

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2026 CHRT-PEA 1

Date: July 10, 2026

File No.: PE-ES-0002-26

Between:

WestJet, an Alberta Partnership

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Unifor et al.

Respondents

Decision

Member: John Hutchings

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I. OVERVIEW AND DECISION

[1] WestJet, the Appellant, must develop a pay equity plan under the *Pay Equity Act*, S.C. 2018, c. 27 (the PEA). It created a committee of employer and employee representatives to develop the plan. The Respondents—Unifor, the Canadian Union of Public Employees (CUPE), the Aircraft Mechanics Fraternal Association (AMFA), the International Association of Machinists and Aerospace Workers (IAMAW), the Canadian Airline Dispatchers Association (CALDA), and the Air Line Pilots Association (ALPA WestJet and ALPA Encore) represent the unionized committee members.

[2] The Respondents complained to the Pay Equity Commissioner (the PEC) that WestJet acted in bad faith. They said that WestJet breached the PEA by requiring their representatives to sign a wide-ranging non-disclosure agreement (NDA) to participate in committee meetings and barring them from participating when they refused. The PEC agreed (see *UNIFOR et al v. WestJet, an Alberta Partnership (Re)*, 2025 PEC 8 [the Decision]). She ordered WestJet to allow Respondent representatives to participate in the committee without restrictions and to stop acting in bad faith.

[3] WestJet appeals the PEC's finding that it acted in bad faith and her order that it stop doing so. It wants me to overturn the finding and cancel the order. The Respondents want me to uphold the PEC's decision.

[4] I dismiss the appeal. The standard of review for appeals of decisions from the PEC to the Canadian Human Rights Tribunal (the CHRT) is correctness for questions of law and reasonableness for questions of fact and questions of mixed fact and law that apply settled law to facts. The PEC made reasonable factual findings and reasonably decided that WestJet acted in bad faith.

II. ISSUES

[5] I must decide the following issues:

- I. What standard should I use to review the PEC's decision?
- II. Does the decision satisfy the relevant standard of review?

III. ANALYSIS

A. The standard of review for pay equity appeals at the Canadian Human Rights Tribunal is correctness for questions of law and reasonableness for other questions

(i) The standard of review flows from the scheme of the Pay Equity Act, not from judicial appeals or judicial reviews

[6] The standards of review that appeal courts use to review trial court decisions do not apply to this case. Appeal courts review the decisions of trial courts on a standard of correctness for legal questions and a standard of palpable and overriding error for other questions (see *Housen v. Nikolaisen*, 2002 SCC 33). The PEC is not a trial court and the CHRT is not an appeal court: both are tribunals. The judicial appellate standard flows from judicial policy considerations that do not apply here (see Paul Daly, “Unresolved Issues after *Vavilov*,” 2020 CanLII Docs 3615 at 4). As such, although all parties ultimately argue that the CHRT should use a palpable and overriding error standard for questions of fact and mixed fact and law, I am unable to accept this submission as such. However, I do accept that the scheme of the PEA supports a more deferential standard than correctness in reviewing questions of fact or mixed fact and law. I agree that this appeal is not a *de novo* (entirely new) process, and that the CHRT should not reweigh the evidence that was before the PEC. While the PEC is not a trial court, it is a finder of fact. To the extent that I can draw inspiration from the judicial appellate standard, I find that the deference typically afforded to triers of fact—whether judicial or administrative—should have some resonance in this Tribunal’s approach to pay equity appeals.

[7] The standards of review that courts use to review administrative decisions do not apply to this case. The judicial review guidance in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*] “does not apply to standards of review within administrative processes that have been set through legislation” (see *Smith v. Canada (Attorney General)*, 2021 FCA 73 at para 45 [*Smith*]). The PEC and the CHRT are part of an administrative process for pay equity appeals set out in the PEA. Both are administrative tribunals, not courts. As such, *Vavilov*’s guidance on determining the standard of review when a court reviews an administrative tribunal’s decision is inapplicable here.

