# Pay Equity Commission Annual Report 2020–21

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Pay Equity Commission, Suite 300, 180 Dundas St W, Toronto, ON M7A 2S6

Tel: 1-800-387-8813 | TTY: 1-855-253-8333 | www.payequity.gov.on.ca

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# Pay Equity Office

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# 1. Message from the Pay Equity Commissioner

Like most ministries and agencies of the province, 2020-2021 was a transformative year for the Pay Equity Office. In Q1, the PEO responded to the government-issued COVID-19 province-wide shut down by establishing its operations remotely through cyber-secure and integral systems. The staff that make up the PEO created and adapted to new electronic processes and digital tools in order provide as minimal disruption possible to our case files, while responding to employer and employee concerns.

Inevitably, the sudden transformation caused by COVID-19 led to some delays in service delivery. Despite this, our team 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 and meet most of our targets.

A recent study by RBC discovered that the COVID-19 pandemic knocked women's participation in the labour force down from a historic high to its lowest level in over 30 years, with 1.5 million women losing their jobs in the first two months of the recession (RBC Economics, 2020). We have seen that women's representation in the labour market has both social and economic benefits, not only driving gender equality but also household income and workforce productivity. An oft-cited report by McKinsey estimated that, by 2026, Canada could add $150 billion to its annual GDP by supporting women's participation in the workforce.

At the PEO, we focus on women in the workforce and fair compensation. Our work is especially important now as decreasing the gender wage gap is one way to build a more inclusive and prosperous Ontario through its post-COVID-19 economic recovery.

We are committed to this.

The report outlined below highlights the PEO operations and accomplishments for 2020-2021.

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 Understanding the Wage Gap

The gender wage gap is the difference between wages[2] earned by men and wages earned by women. The most recent Statistics Canada data (2018) shows that the gender wage gap in Ontario is 12.2%. This gap includes both full and part-time work in core working age people (ages 25-54). The gap of 12.2% means that for every $1.00 earned by a male worker, a female worker earns 88 cents.

The gender wage gap shrank by more than 7% between 1998 and 2018. Statistics Canada noted the reduction was largely explained by changes in the distribution of men and women across occupations, women's increased educational attainment, and the decline in the share of men in unionized employment.

Nearly two-thirds of the gap remains unexplained. The unexplained portion of the gap captures two kinds of effects: measurable and unobservable wage-related characteristics. Measurable effects could include total work experience, the higher prevalence of work interruptions among women which are strongly linked to caregiving responsibilities, and field of study which may help to explain the impacts of education level on occupation. Unobservable wage-related characteristics could include gender

[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.

[2] Based on hourly wages, not annualized salaries. For more information on gender compensation differences, visit the PEO's website at www.payequity.gov.on.ca.

differences in behaviours (e.g., wage negotiation), societal expectations, constrained choices resulting from gender roles in paid work, as well as the impact of explicit or implicit gender-based wage discrimination.

## 2.3 Ontario's Pay Equity Act

Pay equity (or equal pay for work of equal value) addresses the undervaluation of work traditionally or historically done by women, or work that is stereotyped as "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 (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.

## 2.4 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 with diverse stakeholders;
- 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 year 2020 will take its place in history as a year of extraordinary upheaval. The global pandemic triggered by the SARS-CoV-2 virus, more commonly known as COVID-19, affected all organizations' ability to maintain operations and the PEO was no exception.

The PEO team pivoted as quickly as the rest of the Ontario Public Service, switching to the work-from home model and adapting to full electronic service delivery. Staff stepped up admirably to support each other through the initial, and then prolonged, turbulence of adapting to a constantly changing world. Staff were equally supportive of employer and employee clients by accommodating the sudden strain on all organizations, such as by extending deadlines wherever possible and temporarily setting aside our commitment to performance targets that were defined pre-COVID-19.

In addition, the PEO necessarily cancelled all plans for in-person stakeholder events for 2020-21. Towards the end of the fiscal year, the PEO was happy to resume its participation in stakeholder events that were converted to virtual venues, such as the annual conference held by the Human Resource Professionals Association.

