Ontario

Pay Equity Commission Annual Report 2018–19

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Pay Equity Office

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1. Message from the Commissioner

This annual report marks the end of the long tenure served by our former Pay Equity Commissioner, Emanuela Heyninck. On behalf of the Pay Equity Office, we wish her the very best and thank her for her dedication and commitment to advancing the work on pay equity and addressing the complexity of our wage gap for the past 14 years.

As the incoming Pay Equity Commissioner, it is my honour and privilege to have the opportunity to continue to represent and uphold our fairness in compensation laws and to delve into the many facets, difficulties and opportunities that women have in the workplace today.

Jodi MacDonald
Pay Equity Commissioner

2. About the Pay Equity Office

2.1 The Organization

The Pay Equity Commission (the Commission) was established by section 27 of the *Pay Equity Act*, R.S.O, 1990, c.P.7. Its purpose is to redress gender discrimination in the compensation of employees employed in female job classes in Ontario.

The Commission consists of two separate and independent parts: the Pay Equity Office (PEO), headed by the Commissioner, and the Pay Equity Hearings Tribunal (the Tribunal), headed by the Chair. Both the Commissioner and the Chair are appointed by the Lieutenant Governor in Council.

The Minister of Labour represents the PEO and the Tribunal in Cabinet and its Committees, in the Legislative Assembly and before Committees of the Legislature. The Minister is accountable to the Legislature for the PEO's and the Tribunal's fulfillment of their mandates and their compliance with statutes and government administrative policies. The Minister is also responsible for the review and approval of their Business Plans and Annual Reports.

2.2 Ontario's Pay Equity Act

Statistics Canada's most recent Ontario information shows a gender wage gap of 29 per cent for full-time, full-year employment. There are many reasons for the existence of the gap from a workplace perspective. Conscious or unconscious bias in the hiring process, the assignment of work and bonuses, advancement criteria and the undervaluing of women's work can act as systemic barriers to women achieving their full economic potential.

Pay equity (or equal pay for work of equal value) addresses the undervaluation of women's work. The *Pay Equity Act* (the Act) applies to all public sector employers and all private sector employers with ten or more employees, who are required to have compensation practices that provide for pay equity.

The Act sets out the criteria to be applied by employers to identify systemic gender discrimination in compensation and how it is to be corrected. To meet the minimum requirements and to show that pay equity has been achieved, all employers covered by the *Act* are required to undertake the following at each of the employer's establishments:

1. Determine job classes, including identifying the gender of the job class and job rate;
2. Determine the value of job classes based on factors of skill, effort, responsibility and working conditions;

3. Conduct comparisons for all female job classes using the job-to-job, proportional value or proxy method of comparison[1] (proxy is for public sector only and of limited application);
4. Adjust the wages of underpaid female job classes so that they are paid at least as much or equal to a comparable male job class or classes within the establishment;
5. Maintain pay equity for female job classes to ensure that new pay equity gaps are not created or re-emerge.

2.3 PEO Mandate

The PEO promotes gender economic equality by enforcing pay equity rights and obligations through effective case management; understanding gender wage gaps through research; and promoting awareness to advance economic equality for Ontario's working women.

The PEO fulfills its mandate by:

- Providing information and educational resources to employers and employees about pay equity and pay equity processes;
- Conducting information sessions at a variety of venues;
- Investigating and resolving complaints through alternative dispute resolution methods, or issuing Orders for compliance;
- Referring Orders to the Tribunal for enforcement;
- Monitoring establishments for compliance with the provisions of the Act;
- Researching and disseminating information about pay equity and gender wage gaps to the public and workplace parties;
- Responding to requests from the Minister and preparing reports and recommendations to the Minister about pay equity and related matters such as the gender wage gap.

[1] The proxy method of comparison contained in Part II of the *Act* was repealed in 1996 and restored by court order in 1997. The Pay Equity Office continues to enforce the proxy provisions.

3. Report on Activities

In our 2018–19 Business Plan, the PEO identified three key objectives and is now pleased to report on its achievements.

3.1 Strategic Objective 1: Foster collaborative partnerships to identify initiatives that will advance gender economic equality in Ontario

Commitment:

Strategic initiatives that provide a framework for addressing pay equity issues and support the reduction of the gender wage gap in Ontario.

Working with Ministry partners and stakeholders, the PEO will focus on identifying workplace barriers to gender economic equality that negatively impact Ontario's productivity. Relying on evidenced-based research, the agency will seek a better understanding of root causes and solutions. Partnerships with key stakeholders will leverage opportunities for outreach and awareness.

