Ontario

Pay Equity Commission Annual Report

2019–20

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Pay Equity Office

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1. Message from the Pay Equity Commissioner

I hope this report finds you healthy and well.

At the time of writing this report, the COVID-19 state of emergency, issued by the Government of Ontario, remains in effect. In the midst of this pandemic the Pay Equity Office (PEO) continued to work with stakeholders and administrators to fulfil its mandate of redressing gender discrimination in the compensation of employees employed in female job classes.

As we slowly emerge from this unprecedented health and economic turning point, it's clear that the socio-economic impact of the pandemic has been incredibly disruptive for Ontario's workforce and is disproportionately affecting working women. An inclusive and all-encompassing approach will be essential to address the setbacks of COVID-19, drive prosperity and strengthen Ontario's economy as we reopen for business in 2020 and in the years to come.

Decreasing the gender wage gap is one way to build a more inclusive and prosperous Ontario. The PEO continues to be fully committed to this and to finding new ways to educate and assist businesses with user friendly programs that support fairness in compensation practices for working women in Ontario.

The report outlined below highlights the PEO accomplishments for 2019-2020. During this time the team was led by outgoing Commissioner Jodi MacDonald and Acting Director Gregory St. Pierre. My sincere gratitude to both of them for their contributions to fulfilling the PEO's mandate and leading an organization vital to Ontario's labour ecosystem.

Sincerely,

Kadie Ward

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[1] 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, Training and Skills Development 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] According to the Pay Equity Act, a "female job class" is defined as a job in which 60% or more of the incumbents are female.

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 (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.

3. Report on Activities

3.1 Achievements

The PEO has expanded its reach and relevance by building new, and deepening existing, stakeholder relationships in 2019-20.

In May 2019, the Pay Equity Commissioner was delegated by the Minister of Labour to attend the International Labour Organization's (ILO) meeting on equal pay to outline how economic based laws can elevate women in other jurisdictions. The meeting was organized in the framework of the International Coalition for Equal Pay (EPIC) which is led by the ILO, UN Women and the Organization for Economic Cooperation and Development (OECD). Ontario's proactive, economic-based legislation for women in the workplace was of great interest to other jurisdictions that look to study and adopt similar laws.

In January 2020, the PEO once again participated in the Human Resources Professionals Association annual conference. More than 140 conference participants visited the PEO's booth. The PEO also conducted an educational presentation on pay equity to conference attendees.

In 2019-2020, the PEO continued to provide pay equity education sessions to York University's School of Human Resources Management. Since 2014 the PEO has dispatched Review Officers to conduct presentations on pay equity to graduate students in Professor Parbudyal Singh's Masters in Human Resources Management and Masters in Public Administration and Law. These students are usually mid-level Human Resources Managers and some senior public sector employees.

The PEO also met with Karen Jensen, Canada's first-ever federal Pay Equity Commissioner who is responsible for providing leadership and direction for the administration and enforcement of the new federal Pay Equity Act. Canada's first federal proactive Pay Equity legislation was passed on December 13th, 2018 and is expected to come into force in 2020.

Furthermore, the PEO has continued to carry out its core statutory mandate of enforcing the Act by responding to complaints. Additional details are set out in Section 4 of this report.

Outcome	Measure	2018–19 Achieved	2019–20 Target	2019-20 Achieved
The PEO strives to ensure timely closure of files, taking into consideration the reality that pay equity matters often require analysis of large volumes of information. (Efficiency)	Per cent cases resolved within 24 months[2]	77%	80%	56%
The PEO is able to facilitate consensus resolution that comply with the Act. Consensus resolution means that employers and employees are able to work together constructively. (Effectiveness)	Per cent cases resolved without an Order	98%	80%	95%

Finally, all members of the PEO are committed to meeting the highest standards of integrity, quality, and accountability while providing educational resources and general advice to employers, employees and bargaining agents. The PEO continued to invest in ongoing professional development in a fiscally responsible manner.

PEO Values

- Respect – The PEO values respectful and fair conversations around pay equity, both internally and externally.
- Openness – The PEO is approachable and accessible in sharing its knowledge and expertise as a trusted resource with its stakeholders and clients.
- Impact – The PEO connects with stakeholders and clients to educate, catalyze, change, and build an economy where economic equality is the norm.

[2] The Review Services Unit prioritized closing aging monitoring cases.

- Service Excellence – The PEO provides a professional, expert, constructive, and value-added service to its stakeholders and clients.