The PEO was pleased to welcome a new Commissioner in September 2020. By this point in the fiscal year, it was also clear that the pandemic would not be a short-term matter and that the PEO needed to position itself differently for post-pandemic recovery and a new normal.

All of these happenings stirred the PEO to re-think and revitalize its strategic plan. This new plan is being finalized at the time of this writing, and we look forward to sharing more information in due course.

## 3.2 PEO Values

The PEO team embraces strong corporate 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.

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

# 4. Performance Measures

## 4.1 Pay Equity Office Year-end Caseload Summary 2020-21

| | |
|---|---|
| **Orders Issued** | 8 |
| **Pay equity adjustments recovered** | $3,168,165 |
| **Number of employees received adjustments** | 1801 |
| **Cases Open** | |
| Carried over from previous year | 166 |
| New complaint applications | 45 |
| New monitoring | 2 |
| Cases returned from the Tribunal | 1 |
| Notice of Inability to Achieve Pay Equity | 0 |
| **Case Closures** | |
| Complaint applications | 39 |
| Monitoring | 20 |
| Cases referred to the Tribunal | 0 |
| Notice of Inability to Achieve Pay Equity | 0 |
| **Case Dispositions** | |
| Compliance without order | 18 |
| Complaint applications decided | 7 |
| Withdrawn | 12 |
| PEO referrals 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 an employee.

“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 Efficiency and Effectiveness Measures

Performance against targets for the latter half of the 2019-20 fiscal year and all of the 2020-21 fiscal year were dramatically affected by the global pandemic. PEO staff needed time to receive all of the technological tools and supports that eventually enabled them to work fully electronically. Parties to open files, especially employers, needed additional time to provide necessary documentation to Review Officers, leading to lower-than-normal performance against targets. For the duration of the pandemic, the PEO accommodated, and will continue to accommodate, the extraordinary pressures placed on both employees and employers. The PEO commends all parties for demonstrating admirable commitment to compliance with the *Pay Equity Act* despite these challenges.

| Outcome | Measure | 2019–20 Achieved | 2020–21 Target | 2020-21 Achieved |
|---|---|---|---|---|
| **Efficiency:** 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. | Per cent cases resolved within 24 months | 56% | 80% | 53%[3] |
| **Effectiveness:** 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. | Per cent cases resolved without an Order | 95% | 85% | 31%[3] |

## 4.3 Year-Over-Year Performance

In 2020-21, the number of new complaints received continued the pattern of

[3] The Review Services Unit prioritized the closing of ageing monitoring cases.

unpredictable variability evident over the last several years. The high degree of variability is caused by a wide variety of factors, only a few of which can be identified – and with limited certainty – from one year to the next. For instance, the apparent spike in complaint applications in 2020-21 can be partly attributed to the fact that the PEO received a set of 24 applications from Ontario's Colleges of Applied Arts and Technology which reflected a single allegation common to all of the colleges. Taking this set of applications into account, the PEO received approximately the same number of new complaints as in 2019-20, and the low number for both years is most likely due to the global pandemic. The reduction in the number of new "Monitoring" cases reflects the PEO's decision to begin changing its approach to proactive compliance; as a result, effort was put into closing existing Monitoring files and a new approach to monitoring is being designed.

**New Cases Opened**

| Fiscal Year | Total | Monitoring | Complaint Applications | Other Types of Cases[4] |
|---|---|---|---|---|
| 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 |
| 2020-21 | 60 | 3 | 57 | 0 |

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

## Applicant[5] Profile

| Fiscal Year | Total Applicants | Applicant status Represented and/or Union | Applicant status Unrepresented Employee | Other Types of Applications[6] |
|---|---|---|---|---|
| 2014–15 | 95 | 50 (53%) | 45 (47%) | 0 |
| 2015–16 | 105 | 30 (29%) | 64 (61%) | 11 (40%) |
| 2016–17 | 93 | 19 (20%) | 58 (62%) | 2 (2%) |
| 2017–18 | 56 | 22 (39%) | 30 (54%) | 1 (2%) |
| 2018–19 | 86 | 14 (16%) | 51 (59%) | 1 (1%) |
| 2019-20 | 64 | 31 (48%) | 31 (48%) | 2 (3%) |
| 2020-21 | 39 | 21 (54%) | 19 (49%) | 1 (3%) |

[5] "Applicant" denotes complaint files only. A single Applicant may file multiple Applications in one year.

