



September 28, 2023

The Honourable Niki Sharma
Attorney General of British Columbia
Parliament Buildings
Victoria, BC
V8V 1X4

Dear Honourable Minister:

RE: Employment Standards Tribunal Fiscal Year 2022/2023 Report

I am pleased to forward to you the Employment Standards Tribunal's annual report for the fiscal year 2022/2023. This Report has been prepared for your review pursuant to Section 103 of the *Employment Standards Act*.

Yours truly,

A handwritten signature in black ink, appearing to read "J. Glougie", written in a cursive style.

Jennifer Glougie, Chair
Employment Standards Tribunal

Enclosure

cc. The Honourable Harry Bains
Minister of Labour
Parliament Buildings
Victoria, BC
V8V 1X4



Annual Report of the Employment Standards Tribunal

For the period April 1, 2022 to March 31, 2023.

CHAIR'S MESSAGE

The Tribunal sits as an appeal body of decisions issued by the Employment Standards Branch ("Branch"). As a result, its caseload is very much dependent on the work of the Branch.

As reported in the Tribunal's 2021-2022 annual report, as the number of decisions coming out of the Branch has increased, so has the Tribunal's.

The Tribunal remains focused on, and committed to, delivering timely appeal and reconsideration decisions. However, the increased number of applications continues to present a challenge. That the Tribunal has so far been able to rise to this challenge is a testament to the dedication of its Registrar, staff, and Members. I am grateful to all of them for the excellent work they do.

THE EMPLOYMENT STANDARDS ACT, THE TEMPORARY FOREIGN WORKER PROTECTION ACT, AND THE EMPLOYMENT STANDARDS TRIBUNAL

The *Employment Standards Act* (“*ESA*”) establishes the Employment Standards Tribunal (“*Tribunal*”) and gives it exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an appeal or reconsideration under Parts 12 and 13 of the *ESA* and to make any order permitted to be made.

The *Temporary Foreign Worker Protection Act* (“*TFWPA*”) gives the Tribunal exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an appeal or reconsideration under Parts 9 and 10 of the *TFWPA* and to make any order permitted to be made.

Although the provisions relating to complaints that would give rise to appeals under the *TFWPA* are in effect, the Tribunal has not received any appeals or applications for reconsideration under this legislation. The statistics in this report relate to appeals and reconsiderations under the *ESA*.

ORGANIZATION OF THE TRIBUNAL

The Chair and Members

The Tribunal’s Chair is appointed by order-in-council. The current Chair is Jennifer Glougie, who is also Chair of the Labour Relations Board.

During the reporting period, the Tribunal had 14 members who are appointed by Ministerial Order: Shafik Bhalloo, Jonathan Chapnick, John Chesko, Ryan Goldvine, Richard Grounds, Robert E. Groves, Jenny Ho, James Maxwell, Brandon Mewhort, Mona Muker, Carol L. Roberts, David B. Stevenson, Kenneth Wm. Thornicroft, and Maia Tsurumi.

There are no representative members appointed to the Tribunal.

The *ESA* gives the Chair the authority to assign panels to hear and decide appeals and applications for reconsiderations.

The Chair is responsible for ensuring that the Tribunal’s processes are fair, independent, effective and timely. The Chair is also responsible and accountable for the Tribunal’s operations and its budget.

The Registry

During the reporting period, the Tribunal's Registry consisted of a Registrar and 4 employees.

All appeal and reconsideration applications received by the Tribunal are processed through the Tribunal's Registry. The Registry also administers informal dispute resolution services.

Registry staff are familiar with legal principles, case law, and policies, including the requirements for the filing of appeals and applications for reconsiderations, requests for suspensions, the application of the *Freedom of Information and Protection of Privacy Act*, and the confidentiality of party information.

Registry staff respond to inquiries from parties to appeals and reconsiderations information and to requests from members of the public.

Legal Services

Legal services to the Tribunal are provided by the lawyers in the legal department of the Labour Relations Board.