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 2019-20

Orders Issued	12
Pay equity adjustments recovered	$1,201,618
Number of employees received adjustments	347
Cases Open	
Complaint applications	98
Monitoring	59
Cases returned from the Tribunal	3
Notice of Inability to Achieve Pay Equity	0
Case Closures	
Complaint applications	64
Monitoring	107
Cases returned from the Tribunal	2
Notice of Inability to Achieve Pay Equity	0
Case Dispositions	
Compliance without order	67
Complaint applications decided	59
Withdraws	14
PEO referral cases to the Tribunal	3
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
2019-20	31	1	29	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
2019-20	64	31	31	2

[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.

In 2019–20, 48 per cent of complaint applications received were made by unrepresented individuals. 32 per cent of unrepresented individuals were from the private sector while the remaining 68 per cent were from the broader public sector.

5. Finances and Human Resources

5.1 Financial Report

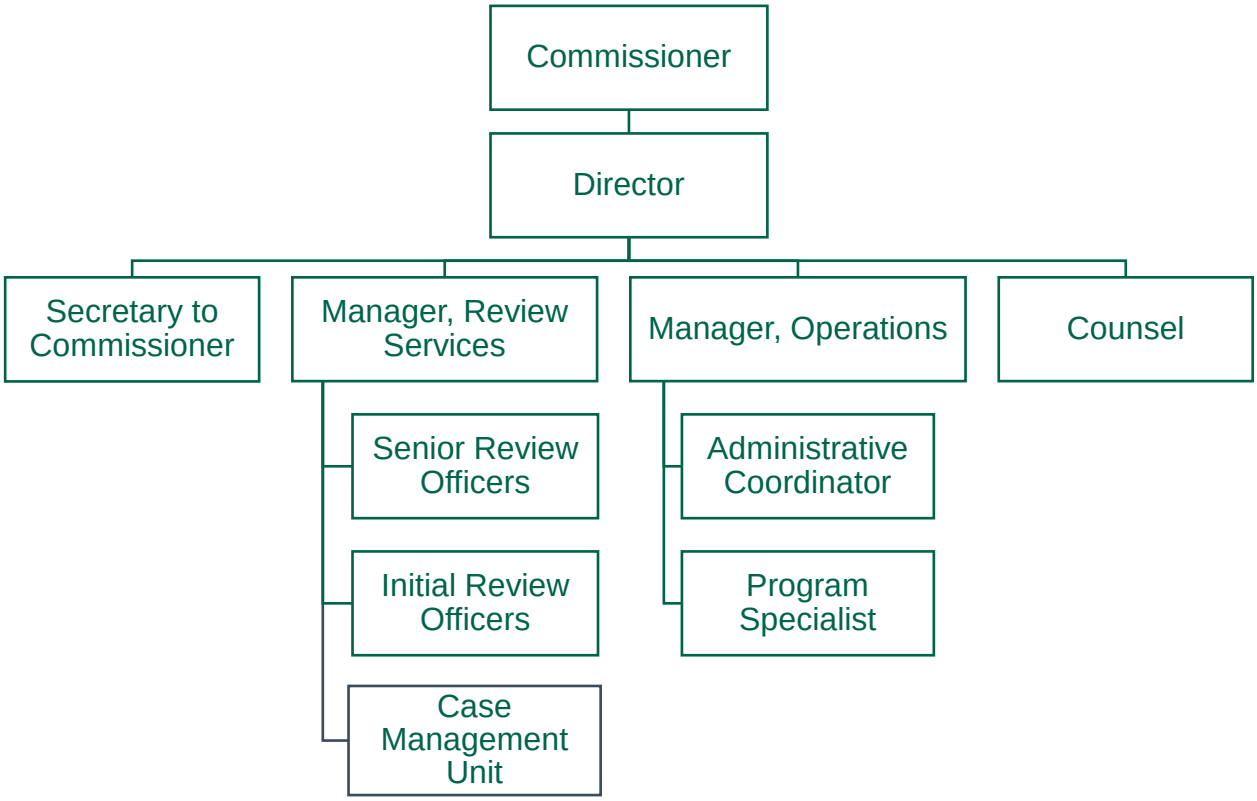
The PEO's annual operating budget is part of the Ministry of Labour, Training and Skills Development's Estimates and reports quarterly on its expenditures and planned commitments.