[6] 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, Training and Skills Development's Estimates and reports quarterly on its expenditures and planned commitments.

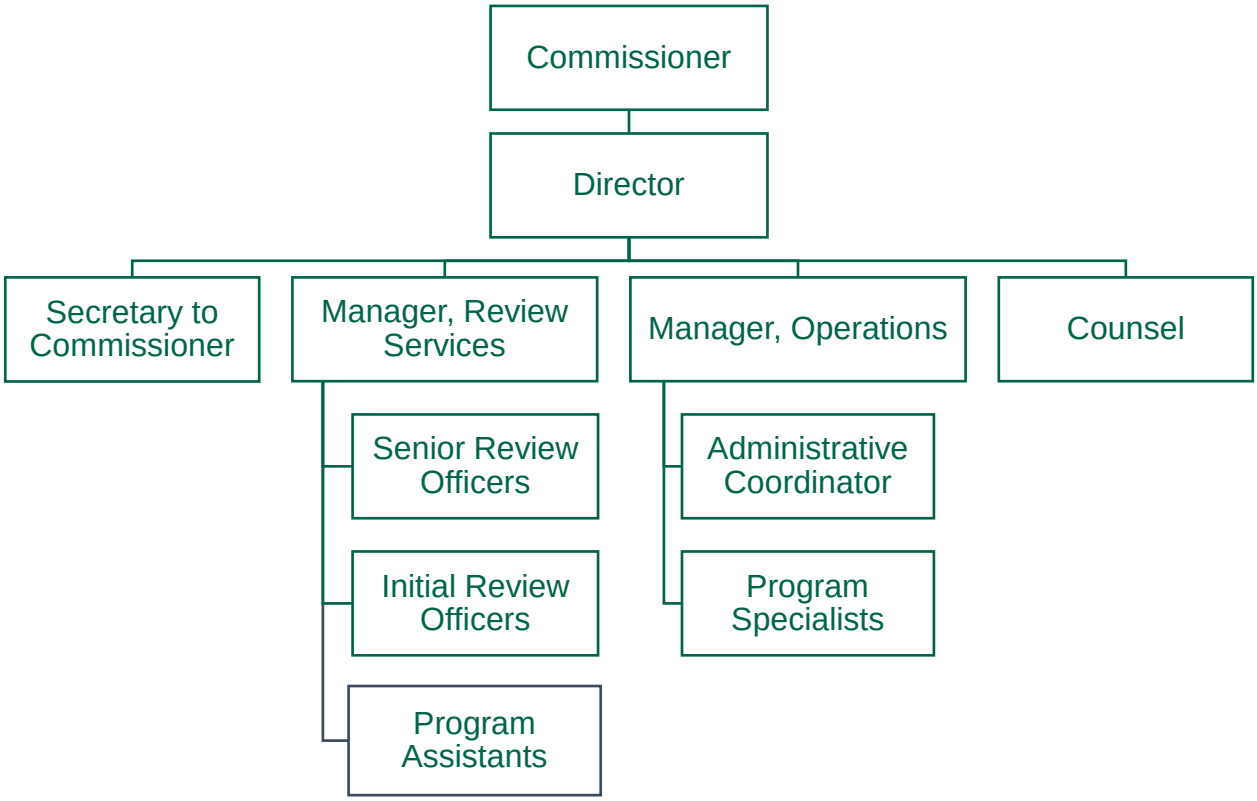
**Fiscal Year 2020–21** (in thousands of dollars)