Administration

The Registrar oversees the Tribunal's recordkeeping and is responsible for the Tribunal's information systems as well as payroll and benefits administration. The Operations Manager is responsible for overseeing the processing of Member and vendor remuneration.

Information and Website

The Tribunal's website contains information about the Tribunal's processes, its decisions, and annual statistics reports. The website address is www.bcest.bc.ca.

STATUTORY AND REGULATORY AMENDMENTS

The following amendments were made to the *ESA* in Fiscal Year 2023 ("FY23").

- Section 1 (1) definition of "statutory holiday" amended by 2023-4-3, effective March 9, 2023 (Royal Assent).
- Section 9.1 was enacted by 2019-27-7, effective January 1, 2023 (BC Reg 200/2022).
- Section 56 (2) (b) amended by 2023-10-196, effective March 30, 2023 (Royal Assent).
- Section 79 (2) (d) amended by 2023-10-197, effective March 30, 2023 (Royal Assent).
- Section 84.1 (1) BEFORE amended by 2023-10-198, effective March 30, 2023 (Royal Assent).
- Section 109 (1) (part) BEFORE amended by 2023-10-199, effective March 30, 2023 (Royal Assent).
- Section 126 (4) (b.1) was added by 2019-27-34(c), effective January 1, 2023 (BC Reg 200/2022).
- Section 127 (2) (b.2) was added by 2019-27-35(a), effective January 1, 2023 (BC Reg 200/2022).

Only the amendment to section 109(1) of the *ESA* affects a provision that governs the Tribunal.

There were no amendments to the *TFWPA* that affect a provision that governs the Tribunal during the reporting period.

Accessible British Columbia Act

The *Accessible British Columbia Act* is intended to make BC more inclusive for people with disabilities by supporting their capacity to meaningfully participate in their communities. The Act took effect in June 2021. The *Accessible British Columbia Regulation*, which came into effect in September 2022, will apply to the Tribunal in 2024. In anticipation of this, the Tribunal has begun the process of establishing best practices and accessibility plans.

OPERATIONS UPDATE

Communicable Diseases Plan

The Tribunal continues to operate under its Communicable Diseases Plan which is available on its website.

Access and transparency

The Tribunal's processes must be fair, meet statutory requirements, and address its operational needs. They must also be accessible and transparent. Listed below are just some of the initiatives in place or underway.

[Access to Information and Privacy and Anonymization Policy](#)

The Tribunal's privacy and anonymization policy is available on its website. It describes the information the Tribunal collects in proceedings under the *ESA*, how the information is used, and what information the public has access to. The Policy also confirms that, in accordance with the open court principle, names and relevant personal information are published in Tribunal decisions. However, in exceptional circumstances, a panel may exercise its discretion to anonymize the name of a party or omit certain personal information where the harm to a person's privacy or security outweighs the public interest in transparency, accountability, and intelligibility of Tribunal decisions. The Policy sets out the process by which an applicant can ask the panel to consider exercising its discretion in that regard.

[Time Limits](#)

The usual time limit for deciding an appeal or application for reconsideration is three to four months.

Diversity, inclusion, and Indigenous reconciliation

The Tribunal has continued to take steps to ensure that it is open and inclusive both as a public body and as an employer, including those outlined below.

Pronouns and forms of address

The Tribunal implemented a gender-neutral policy for pronouns and forms of address in late 2020. Where an individual has identified how they wish to be addressed, the Tribunal does its utmost to ensure that its correspondence and decisions reflect their pronouns and preferred form of address. Where an individual has not identified how they prefer to be addressed, the Tribunal is committed to using gender-neutral language to refer to them.

Recruitment

The Tribunal remains committed to improving the diversity of its ministerial order appointees and staff. The Tribunal's staff and Members includes individuals who are First Nations. The Tribunal is continuing to work with the Tribunals and Agencies Support Division of the Justice Services Branch and the Crown Agencies and Board Resourcing Office to develop and implement tools and strategies for increasing diversity and inclusion in its ministerial order appointees. We encourage individuals to self-identify when applying for a position at the Tribunal, whether for a ministerial order appointment or a staff position.