Fiscal Year 2019–20 (in thousands of dollars)

Account	2019-20 Expenditure Estimates	2019-20 In-year Board Approvals	2019-20 Year-end Budget	2019-20 Year-end Actuals	Variance	% Variance
Salaries & Wages	2,347.1	(210.0)	2,137.1	1,870.9	266.2	*12.5%*
Benefits	266.1		266.1	299.7	(33.6)	*-12.6%*
ODOE :						
Transportation & Communication	50.0	(7.2)	42.8	13.7	29.1	*68.0%*
Services (Including Lease)	358.0		358.0	387.6	(29.6)	*-8.3%*
Supplies & Equipment	20.0		20.0	13.3	6.7	*33.4%*
Total ODOE	**428.0**	**(7.2)**	**420.8**	**414.6**	**6.2**	***1.5%***
Grand Total	**3,041.2**	**(217.2)**	**2,824.0**	**2,585.2**	**238.80**	***8.5%***

5.2 Human Resources

The PEO consists of 25 Full Time Equivalents. The Commissioner is the sole Order-in-Council appointee.



Section 3.5.1 of the *Agencies and Appointment Directive, April 2020,* requires that remuneration for appointees be included in the annual report. The total annual remuneration (salary not including benefits) the Commissioner received for the 2019-2020 fiscal year is $199,766.37.

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 2019-2020

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Message from the Presiding Officer

I am pleased to present the 2019-2020 Annual Report for the Pay Equity Hearings Tribunal.

There were significant changes to the Tribunal in 2019-2020. First and foremost, Mary Anne McKellar announced her well-deserved retirement as the Presiding Officer of the Tribunal; and Patrick Kelly, the Tribunal's Alternate Presiding Officer, also left the Tribunal in 2019. The Tribunal is grateful to them for their leadership and expertise during their tenures at the Tribunal.

I was appointed as the Interim Presiding Officer effective August 13, 2019, and the Interim title was lifted effective April 2, 2020. I hope to build on the progress that Presiding Officer McKellar initiated, especially with regard to making the Tribunal more accessible electronically, such as having cases proceed by video hearing where it is appropriate.

I am pleased to welcome Johanne Cavé as a Deputy Presiding Officer, cross-appointed from the Ontario Labour Relations Board, and Patricia Greenside and Stephen Roth as members, both of whom are cross-appointed from the Workplace Safety and Insurance Appeals Tribunal.

The Tribunal received 10 new applications in the fiscal year 2019-2020, the highest number since 2016-17 and disposed of 18 applications on or before March 31, 2020 which is the highest disposition rate since 2015-16. Of course, there were cases that remained pending at the commencement of the fiscal year and, including those in the calculation, the Tribunal disposed of 46% of all cases in 2019-2020.

In April 2019, the Divisional Court issued its judicial review decisions in *Participating Nursing Homes v. Ontario Nurses' Association*, 2019 ONSC 2772 and *Ontario Nurses' Association v. Participating Nursing Homes*, 2019 ONSC 2168. These decisions could have a major impact on how the *Pay Equity Act* is interpreted and applied by the Tribunal. Leave to the Court of Appeal has been granted and is scheduled to be heard later in 2020.

Lastly, I would be remiss if I did not mention that the declaration of a pandemic and emergency in March 2020 has changed the landscape of all legal proceedings, including those before the Tribunal. This especially affects the Tribunal because a large percentage of employers who are party to these applications are municipalities and health care providers, all of which have had extreme operational pressures placed on them during the pandemic. The Tribunal is proud that it has been able to continue to operate at full capacity during this unparalleled time and has ensured that parties can file applications, responses and submissions electronically. The Tribunal has also ensured that cases, including resolution discussions, continued to be conducted by video hearing

where it was appropriate to do so, and I want to note that the cooperation from all of the parties to these proceedings during this time has been greatly appreciated.

David Ross, 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 (Appendix A).

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.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, 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 (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, and common library services.

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.