Achievements

Of the PEO's varied and diverse stakeholder engagements in 2018–19, a few stand out in particular.

Researchers at the University of Ottawa conducted a study showing that women who were coached in negotiating skills were more likely to initiate negotiations, make counter-offers and to have overall higher salary expectations. The full report describing the research methodology and results is available to the public on the PEO's website.

PEO conducted a customer satisfaction survey of employers who recently closed files with the PEO. With a response rate of nearly 30 per cent, employers indicated that they found their interactions with the PEO to be positive and that the Pay Equity Mini-Kit is a valuable resource. Respondents also communicated their view that the pay equity process is very technical and time-consuming.

Once again, PEO partnered with the Human Resource Professionals Association at the Association's annual conference. More than 300 conference participants stopped by the PEO's booth. PEO conducted a customer satisfaction survey of Association members, gathering valuable feedback on ways that the PEO can further strengthen its services to human resource professionals to make pay equity compliance easier.

3.2 Strategic Objective 2: Support compliance across Ontario workplaces, with targeted enforcement

Commitment

Innovative compliance programs and integrated enforcement influenced by research findings and reactive trends.

The PEO will continue to deliver effective compliance and monitoring programs, based on identified priorities that incorporate concepts of self-management within a risk-based framework. The PEO will continue to leverage its e-learning platform to ensure that resources are available and accessible.

Achievements

The PEO met most performance commitments set out in its 2018–19 Business Plan. Additional details are set out in Section 4 of this report.

Program: Pay Equity	Measure	2017–18 Achieved	2018–19 Target	2018–19 Achieved
Employers, unions and employees work collaboratively to address emerging pay equity issues	Percentage of cases where compliance achieved without order, no contraventions, settled.	93%	85%	98%
Employers take corrective action to become pay equity compliant	Number of pay equity cases resolved.	314	340	275
Program services are delivered in a timely, professional, knowledgeable, and cost-effective manner	Time spent to resolve cases (complaint and monitoring)	93% of cases < 3 years	90% of cases < 3 years	92% of cases < 3 years
Program services are delivered in a timely, professional, knowledgeable, and cost-effective manner	Percentage of complaint cases resolved within 24 months[2]	68%	80%	77%

[2] The Review Services Unit prioritized closing aging monitoring cases. As of March 31, 2019, there remained only 9 monitoring cases (3.2%) older than 3 years.

3.3 Strategic Objective 3: Run a Modern, Accountable and Efficient Organization

Commitment

Excellent and consistent service through a skilled and diverse workforce and effective systems.

The PEO will ensure its mandate is delivered with high performing, trained, engaged and committed staff, leveraging contemporary methods of education and enforcement to achieve its goals.

Achievements

All members of the PEO are committed to meeting the highest standards of integrity, quality, and accountability. The PEO continued to invest in ongoing professional development in a fiscally responsible manner.

PEO Values

- Fairness - We demonstrate integrity by providing equitable and impartial enforcement actions.
- Accountability - We accept responsibility for our activities and disclose the results in a transparent manner.
- Service Excellence - We strive to provide outstanding and responsive service.
- Impact - We influence, educate, and enforce to achieve and maintain pay equity in Ontario workplaces.
- Connect - We connect and advance pay equity by building effective partnerships with diverse stakeholders and communities.

Commitment to Accountability and Transparency

The PEO remains steadfastly committed to respecting public sector accountability expectations. These include but are not limited to:

- Directives issued by Management Board of Cabinet *(Agencies and Appointments Directive; Travel, Meal, and Hospitality Expenses Directive; Internal Audit Directive;* among others);
- All statutes governing the public sector (*Freedom of Information and Protection of Privacy Act; Archives and Recordkeeping Act; Accessibility for Ontarians with Disabilities Act*; among others);
- Ontario Public Service's "Common Service Standards" for phone inquiries and correspondence.

4. Performance Measures

4.1 Pay Equity Office Year-end Caseload Summary 2018–19

Orders Issued	11
Pay equity adjustments recovered	$2,246,163.21
Number of employees received adjustments	477
Cases Open	
Complaint applications	108
Monitoring	41
Cases returned from the Tribunal	1
Notice of Inability to Achieve Pay Equity	0
Case Closures	
Complaint applications	86
Monitoring	184
Cases returned from the Tribunal	3
Notice of Inability to Achieve Pay Equity	2
Case Dispositions	
Compliance without order	110
Complaint applications decided	35
Withdraws	25
PEO referral cases to the Tribunal	1
Parties disputing Review Officers' decision	1

“Orders”: Where Review Officers discover non-compliance and employers are uncooperative, Review Officers will issue Orders. Any party affected by a Review Officer’s decision may request a hearing before the Tribunal. The PEO is not a party to those hearings except in very limited circumstances.