[8] PEA appeals involve an administrative tribunal reviewing the decision of another administrative tribunal under the same legislation (an internal statutory appeal). As such, the standard of review flows from interpretation of the statute in question (see *Smith* at paras 49–50). The PEA does not explicitly specify the standard of review for this kind of appeal. It states only that an appeal is available, and lists what measures the CHRT may take in deciding the appeal. The PEA was passed as part of an omnibus budget bill, and there was no parliamentary discussion of its appeal provisions. As such, I must determine the function that Parliament intended the PEC to perform and what kind of supervisory role it intended for the CHRT (see Paul Daly, “Les appels administratifs au Canada”, *Revue du Barreau canadien*, Vol. 93, No. 1, 71, at page 82).

(ii) Reviewing questions of law for correctness helps the PEC develop a coherent pay equity jurisprudence

[9] Unlike some other internal appeals under different legislation, the PEA does not ask the CHRT to consider whether the PEC's decisions are wrong. In refugee appeals under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, the Refugee Appeal Division (the RAD) of the Immigration and Refugee Board of Canada (the IRB) must ask whether decisions under appeal were “wrong.” This word “definitively points to the standard of correctness” (see *Huruglica v. Canada (Citizenship and Immigration)*, 2016 FCA 93 at para 64). The PEA uses no such language to qualify or direct the scope of appeals. As such, I find no indication that a PEA appeal should review all PEC findings—including findings of fact, findings of mixed fact and law, and findings of law—on a single correctness standard.

[10] Reviewing legal questions on a correctness standard assists the PEC in developing pay equity jurisprudence that is consistent with the broader scheme of human rights law. Pay equity is a specialized sub-field of human rights. Advancing gender equity in pay is part of addressing discrimination on the prohibited ground of gender more broadly. While pay equity and human rights decisions lack the force of binding precedent—like all decisions of administrative tribunals—they can be of persuasive value to tribunals and courts. Appeals can correct legal errors and provide guidance to parties facing similar issues in future cases. I find that reviewing legal questions for correctness, in appeals where such questions arise,

helps to promote coherent pay equity and human rights jurisprudence and is most consistent with the PEA. While the PEA's use of the word "appeal" does not determine the standard to use, I find that it suggests more potential scrutiny than a "review" scheme might. The CHRT considers whether the PEC's findings of law are correct while paying it appropriate deference as a finder of fact.

(iii) Reviewing other questions for reasonableness helps to streamline and expedite the pay equity process

[11] Reviewing other questions on a reasonableness standard is most consistent with the PEA's purpose of streamlining and expediting pay equity disputes. The PEA is designed to provide a streamlined, expeditious appeal process that quickly resolves pay equity disputes and provides practical guidance to the parties. While both the PEC and the CHRT have expertise in pay equity, only the PEC has day-to-day experience with technical pay equity matters like identifying job classes and conducting wage analysis. I find that reviewing technical pay equity matters on a correctness standard, including asking whether the PEC's factual findings were wrong, would lead to delay and duplication in the appeal process. I further find that reviewing the PEC's application of settled law to facts on a correctness standard would increase delay and duplication while also slowing the development of a vibrant pay equity jurisprudence at first instance. Absent some unsettled legal question, the Tribunal should afford some deference to the PEC on findings of fact and findings of mixed fact and law. The reasonableness standard resonates best with this kind of review.

B. The PEC's decision is reasonable

(i) Factual findings are not at issue

[12] I see no real dispute between the parties as to the reasonableness of the PEC's factual findings. They centre on discussions of WestJet's non-disclosure agreement for pay equity committee participants and the eventual exclusion of unionized employee representatives from the committee for refusing to sign it. I understand WestJet to argue, and I agree, that there is no overt or direct evidence of bad faith among these factual

findings. WestJet accepts and does not appeal the PEC's order that it allow the representatives to participate without restriction. I accept WestJet's position that the findings, in themselves, cannot directly establish its background intention—its good faith or lack thereof—in its actions or omissions during the pay equity process. While we know what WestJet did and did not do, these facts are not direct evidence of an intent to advance or frustrate pay equity as the case might be. The determinative issue in this appeal is whether these factual findings, taken together and in light of all the circumstances, support an inference that WestJet was more likely than not acting in bad faith. WestJet says that such an inference would amount to pure speculation about its intent, while the Respondents say that the PEC had ample evidence to support her conclusion. As such, I do not understand this appeal to challenge the PEC's factual findings as such.

