is a chart of OICs working in 2022/23, their appointment terms and remuneration:

Name	First Appointed	Term of Appointment	Annual Remuneration
Presiding Officer			
Ross, David *	August 13, 2019	April 1, 2025	\$135,108.48
Alternate Presiding Officer			
Rowan, Caroline *	August 6, 2020	August 5, 2025	\$20,209.92
Deputy Presiding Officer			
Lawrence, Lindsay *	February 17, 2022	February 16, 2024	\$18,366.20
P/T Members (Employer)			
Bolton, Lori	September 13, 2017	September 25, 2027	\$394.00
Burke, Ann	April 4, 2012	April 3, 2022	\$0.00
Greenside, Patricia	November 21, 2019	November 20, 2024	\$3,447.50
Zabek, Carla	April 4, 2012	April 3, 2027	\$7,609.13
P/T Members (Employee)			
Harris, Irene	December 21, 2012	December 20, 2022	\$0.00
Irwin, MacKenzie	March 23, 2023	March 22, 2025	\$0.00
Phillips, Carol	August 15, 2012	September 28, 2024	\$10,244.00
Roth, Stephen	December 12, 2019	December 11, 2024	\$0.00

* Remuneration of full-time Appointees is representative of their cross-appointments with the OLRB. The Presiding Officer is currently cross-appointed to the OLRB and the Alternate Presiding Officer along with the Deputy Presiding Officer are cross-appointed from the OLRB. A cost recovery model is in place between OLRB and PEHT. Salaries in the PEHT's remuneration chart for the above three positions is reflective of the actual amounts paid by the PEHT. Part-time Appointees are paid on a per diem basis. Their annual remuneration is the actual amount paid to them by the PEHT.

Accountability Statement

The Tribunal's Annual Report for the fiscal year ending March 31, 2023 was prepared under my direction for submission to the Minister of Labour, Immigration, Training and Skills Development in accordance with the Agencies and Appointments Directive as issued by Management Board of Cabinet.

The Public Accounts of Ontario are the annual financial statements that are prepared in accordance with the accounting principles for governments issued by the Public Sector Accounting Board (PSAB). The Public Accounts consist of the financial report of the Government of Ontario and the financial reports of each ministry. In accordance with the Ministry's Delegation of Financial Authority Framework, financial authority is delegated to the agency. Each year the Tribunal verifies that all its transactions are reflected accurately and completely in the Public Accounts through the execution of a Certificate of Assurance.

As an agency of the Ministry of Labour, Immigration, Training and Skills Development, the Tribunal's Annual Report is subject to the minimum reporting requirements established in the Agencies and Appointments Directive, including:

- Financial statements that have been audited or subject to the appropriate level of external assurance;
- Analysis of operational performance;
- Analysis of financial performance;
- Names of appointees, term of appointments and remuneration;
- Performance measures, targets achieved/not achieved and action to be taken.

This report covers the fiscal year April 1, 2022 to March 31, 2023.

For More Information

Local: 416-326-7500

Toll-Free: 1-877-339-3335

Hearing Impaired (TTY): 416-212-7036

Hours of Operation: 8:30am – 5:00pm

Website: <http://www.peht.gov.on.ca>

505 University Ave, 2nd Floor
Toronto, Ontario
M5G 2P1

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