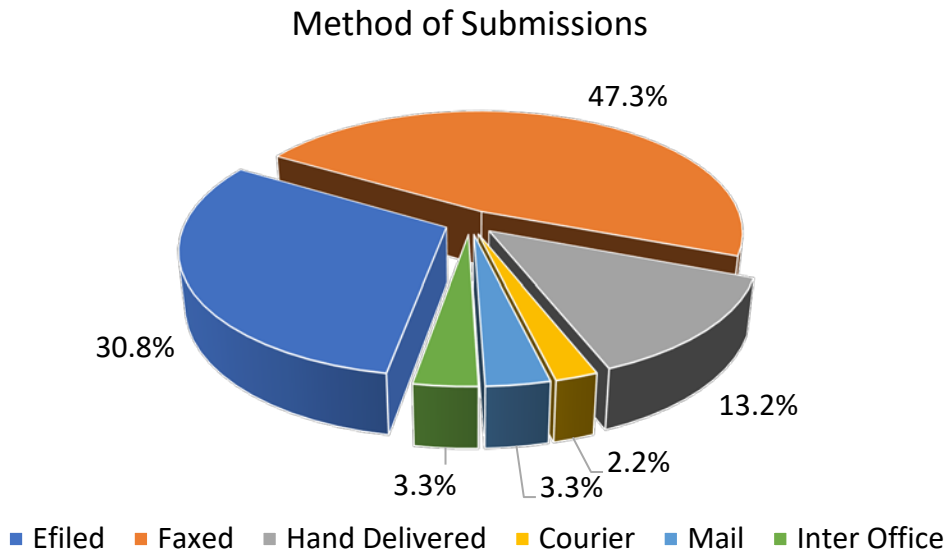
Mediation

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 2019/2020, 30.8% of the total number of

forms and submissions filed with the Tribunal were filed electronically. Since the pandemic was declared in March 2020, all submissions and applications have been received electronically.



A project to replace the Tribunal's older website with a new modernized website commenced in 2019/2020 and is expected to 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. Due to the Covid-19 pandemic, the website modernization project was put on hold while the OLRB's IT staff, who support the Tribunal's IT needs, worked to ensure the continued operations of both tribunals. Electronic filing became mandatory, all staff, management and OICs were required to work remotely, new website notices were posted to inform the public of pandemic-related process changes and new methods of video hearings were explored while in-person hearings were cancelled.

Caseload Processing

The total caseload for the fiscal year 2019/2020 amounted to 39 applications, which was a combination of 29 pending applications carried over from the previous year plus 10 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 2019/2020 fiscal year, the Tribunal disposed of 18 applications. One application was granted, 13 were dismissed, one was settled, 3 were adjourned pending other cases.

Twenty-one applications remained pending on March 31, 2020. Ten of them relate to a single Order of the Pay Equity Office and were filed on the same day in 2016. These should properly be counted as a single case, bringing the pending number as of March 31, 2020 down to 11. The pending number also includes applications that remain open but were not actively pursued by the parties in 2019/2020, 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, 2020 is 9 when inactive or pending files are not taken into account. This is significantly lower than suggested by the number of applications that remain open.

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 and held (3), case management hearings scheduled (2) and held (1), hearings scheduled (7) and held (5), and number of written decisions issued this year (33). 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	Total Disposed	Granted	Dismissed	Terminated	Settled	Pending Other Case	Pending March 31
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

The Tribunal considered whether various employer care homes were required to negotiate pay equity maintenance with a Union upon the Union's request, pursuant to sections 11.3, 13.1 and 14.1 of the *Pay Equity Act*. The majority of the panel of the Tribunal found that the Employers were not required by the Act to negotiate pay equity maintenance but noted that Unions play a significant role under the Act in establishing the pay equity plans and in bargaining compensation of its members through the normal collective bargaining process. The Tribunal relied on the fact that the legislative scheme imposes certain duties and responsibilities solely on employers and the Act does not include an express right of a union to negotiate or give notice to negotiate the issue of maintaining pay equity or maintaining compensation practices. In the result, the applications were dismissed. The Applicant has applied to the Court for judicial review of this decision.

ONTARIO NURSES' ASSOCIATION V. CENTRAL COMMUNITY CARE ACCESS CENTRE; PEHT File Nos. 0085-16-PE, 0086-16-PE, 0087-16-PE, 0088-16-PE, 0089-16-PE, 0090-16-PE, 0091-16-PE, 0092-16-PE, 0093-16-PE, and 0094-16-PE; September 10, 2019, 2019 CanLII 86314 (ON PEHT)

The Tribunal considered whether the individual applicants had established that their classification was not paid in accordance with the *Pay Equity Act*. The applicants submitted that the full extent of their job duties were unreasonably scored. The Tribunal considered the applicants' arguments, but concluded that they had not made out a *prima facie* violation of the Act. The Tribunal concluded that the applicants had not led evidence that, if accepted as true, could lead to the conclusion that the job evaluation system either: "ignored or failed to apply one or the statutory criteria or unreasonably excluded important job information related to any of the four statutory criteria." Accordingly, application was dismissed.

