

# Guideline # 16

## Dispute Resolution II

### Pay Equity Hearings Tribunal

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#### PAY EQUITY IMPLEMENTATION SERIES

The *Pay Equity Implementation Series* is designed to help employers, employees and bargaining agents to achieve pay equity and to understand their rights and obligations under the *Pay Equity Act*, R.S.O. 1990, c. P7, as amended (the *Act*). These guidelines do not restrict review officers of the Commission or the Pay Equity Hearings Tribunal in their interpretation of the *Act*. The series is published in a sequence that generally reflects the steps for implementing pay equity. (**Revised Summer 2002**).

There are two guidelines dealing with two elements of dispute resolution: Review Services and hearings before the Pay Equity Hearings Tribunal. This guideline has been prepared by the Pay Equity Office and discusses the Pay Equity Hearings Tribunal. Guideline #15 deals with dispute resolution concerning Review Services.

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#### The Pay Equity Hearings Tribunal

The Pay Equity Commission, created by the *Pay Equity Act*, R.S.O. 1990, c. P.7, as amended (the *Act*) consists of two separate and independent parts: the Pay Equity Office, which includes the Review Services Branch, and the Pay Equity Hearings Tribunal.

The Pay Equity Hearings Tribunal is a quasi-judicial body and has exclusive jurisdiction to determine all questions of fact or law that arise in any matter before it. The Tribunal is subject to the requirements of the *Statutory Powers Procedures Act* R.S.O. 1990, C.S. 22, as amended.

The action or decision of the Tribunal is final and conclusive for all purposes. Decisions of the Tribunal cannot be appealed but may be judicially reviewed where a party alleges the Tribunal has made jurisdictional errors or rendered a patently unreasonable decision.

#### The Tribunal's Mission Statement

The purpose of the *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 where women and men may achieve equality.

The goals of the *Act* can best be achieved through the co-operation of employers, bargaining agents and employees. The Pay Equity Hearings Tribunal is committed to encouraging settlement between the parties. Where parties are unable to resolve their differences, the Tribunal's decision is final and binding.

The Tribunal is committed to a hearing process that balances the need to be fair, accessible and efficient.

## Structure of the Tribunal

The Tribunal consists of a Chair, one or more **Vice-Chairs** and equal numbers of Members representative of employers and employees. All of these positions are filled through appointments made by the Lieutenant Governor in Council.

The Chair assigns tripartite panels consisting of the Chair, or a Vice-Chair, a Member representative of employers and a Member representative of employees to hear each application. The panel brings its specialized expertise and understanding of pay equity, compensation and labour relations to the hearing process. Members do not favour their particular constituency but determine the issues in dispute based on the evidence and the arguments made by the parties.

## How Applications Come to the Tribunal

After the Review Services Branch receives the complaint, a review officer will be assigned to investigate and attempt to settle the issue(s) in dispute.

An employer, employee(s) or bargaining agent may make an application for hearing before the Tribunal if:

1. The review officer has notified the parties that they have not been able to effect a settlement and will not be issuing an order;
2. A party objects to a review officer's order or disagrees with the review officer's refusal to consider the complaint;
3. The review officer refers the matter to the Tribunal;
4. A party alleges that a review officer's order has not been followed or a settlement between the parties is not being implemented;
5. A party seeks the consent of the Tribunal to prosecute for an offence under the *Act*.
6. In rare circumstances, the Tribunal may determine that the review services process is fulfilled notwithstanding the absence of an Order or decision not to issue an Order.

Hearings before the Tribunal are treated as *de novo* hearings rather than an appeal from the Order. The findings of the Review Officer are not binding **on** the Tribunal.

## Rules of Practice

The Tribunal has established Rules of Practice for the conduct of proceedings before it. The Rules are explained in detail in *A Guide to the Pay Equity Hearings Tribunal Rules*, which is available in English and French. The Guide also contains forms for use before the Tribunal. Use of the forms is not mandatory if all the necessary information is provided in another format.

A party requesting a hearing before the Tribunal is required to complete an application (Form 1), serve it on all other parties and file it with the Registrar of the Tribunal. The application must identify the respondent(s) to the application and state the issue, facts and events, but not the evidence intended to prove them. The application must also identify the remedy sought from the Tribunal.