| Account | 2020-21 Expenditure Estimates | 2020-21 In-year Board Approvals | 2020-21 Year-end Budget | 2020-21 Year-end Actuals | Variance | % Variance |
|---|---|---|---|---|---|---|
| Salaries & Wages | 2,347.1 | 0 | 2,347.1 | 1,565.8 | 781.3 | 33.3%[7] |
| Benefits | 266.1 | 0 | 266.1 | 203.3 | 62.8 | 23.6% |
| ODOE : | | | | | | |
| Transportation & Communication | 42.8 | 0 | 42.8 | 12.8 | 30.0 | 70.2% |
| Services (Including Lease) | 357.3 | 0 | 357.3 | 434.3 | (77.0) | -21.6% |
| Supplies & Equipment | 20.0 | 0 | 20.0 | 4.6 | 15.4 | 76.9% |
| **Total ODOE** | **420.1** | **0** | **420.1** | **451.7** | **(31.6)** | **-7.5%** |
| **Grand Total** | **3,033.3** | **0** | **3,033.3** | **2,220.7** | **812.6** | **26.8%** |

[7] 2020-21 underspending in Salaries, Wages, and Benefits was due to short-term position vacancies. The onset of the pandemic delayed the PEO's ability to recruit new staff.

## 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 annualized remuneration (salary not including benefits) for the Commissioner in 2020-2021 is $174,184 (pro-rated from the actual date of appointment).

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.

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# The Pay Equity Hearings Tribunal

# Annual Report 2020-2021

# PEHT Annual Report 2020-2021

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# Message from the Presiding Officer

I am pleased to present the 2020-2021 Annual Report for the Pay Equity Hearings Tribunal.

This report bears some special importance because we operated during the COVID-19 pandemic for the entire year. The Tribunal's exemplary staff ensured that the electronic systems were in place as we continued to operate at full capacity. All in-person hearings were converted to online hearings, and all documents were able to be filed electronically. The Tribunal has learned valuable lessons during this time about how to increase the accessibility to the public and increase its efficiency with how it processes the matters that come before it.

This year we welcomed back Caroline Rowan as the Tribunal's Alternate Presiding Officer. Caroline brings a wealth of adjudicative experience with her from her career at the Ontario Labour Relations Board and previously having been appointed as a Deputy Presiding Officer.

In the 2020-2021 year, we received six new applications, which is down from the 2019-2020 year, but I assume that part of the reason for the lower number is the pandemic. Once again, we were able to resolve more applications than were filed, as a quarter of the outstanding applications were resolved. In 2021, the Court of Appeal issued its decision in the appeal of the Divisional Court ruling in *Participating Nursing Homes* v. *Ontario*, 2021 ONCA 149 (CanLII). The Court's decision was split 3-2. The Attorney General and the Participating Nursing Homes have sought leave to appeal this decision to the Supreme Court. The Tribunal is following this request with great interest as this issue will greatly impact how pay equity is maintained by employers that used the proxy method to create their plans.

## 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, mail services and common library services.

## Operations During the Pandemic

The Tribunal continued to operate during the pandemic despite all OLRB staff and PEHT adjudicators being sent home to work remotely. In March 2020, the OLRB advised that all staff were to be sent home to work remotely and that the mailroom shared with the Tribunal would now be closed. It took time to obtain equipment for staff and adjudicators for remote work including for the front desk staff who were equipped with cell phones to take calls remotely and provide information to the public and stakeholders while the offices were closed.

The Tribunal faced challenges due to the pandemic which required changes to its policies and processes. The Tribunal notified its community that electronic filing of all applications, responses, correspondence and other material would now be mandatory in order that they could be processed, uploaded and retained in electronic files. In-person hearings were cancelled and hearings would be conducted by video or teleconference where appropriate. Throughout the pandemic, the Tribunal responded to new challenges and changes in conditions by developing new processes and providing notices and regular updates to its community. The availability upon request of in-person hearings has been revised a number of times during the pandemic as the situation has changed. No in-person hearings have taken place yet during the pandemic but parties may write to the Tribunal to request an alternative to video hearing which will be considered on a case by case basis. Some of the other changes which took place include:

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

- A new electronic summons to hearing form was created;

- The Tribunal began accepting 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 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. In 2020-2021, no hearing or pre-hearing conference dates were cancelled shortly before a hearing.