BONNIE E. MACLEOD, IRENE HUTTON, LINDA GEMMELL V. BROCKVILLE GENERAL HOSPITAL; PEHT File No. 1763-17-PE; November 20, 2019, 2019 CanLII 113536 (ON PEHT)

The Tribunal considered whether a six-year span between an order by a Review Officer and the filing of an application objecting to the order constituted an abuse of process should warrant the dismissal of the application. The Tribunal found that, when considering whether delay constitutes an abuse of the Tribunal's processes, the Tribunal may have regard to the following non-exhaustive list of factors: the length of the delay, the explanation for the delay, prejudice, the nature of the case and its complexity, the facts and issues in dispute, the purpose and nature of the proceedings, the nature of the

various rights at stake in the proceedings, and the extent to which the responding party contributed to (or waived) the delay. The Tribunal concluded that the delay was lengthy, the Employer did not contribute to the delay, there was no compelling explanation for the delay, the delay was presumptively prejudicial, and the Employer had demonstrated actual prejudice because of the delay. The Application was dismissed.

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1328 V. TORONTO CATHOLIC DISTRICT SCHOOL BOARD; PEHT File No. 0288-15-PE; December 2, 2019, 2019 CanLII 116293 (ON PEHT)

Court Activity

During the 2019-2020 fiscal year, there was one new application for judicial review filed with the Divisional Court.

As of April1, 2019 there were two matters pending before the Courts. Those remaining matters were two applications for judicial review of the same Tribunal decision. One of those applications was granted and the other was dismissed by the Divisional Court. The Board received three applications for leave to appeal arising from those Divisional Court decisions. Leave to appeal was granted by the Court of Appeal in all three applications and all three appeals will proceed together on the merits before a five judge panel at the Court of Appeal. These matters were scheduled to be heard in April 2020 but have been adjourned until October 2020 due to the pandemic. Therefore, as of March 31, 2020, there are four outstanding matters before the courts.

Performance Measures

Efficient Case Processing

2019/2020 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

2019/2020 Achievements

- 100% of new files opened within two days after an application is filed in accordance with the Tribunal's Rules of Practice
- 80% 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

2019/2010 Commitments

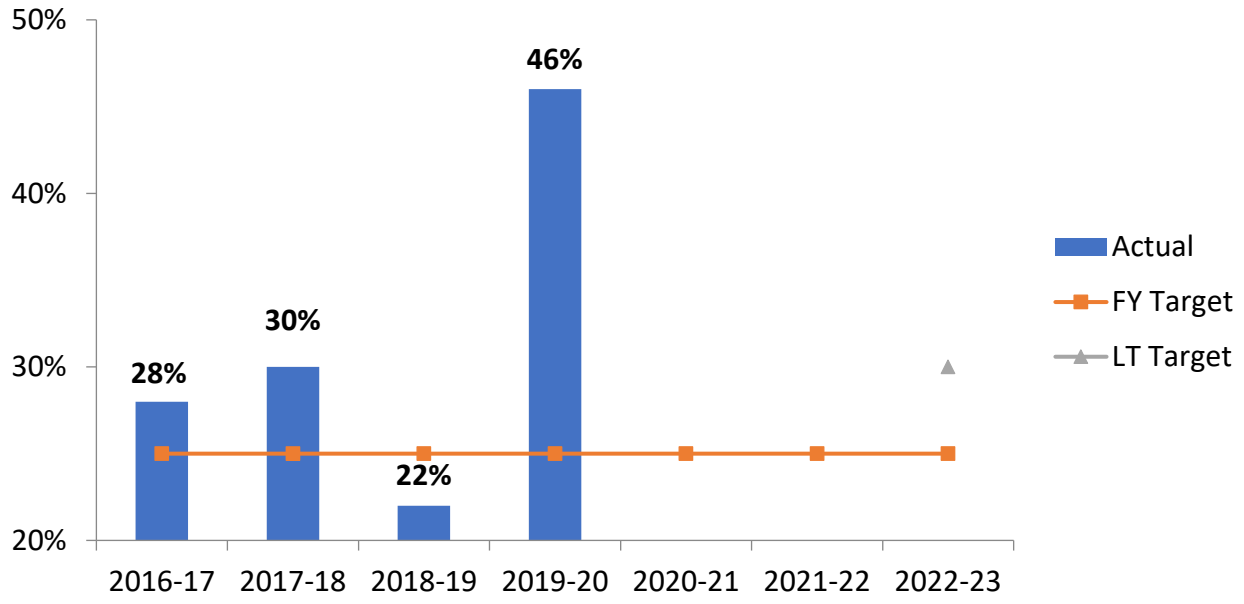
- 90% of files reviewed by Presiding Officer or Deputy Presiding Officer within two weeks of response date
- Where a case management hearing is held, in 50% of those cases at least one issue is resolved
- 25% of outstanding cases disposed of during the year

2019/2020 Achievement

- 100% of files reviewed within two weeks of response date
- Where a case management hearing was held, at least one issue was resolved in 40% of those cases.
- 46% of cases disposed of during the year overall
- 80% more cases were disposed of than were filed in in the 2019-2020 fiscal year.