Indigenous reconciliation

The Tribunal continues to encourage and require cultural awareness training for its staff and ministerial order appointees to continue the important work of reconciliation.

STATISTICS

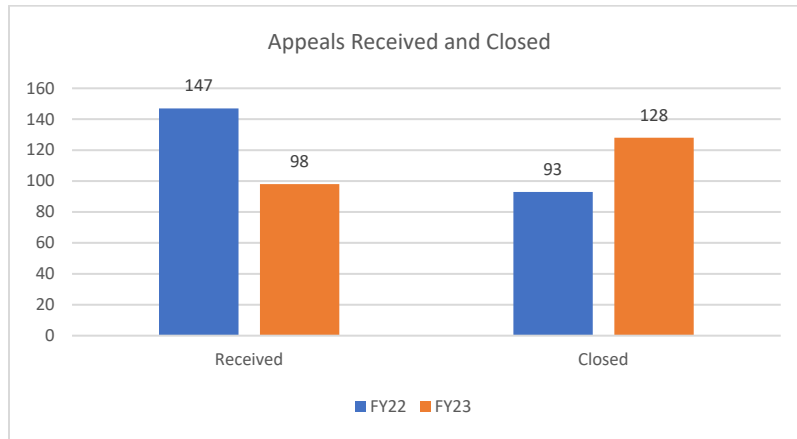
The below statistics cover the period April 1, 2022 through to March 31, 2023 for activities under the *Employment Standards Act*.

Appeals and Applications for Reconsideration

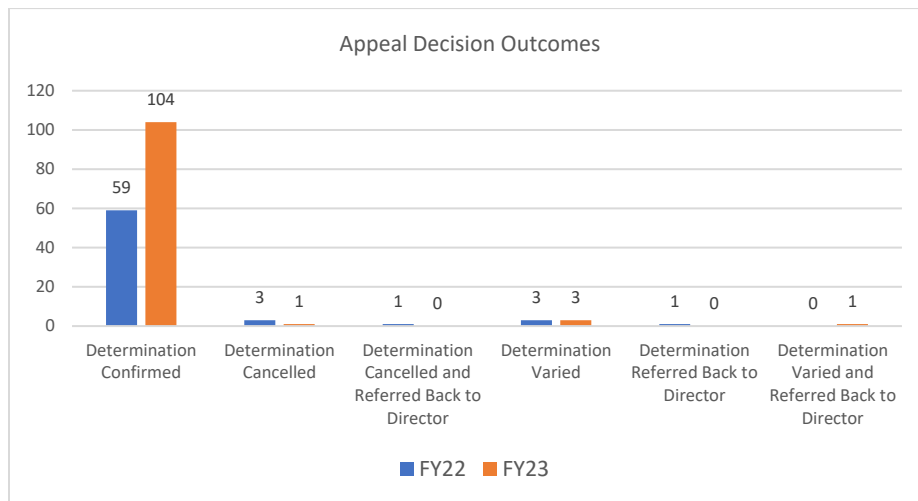
A typical Tribunal case involves a single appellant and a single employer, and, in most instances, the parties are not represented by legal counsel. In FY23, the Tribunal also had cases involving multiple employees and cases with multiple related employers. Some cases involved two or more appellants and over 70 respondents.

Appeals

During FY23, the Tribunal received 98 appeals and closed 128 appeals. The chart below shows a comparison of appeals received and closed in FY22 and FY23.