# 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, in French and English, were made available electronically on its website and are hosted by Ontario Shared Services. A total of seven forms 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 2020/2021,100% of the total number of forms and submissions filed with the Tribunal were filed electronically as electronic filing became mandatory during the pandemic.

A project to replace the Tribunal's older website with a new modernized website was completed in 2020/2021. Technology had advanced considerably since the previous website was created. The OLRB staff developed a more modern, user-friendly and accessible Tribunal website which was launched in February 2021. The entire content of the website was updated, reorganized and streamlined so that stakeholders would be able to use it easily. Staff members were trained on the website in order to assist and guide members of the public to find what they needed.

## Caseload Processing

The total caseload for the fiscal year 2020/2021 amounted to 27 applications, which was a combination of 21 pending applications carried over from the previous year and 6 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 2020/2021 fiscal year, the Tribunal disposed of seven applications. One application was granted, four were dismissed, one was terminated and one was settled.

Twenty applications remained pending on March 31, 2021. 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, 2021 down to 11. The pending number also includes applications that remain open but were not actively pursued by the parties in 2020/2021, 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, 2021 is five 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 (3) and held (2), hearings scheduled (8) and held (4), and number of written decisions issued this year: interim decisions (21) and final decisions (7). 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 |
| **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

The Tribunal considered a request to dismiss an application on a preliminary basis. The employer argued, *inter alia*, that the applicant had signed a settlement, which included a full and final release and which barred the application. The applicant asserted that the employer had repudiated the settlement which allowed this application to proceed to the Tribunal. The Tribunal rejected the repudiation argument on two grounds. First, the Tribunal found that when the applicant was required to make her election, she elected to sue for damages under the contract. Second, the applicant had not pled a *prima facie* case that the contract has been repudiated such that she is relieved of her obligations under the settlement. Assuming the applicant's allegations were true, she had still received the vast majority of the benefit owing under the contract and the contract had been substantially performed. In the result, the Tribunal dismissed the application.

JOAN MILLS V. CITY OF HAMILTON; PEHT Case No: 0062-20-PE; August 21, 2020, 2020 CanLII 62090 (ON PEHT)

The applicant asserted that her job was not valued properly and was not compared to a proper male comparator contrary to the requirements of the *Pay Equity Act*. The Tribunal agreed with the employer's position that the applicant had not pled a *prima facie* case based on the materials filed because: the applicant's position was re-evaluated using a gender-neutral evaluation system pursuant to the Act, but although her position scored higher it did not elevate her to a higher band. There was no evidence that the employer ignored or failed to apply any of the statutory criteria, or that the newly evaluated job score was unreasonable. The application was dismissed.

TINA LAHTINEN V. CORPORATION OF THE CITY OF THUNDER BAY; PEHT Case No: 2872-19-PE; November 2, 2020, 2020 CanLII 86643 (ON PEHT)

The applicant requested that the Tribunal quash the decision of the review officer from several years prior because they were not afforded procedural fairness by the officer and that the matter be remitted back to review services for a new investigation. The Tribunal noted that its role was to hear the application on a *de novo* basis. The parties were entitled to present evidence and make arguments to the Tribunal for its consideration, and the Tribunal would reach its own conclusions from the evidence and arguments. In order for the Tribunal to consider an issue, it must first have been raised with review services. The Tribunal confirmed that it is not its role to review the process or conduct of the review officer, which the applicant was requesting that the Tribunal do in this instance. The Tribunal dismissed the application without prejudice to the applicant's right to file a fresh application to review services.