Each respondent is required to complete a response to the application (Form 2) noting the facts, events and issues. A party may choose to file a reply to any new matters, arguments or issues raised in a response.

The parties are reminded that they are responsible for service of all pleadings on each other. Parties must complete statements of service (Form 3), which verify to the Hearings Tribunal that they have served documents on the other parties. The Tribunal may also order pre-hearing disclosure of evidence and documents if the Tribunal considers it necessary.

A party will not be permitted to raise a fact, event or issue that is not set out in the application, response or reply, except with the permission of the Tribunal.

## **Pre-Hearing Conferences**

The Tribunal will hold a Pre-hearing Conference to:

- identify and narrow the issues
- get agreement on the facts, events and documents
- resolve the application where possible
- encourage the exchange of all relevant documents
- identify and attempt to resolve procedural and preliminary objections

The Chair or the Vice-Chair who conducts the pre-hearing conference has no further contact with the application and will not determine its outcome.

## **The Hearing**

The Tribunal holds hearings in eight regional centres within Ontario. Parties are asked to indicate their preferred location for the hearing. Parties are also asked to estimate the number of hearing dates they expect to require and to indicate the number of witnesses they intend to call. Special rules apply to the use of expert witnesses.

The Registrar of the Pay Equity Hearings Tribunal will set the date, time and place for the hearings, which are usually held on consecutive days. Normally, the Registrar will arrange mutually convenient hearing dates for all parties. Every attempt is made to schedule the first day of a hearing within 60 days of receiving the completed application.

The Tribunal attempts wherever possible to use wheelchair accessible facilities. The Tribunal will provide services for the hearing or visually impaired when need for the service is identified. Hearings are conducted in either English or French.

## Conclusion

The Tribunal is committed to an ongoing consultation with the community regarding its procedures. Tribunal procedures may be modified in order to better achieve the goals of fairness, accessibility and efficiency.

## RELEVANT SECTIONS IN THE ACT

Section 17	Discusses hearings in response to complaints and objections regarding an ordered pay equity plan.
Section 21.23	Establishes the Tribunal's power to order information from or to a seeking employer for the purposes of proxy comparisons.
Subsection 24(5.3)	Places the burden of proof on the respondent where they are alleged to have contravened section 9(2) of the Act.
Section 25	Sets out the Tribunal's power to hold hearings, to decide issues before it and to make orders binding on the parties.
Section 25.1	Provides for the binding settlement of matters, which the Tribunal is required to hold a hearing for, and for enforcement of these settlements.
Section 28	Defines the composition and staffing of the Tribunal.
Section 29	Sets out the powers and duties of the Tribunal regarding the form and process of hearings.
Subsection 30(l)	States that the Tribunal has exclusive jurisdiction to determine matters before it for a hearing, and that the Tribunal's decisions or orders are final and binding.
Subsection 30(2)	States that the Tribunal has the power to reconsider its decision or order and may vary or revoke same.
Subsection 32(l)	Lists who may be parties to a hearing before the Tribunal.
Subsection 32(4)	Sets out the right of an employee or group of employees to remain anonymous provided they appoint an agent who becomes the party to the proceeding.
Subsection 32(l. 1)	Establishes the Tribunal's authority to require posting of notices in the workplace.

## REFERENCES:

*Pay Equity Implementation Series (Revised) - Guideline #15: Dispute Resolution I - Review Services*  
*Rules of Practice: A Guide to the Pay Equity Hearings Tribunal Rules*  
*Pay Equity Reports*

## For More Information:

We are here to help. We can answer your questions by e-mail at <mailto:Pecinfo.Pecinfo@ontario.ca> or by phone at (416) 314-1896, or toll-free at 1-800-387-8813. You can also register for a free seminar. Visit our website at <http://www.payequity.gov.on.ca/peo/english/seminar.html>

**All communications are confidential.**

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### The Pay Equity Commission

**This fact sheet is for information only, and is not intended to restrict Review Officers or the Pay Equity Hearings Tribunal in their determination of matters. Refer to the *Pay Equity Act* for exact interpretation.**

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