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.



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 2019/2020.

Financial Performance

In accordance with the Ministry of Labour, Training and Skills Development'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, Training and Skills Development'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 $281,331. A cost-sharing of salaries with the Ontario Labour Relations Board is in place.

All figures in $000.0 thousand

Account	Expenditure Estimates	In-year Board Approvals	Year-end Budget	Year-end Actuals	Variance	% Variance
Salaries & Wages	275.1		275.1	233.4	41.7	*15.1%*
Benefits	39.7		39.7	19.9	19.8	*50.0%*
ODOE:						
Transportation & Communication	15.0	(0.1)	14.9	2.6	12.3	*82.6%*
Services (Including Lease)	167.3		167.3	77.0	90.3	*54.0%*
Supplies & Equipment	1.0		1.0	0.3	0.7	*71.2%*
Total ODOE	**183.3**	**(0.1)**	**183.2**	**79.9**	**103.3**	***56.4%***
Grand Total	**498.1**	**(0.1)**	**498.0**	**333.2**	**164.8**	***33.1%***

Appendix A

Order in Council Appointments

The Tribunal's 's adjudicators (Presiding Officer, Alternate Presiding Office, 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 2019 – 2020, their appointment terms and remuneration*

Name	First Appointed	Term of Appointment	Annual Renumeration
Presiding Officer			
McKellar Mary Anne	August 7, 2019	September 1, 2019	$72,962.00
Ross, David	August 13, 2019	May 12, 2020	$101,445.00
Deputy Presiding Officers			
Cavé, Johanne (P/T)	October 31, 2019	October 30, 2021	$788.00
Kelly, Patrick M.	May 17, 2009	August 30, 2019	$16,202.29
McGilvery, Roslyn	August 25, 2015	December 3, 2019	$38,885.50
Rowan, Caroline	June 2, 2010	September 16, 2019	$38,885.50
P/T Members (Employer)			
Bolton, Lori	September 13, 2017	September 25, 2022	$2,265.50
Burke, Ann	April 4, 2012	April 3, 2022	$1,132.75
Cook, William S.	September 13, 2017	September 12, 2019	$0.00
Greenside, Patricia	November 21, 2019	November 20, 2021	$0.00
Zabek, Carla	April 4, 2012	April 3, 2022	$2,955.01
P/T Members (Employee)			
Harris, Irene	December 21, 2012	December 20, 2022	$1,871.50
Nielsen, Heino	September 13, 2017	September 12 2019	$0.00
Phillips, Carol	August 15, 2012	September 16, 2022	$3,940.00
Roth, Stephen	December 12, 2019	December 11, 2021	$0.00

* The PEHT utilizes a cost sharing agreement with the OLRB which allows the Tribunal to capitalize on cost efficiencies. Remuneration for full-time appointees to the Tribunal is determined by a Directive issued by Management Board of Cabinet. Full-time appointees of the PEHT who are cross-appointed with the OLRB are paid 25% of their salaries for Deputy Presiding Officers and 50% of the salary for the Presiding Officer of the Tribunal, with the remaining salaries paid by the OLRB. The remuneration actually paid to an individual appointee may be less than the maximum set by the Management Board Directive due to individual circumstances such as a change in term of appointment during the year, sick leave, unpaid leave of absence or time spent by an appointee cross-appointed to another tribunal. Remuneration for part-time appointees to the Tribunal is based on a per diem rate established by Management Board of Cabinet. As a result, annual remuneration set out in the chart above is reflective of actual monies received by an individual appointee.

Accountability Statement

The Tribunal's' Annual Report for the fiscal year ending March 31, 2020 was prepared under my direction for submission to the Minister of Labour, 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 compliance with the requirements of Section 13 of the Ministry of Treasury and Economics Act. 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 of Labour, Training and Skills Development'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, 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, 2019 to March 31, 2020.

For More Information

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