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1328 V. TORONTO CATHOLIC DISTRICT SCHOOL BOARD; PEHT Case NO. 0134-18-PE; November 13, 2020, 2020 CanLII 90039 (ON PEHT)

## Court Activity

During the 2020-2021 fiscal year, there were no new applications for judicial review filed with the Divisional Court.

As of April 1, 2020 there were four outstanding matters pending before the Courts. Those remaining matters were three appeals before the Court of Appeal and one application for judicial review before the Divisional Court. All three appeals were heard together before a five-judge panel and were dismissed. Leave to the Supreme Court has been sought. The Application for Judicial Review is pending. Therefore, as of March 31, 2021 there is one outstanding matter before the courts.

# Performance Measures

Efficient Case Processing

**2020/2021 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.

**2020/2021 Achievements**

- 100% of new files opened within two days after an application is filed in accordance with the Tribunal's Rules of Practice.
- 100% of confirmations of filing of applications sent to parties within four days of application filed in accordance with the Tribunal's Rules of Practice.
- 85.7% of files closed within two business days following final decision. Note: Only one file was closed outside the two business days. It was adjourned *sine die* for nine months and closed when the nine-month time frame passed.

Adjudication and Disposition

**2020/2021 Commitments**

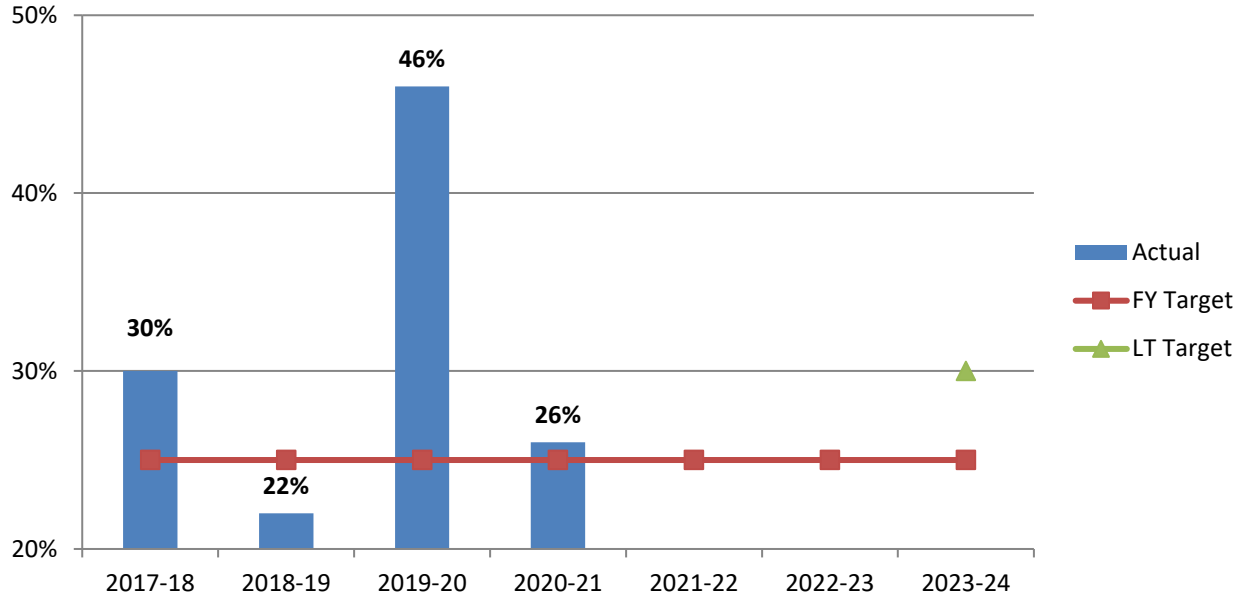
- 90% of files reviewed by Presiding Officer or Deputy Presiding Officer within two weeks of response date.
- Where a case management hearing is held, in 50% of those cases at least one issue is resolved.
- 25% of outstanding cases disposed of during the year.