“Complaint applications”: Investigation files opened in response to a complaint from a worker.

“Monitoring”: Monitoring cases are regularly opened following the resolution of a complaint investigation, where there is information that the establishment has not achieved or maintained pay equity for all female job classes. The goal of monitoring is to encourage employers to assess all of their compensation practices for pay equity.

“Cases returned from the Tribunal”: Where the Tribunal upheld a Review Officer’s decision upon appeal by one of the parties, the matter is returned to the PEO to oversee compliance with the Review Officer’s original order.

“Compliance without order”: The Review Officer was successful in assisting the workplace parties to reach agreement.

“Complaint applications decided”: Consensus between the parties was not possible and the Review Officer issued an order.

"PEO referral cases to the Tribunal": Review Officers may also refer an Order to the Tribunal for enforcement where a party fails to comply with the provisions of the Order within the prescribed timeframes.

"Parties disputing Review Officers' decision": One or both workplace parties appealed the Review Officer's decision to the Tribunal.

4.2 Year-Over-Year Performance

New Cases Opened

Fiscal Year	Total	Monitoring	Complaint Applications	Other Types of Cases[3]
2013-14	153	61	91	1
2014-15	272	177	95	0
2015-16	255	150	96	9
2016-17	282	213	63	6
2017-18	435	373	56	6
2018–19	150	41	108	1

Applicant Profile

Fiscal Year	Total Applicants	Applicant status Represented and/or Union	Applicant status Unrepresented Employee	Other Types of Applications[4]
2013–14	91	63	25	3
2014–15	95	50	45	0
2015–16	105	30	64	11
2016–17	93	19	58	2
2017–18	56	22	30	1
2018–19	86	14	51	1

In 2018–19, 59 per cent of complaint applications received were made by unrepresented individuals. Fifty per cent of unrepresented individuals were from the private sector while the remaining 50 per cent were from the broader public sector.

[3] Other cases include those cases returned from the Tribunal for further investigation and Applications for Notice of Inability to Achieve Pay Equity.

[4] Includes employer applications, Notice of Inability to Achieve Pay Equity, plus new cases resulting from the Tribunal decisions.

5. Finances and Human Resources

5.1 Financial Report

The PEO's annual operating budget is part of the Ministry of Labour's Estimates and reports quarterly on its expenditures and planned commitments.

Fiscal Year 2018–19 (in thousands of dollars)

Standard Account	Expenditure Estimates	In-year Board Approvals	Year-end Budget	Year-end Actuals	$ Variance	% Variance
Salaries & Wages	2,847.1	(399.0)	2,448.1	2,337.7	110.4	4.5%
Benefits	266.1	8.7	274.8	345.7	(70.9)	-25.8%
ODOE: Transportation & Communication	50.0	-	50.0	22.0	28.0	56.0%
Services	361.0	45.0	406.0	412.8	(6.8)	-1.7%
Supplies & Equipment	20.0	-	20.0	20.6	(0.6)	-3.2%
Total ODOE	**431.0**	**45.0**	**476.0**	**455.4**	**20.6**	**4.3%**
Transfer Payment	**50.0**	**(50.0)**	**-**	**-**	**-**	**0.0%**
Grand Total	**3,594.2**	**(395.3)**	**3,198.9**	**3,138.8**	**60.07**	**1.9%**

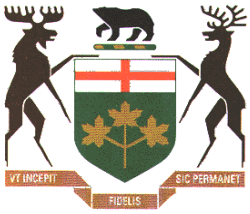
5.2 Human Resources

The PEO consists of 26 Full Time Equivalents. The Commissioner is the sole Order-in-Council appointee. In 2018–19, the PEO did not undertake any recruitment activity.

Section 3.5.1 of the *Agencies and Appointment Directive, January 2019,* requires that remuneration for appointees be included in the annual report. The Commissioner's annual salary is $174,184.

As required by the *Public Sector Expenses Review Act, 2009,* the Commissioner's expenses have been posted quarterly on the Pay Equity Office website commencing April 1, 2015.