(ii) The decision reasonably applies settled law to facts

[13] The PEC reasonably found that her factual findings met the definition of bad faith set out in the pay equity jurisprudence, answering a question of mixed fact and law. In *Public Service Alliance of Canada v. Bank of Canada*, 2024 PEC 29 at para 57 [*Bank of Canada*], the PEC found that bad faith includes ill-will or an intention to mislead or deceive. This standard is settled pay equity jurisprudence for determining whether bad faith is established on particular facts. Here, the PEC found that WestJet deliberately insisted that Respondent representatives sign NDAs before participating in committee meetings, that it was initially receptive to their feedback on potential revisions to the NDA but then refused to explore their concerns, and that it did not provide them with information on upcoming meetings and ultimately proceeded with pay equity work in their absence. In a statutory scheme designed to promote employer-employee collaboration in pay equity, these measures yielded what could be a "frictionless committee" in the absence of full representation (see the Decision at para 54). The PEC then concluded that the Respondents had met their burden of proof to demonstrate that WestJet acted in bad faith and lacked an intention to meaningfully advance pay equity work. I note that the PEC's finding is grounded in the "totality of the evidence." In other words, the PEC conducted a cumulative analysis of circumstantial evidence around

WestJet's actions and drew an inference about the company's intent. I find that the PEC's analysis was transparent, intelligible, and justified. Her decision was reasonable.

(iii) There are no legal questions to attract correctness review

[14] There are no extricable legal questions in the PEC's decision that would justify review on a correctness standard. WestJet says that the decision wrongly conflates a failure to comply with legislative standards with acting in bad faith. I adopt the ALPA's argument that any comments on legislative compliance as such were not determinative elements of the decision regarding bad faith. This appeal raises questions of fact and of mixed fact and law: what WestJet did during the pay equity process, and whether it amounted to bad faith under the relevant legal standard. I can find no basis in the PEC's decision to support WestJet's argument that she based her finding of bad faith on a failure to comply with legislation, something that could raise a question about the proper legal standard for bad faith findings and attract correctness review. Instead, I agree with the Respondents that the PEC stated the established legal standard from *Bank of Canada*, applied it to her factual findings, and made a finding of mixed fact and law that WestJet was acting in bad faith. Nothing in this decision attracts correctness review.

(iv) The approach to circumstantial evidence echoes broader human rights frameworks

[15] The PEC's analysis aligns with broader frameworks in human rights law in addressing a lack of overt evidence and drawing cumulative conclusions from circumstantial evidence. I have already found that there was no real dispute between the parties about the PEC's factual findings, and that the determinative issue in this appeal is one of mixed fact and law: whether the evidence supports an inference of bad faith. Overt evidence of bad faith is rare, just like overt evidence of discrimination. No evidence shows WestJet detailing in writing an overt intention to act in bad faith during the pay equity process. Instead, the decision comprehensively reviews potential circumstantial evidence of bad faith before reaching the conclusion that WestJet's conduct met the relevant test. This is a hallmark of its reasonableness.

IV. ORDER

[16] I dismiss the appeal and confirm the decision of the PEC.

Signed by

John Hutchings
Tribunal Member

Ottawa, Ontario
July 10, 2026

Canadian Human Rights Tribunal

Parties of Record

File No.: PE-ES-0002-26

Style of Cause: WestJet, an Alberta Partnership v. Unifor et al.

Decision of the Tribunal Dated: July 10, 2026

Appeal dealt with in writing without appearance of parties

Written representations by:

Prateek Awasthi, for the Appellant

Isabelle Roy-Nunn, for the Respondent Air Line Pilots Association (ALPA)

Dijana Simonovic, for the Respondent Unifor (on behalf of itself and the Canadian Union of Public Employees, Aircraft Mechanics Fraternal Association, International Association of Machinists and Aerospace Workers, Canadian Airline Dispatchers Association)