**2020/2021 Achievement**

- 100% of files reviewed within two weeks of response date.
- Where a pre-hearing conference was held, at least one issue was resolved in 100% of those cases.
- 26% of cases disposed of during the year overall, and more cases were disposed of than were received.

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. The primary reason for the disposal rate to have dropped from 2019-2020 is that when the new Presiding Officer was appointed in the 2019-2020 year, a thorough review of all cases was conducted and where appropriate, directions were made to ensure that matters were progressing. The previous year also included the fact that the Tribunal issued two final decisions that disposed of several active files at once. In 2020-2021, the Tribunal issued more final decisions, but each matter only disposed of a single file.




## 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 2020/2021.

## 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 2020/2021.

# Financial Performance

In accordance with the Ministry of Labour, 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 $232,263. A cost-sharing of salaries with the Ontario Labour Relations Board is in place.

The PEHT's financial performance for the 2020/21 fiscal year resulted in a significant savings for the Tribunal. Salaries and wages were significantly under-budget as a result of deferred recruitment. Savings in transportation/communications were marginally higher than the previous fiscal due to travel suspension as a result of the pandemic. Services expenditures were underspent due to lower part-time per diem costs and the reduction of SLA costs with WSIAT as a result of the pandemic. Supplies and equipment expenses were slightly overspent due to costs associated with pandemic related safety supplies for the Tribunal.

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 | 126.2 | 148.9 | *54.1%* |
| Benefits | 39.7 | | 39.7 | 11.6 | 28.1 | *70.8%* |
| ODOE: | | | | | | |
| Transportation & Communication | 14.9 | | 14.9 | 0.7 | 14.2 | *95.1%* |
| Services (Including Lease) | 135.5 | | 135.5 | 38.2 | 97.3 | *71.8%* |
| Supplies & Equipment | 1.0 | | 1.0 | 4.0 | (3.0) | *-302.2%* |
| **Total ODOE** | **151.4** | **-** | **151.4** | **43.0** | **108.4** | ***71.6%*** |
| **Grand Total** | **466.2** | **-** | **466.2** | **180.7** | **285.5** | ***61.2%*** |

# 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 2020 – 2021, their appointment terms and remuneration:*

| Name | First Appointed | Term of Appointment | Annual Renumeration |
|---|---|---|---|
| **Presiding Officer** | | | |
| **Ross, David** | August 13, 2019 | Apriil 1, 2022 | $174,184.00 |
| **Alternate Presiding Officer** | | | |
| **Rown, Caroline** | October 1, 2020 | August 5, 2022 | $0.00 |
| **Deputy Presiding Officers** | | | |
| **Cavé, Johanne (P/T)** | October 31, 2019 | October 30, 2021 | $2,167.00 |
| **Rowan, Caroline** | August 6, 2020 | August 5, 2022 | $39,019.00 |
| **P/T Members (Employer)** | | | |
| **Bolton, Lori** | September 13, 2017 | September 25, 2022 | $788.00 |
| **Burke, Ann** | April 4, 2012 | April 3, 2022 | $394.00 |
| **Greenside, Patricia** | November 21, 2019 | November 20, 2021 | $4,777.25 |
| **Zabek, Carla** | April 4, 2012 | April 3, 2022 | $4,235.50 |
| **P/T Members (Employee)** | | | |
| **Harris, Irene** | December 21, 2012 | December 20, 2022 | $98.50 |
| **Phillips, Carol** | August 15, 2012 | September 16, 2022 | $2,955.01 |
| **Roth, Stephen** | December 12, 2019 | December 11, 2021 | $3,644.50 |

* 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 part time appointee.

# Accountability Statement

The Tribunal's Annual Report for the fiscal year ending March 31, 2021 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'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, 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, 2020 to March 31, 2021.**

# For More Information


**Local**: 416-326-7500

**Toll-Free**: 1-877-339-3335

**Hearing Impaired (TTY):** 416-212-7036

**Fax**: 416-326-7531

**Hours of Operation**: 8:30am – 5:00pm

**Website**: http://www.peht.gov.on.ca

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



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