The Pay Equity Hearings Tribunal



Annual Report 2018-2019

PEHT Annual Report 2018-2019

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Message from the Presiding Officer

I am pleased to present the 2018-19 Annual Report for the Pay Equity Hearings Tribunal.

The Tribunal introduced electronic filing, accompanied by modified Rules of Practice and more streamlined forms, early in 2018-19, with the aim of improving access. As a result, 16.7% of all documents filed with the Tribunal were filed electronically in 2018-19.

The Tribunal received five new applications in the fiscal year 2018-19 and disposed of 8 cases overall on or before March 31, 2019. There were, of course, also cases that remained pending at the commencement of the fiscal year which formed part of this year's caseload. Not including inactive files such as those on hold pending court decisions or a large group of related cases treated as one matter, the Tribunal disposed of 80% of all active cases in 2018-19.

Several cases that continue to appear as "pending' from year to year have been adjourned as a consequence of the uncertainty about the extent of the obligation to maintain pay equity in those broader public sector workplaces where it was achieved by the proxy method of comparison. The Tribunal issued a decision addressing this issue in January 2016, but the workplace parties all filed judicial review applications, which they did not proceed to perfect until 2018. The applications for judicial review were heard by the Divisional Court in early February 2019.

The historical data summarizing the Tribunal's annual caseload over the last several years shows a perplexing situation. The number of applications this year continued to decrease. As 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

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 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 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 (Figure 1).

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. 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.olrb.gov.on.ca/pec/PEHT/index.html 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, 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. (Figure 1)

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.

Names of 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	December 31, 2023
Kelly, Patrick Michael	OLRB+	Deputy Presiding Officer	May 17, 2008	December 31, 2023
Rowan, Caroline	OLRB+ & HRTO*	Deputy Presiding Officer	June 2, 2010	September 16, 2019
McGilvery, 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

Figure 1

Tribunal Processes

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.

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 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.

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 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). 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.

IT Initiatives and Electronic Filing

In early 2018-2019, the Pay Equity Hearings Tribunal was able to offer electronic filing to its stakeholders. The Tribunal's forms were made available electronically on its website and are hosted by Ontario Shared Services. A total of seven forms, in both French and English, are currently available to be submitted electronically. Parties are now able to file correspondence, submissions and other material electronically as well. The e-filing project necessitated the modernization of the Tribunal's forms, Notices, Information Bulletins, and Rules of Practice. In 2018-2019, 16.7% of the total number of forms and submissions filed with the Tribunal were filed electronically.

A project to replace the Tribunal's older website with a new modernized website is expected to commence in 2019/2020 and continue in the next fiscal year, subject to resources. Technology has advanced considerably since the current website was created. The Tribunal expects to attain a more user-friendly and accessible website for the public and stakeholders as well as an updated look.

Caseload Processing

The total caseload for the fiscal year 2018-2019 amounted to 36 applications, which was a combination of 31 pending applications carried over from the previous year plus 5 new applications. 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.

During the 2018-2019 fiscal year, the Tribunal disposed of eight applications. Three applications were granted, two were terminated and three settled.

Twenty-nine applications remained pending on March 31, 2019. 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, 2019 down to 8. The pending number also includes applications that remain open but were not actively pursued by the parties in 2018-19, such as cases adjourned pending a court decision in another file, and therefore the Tribunal could not take steps to dispose of them in the fiscal year. Thus, the number of actual disputes pending before the Tribunal on March 31, 2019 is significantly lower than suggested by the number of applications that remain open. The final disposition rate in 2018-19 was 22.2%, if all applications (including all 22 related files and inactive cases) are included, but 80% when only active files are included.

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 (3) and held (2), hearings scheduled (15) and held (7), and number of written decisions issued this year (29). Even then, of course, there is considerable variation in the complexity of the decisions and the amount of time required to generate the reasons.

It is important to note that 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 which was 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 may 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.

Caseload Statistics

	Caseload			Disposed of					
Fiscal Year	Total	Pending April 1	Received Fiscal Year	Total Disposed	Granted	Dismissed	Terminated	Settled	Pending March 31
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

One important decision considered the differences between section 7 and section 14.1 of the Pay Equity Act in a circumstance where job duties and titles changed. The Tribunal held that changes in the job content or title or compensation of a job class under a pay equity plan may constitute a change in circumstances that neither the employer nor the bargaining agent believes renders the pay equity plan no longer appropriate but that may nevertheless require consideration of the maintenance obligation in section 7 of the Act. The Tribunal also held that the requirement to bargain (and to do so in good faith) in subsection 14.1(1) is engaged when one of the workplace parties (or both) forms a belief that some set of new circumstances makes the pay equity plan no longer appropriate and communicates that in the form of a notice to bargain to the other side.

ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION V. SIMCOE MUSKOKA CATHOLIC DISTRICT SCHOOL BOARD; PEHT File Nos. 2028-15-PE and 2029-15-PE; December 17, 2018, 2018 CanLII 123879

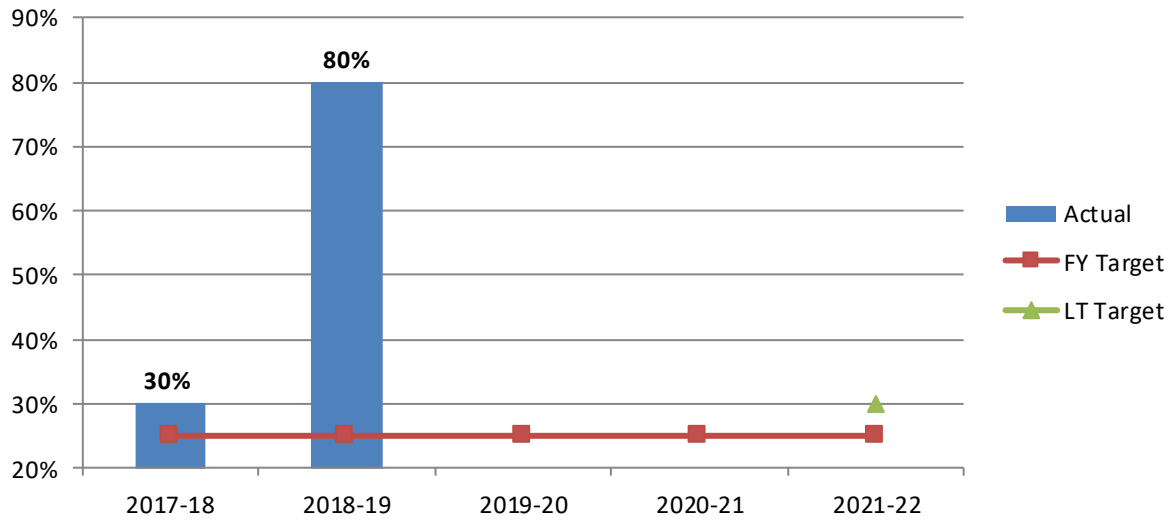
In another precedent-setting case, the University of Western Ontario Faculty Association asserted that the University failed to comply with the Pay Equity Act while negotiating pay equity issues after the Union was certified to represent the librarians and archivists. Among the findings in this decision, the Tribunal found that a Letter of Understanding entered into between the parties during collective bargaining went beyond the strict requirements of the Act. There was no evidence to suggest that the minimum requirements of the Act had not been adhered to. Consequently, there was nothing that the Tribunal could do to resolve the issues that had arisen in the case.

University of Western Ontario Faculty Association v. University of Western Ontario Board File No. 1534-16-PE November 28, 2018, 2018 Can LII 116055

Court Activity

During the 2018-2019 fiscal year, there were no new applications for judicial review filed with the Divisional Court. On April 1, 2018 there were three matters pending before the Courts. All matters pending were at the Divisional Court level. On April 25, 2018 one of the matters was dismissed. The remaining matters were two applications for judicial review of the same Tribunal decision. Those applications were heard in Divisional Court from February 5 to February 7, 2019.

Performance Measures



2018/2019 Commitment

- 25% of cases disposed of during the year
- Actual disposal rate 22 % overall and 80% of active files (see Case Processing section above for analysis)

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.

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 $209,100. 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 thousand

Account	2018-19 Year-end Budget	2018-19 Year-end Actuals	Variance	% Variance
Salaries & Wages	275.1	209.1	66.0	*24.0%*
Benefits	39.7	15.5	24.2	*60.9%*
ODOE:				
Transportation & Communication	15.0	2.3	12.7	*84.3%*
Services (Including Lease)	67.4	73.9	(6.5)	*-9.7%*
Supplies & Equipment	1.0	0.1	0.9	*88.1%*
Total ODOE	**83.4**	**76.3**	**7.1**	***8.4%***
Grand Total	**398.2**	**301.0**	**97.2**	***24.4%***

For More Information

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Fax: 416-326-7531

Hours of Operation: 8:30am – 5:00pm

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