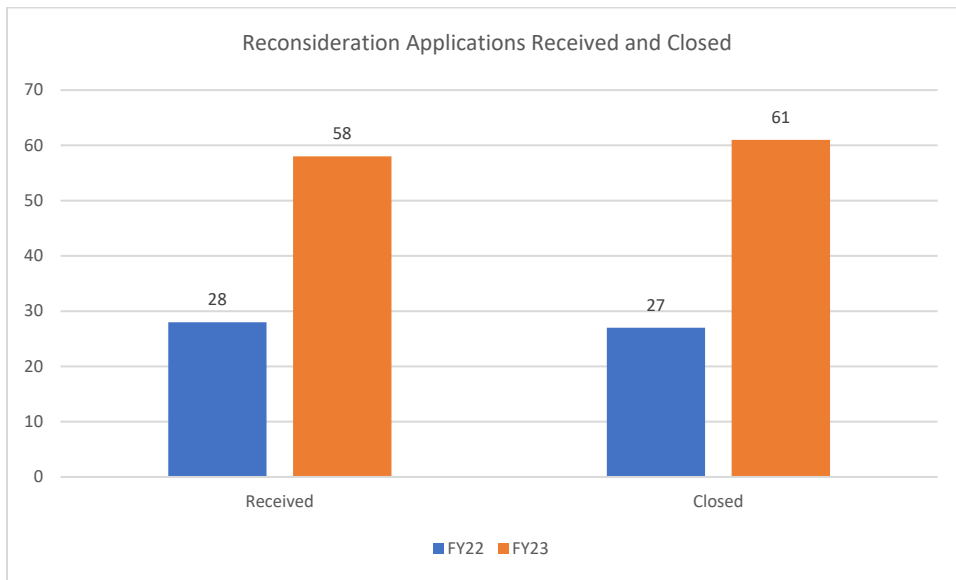


Of the 128 closed appeals, 109 were closed as a result of a final decision being issued. 3 were closed because of a settlement/withdrawal while 16 were closed as incomplete or for non-compliance with Tribunal directions. The chart below shows a comparison of appeal decisions outcomes in FY22 and FY23.

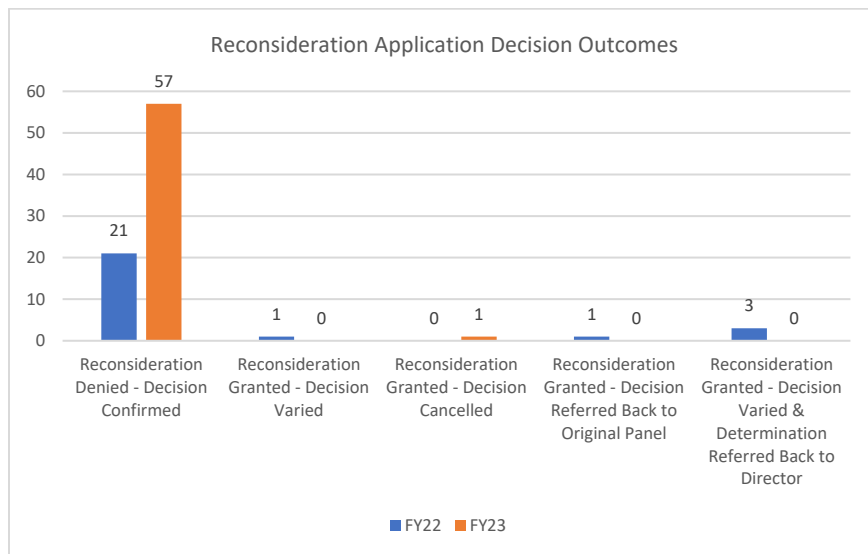


Reconsiderations

During FY23, the Tribunal received 58 applications for reconsideration and closed 61 applications for reconsideration. The chart below shows a comparison of reconsideration applications received and closed in FY22 and FY23.



Of the 61 closed applications for reconsideration, 3 cases were closed for being incomplete and not complying with Tribunal directions and 58 cases were closed as a result of a final decision being issued. The chart below shows a comparison of decisions outcomes on applications for reconsideration in FY22 and FY23.



Budget and Expenditures

The chart below shows a comparison of the Tribunal's budget and expenditures in FY22 and FY23.

