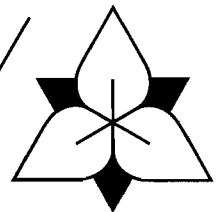




March 26, 2008

**WAYNE SAMUELSON**  
President  
**IRENE HARRIS**  
Secretary - Treasurer  
**TERRY DOWNEY**  
Executive Vice-President



**OFL/FTO**

**TO: HEADS OF UNIONS, OFL EXECUTIVE BOARD & COUNCIL**

Greetings:

**LEGAL OPINION ON MAINTENANCE OF PAY EQUITY**

Enclosed is a copy of our legal opinion on a union's rights and obligations in the maintenance of pay equity plans. We asked Mary Cornish (Cavalluzzo Hayes Shilton McIntyre & Cornish) to provide us with her legal opinion on: the rights and obligations of unions/bargaining agents to maintain pay equity; the rights the union has to information needed, what information and why they need it to carry out steps in the maintenance process.

*In her conclusion Ms. Cornish states "It is clear from the above review of the law that bargaining agents have serious, pro-active and wide-ranging legal responsibilities in the area of pay equity maintenance. Employers are required to negotiate with such bargaining agents to maintain ongoing pay equity compliance. The Commission's recent positions and orders to the contrary are wrong. They are being challenged at the Tribunal and should be resisted by unions should employers insist they be followed."*

I ask that you forward the legal opinion and Bargaining Agent Pay Equity Checklist to your staff representatives, local executives and bargaining/pay equity committees.

**Background**

The Federation's request of Ms. Cornish came about because of our concerns regarding positions taken by the Pay Equity Commissioner, Emanuela Heyninck, in remarks and in the Commission's newsletter. Ms. Heyninck's position seems to say that a union/bargaining agent does not have the right to be involved in decisions on how a pay equity plan is to be maintained. We had met with the Commissioner outlining her error in law and the possible impact on pay equity. To date she has not replied as to whether or not she is prepared to revisit her position.

Since that meeting, her position has extended to decisions of Review Officers as shown in the Review Officer's order in the United Steelworkers case at the University of Toronto. Consequently, it is likely that un-cooperative employers will use the Commission's position – now in a written order and newsletter – to tell local unions and representatives that they cannot have information needed to assess whether plans are being maintained and cannot be involved in maintenance decisions.

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We trust that anyone in your union who is dealing with pay equity will find this legal opinion useful when it comes to the question of maintaining pay equity. If there are any other ways we can be of assistance, please let me know.

In solidarity,



Irene Harris  
Secretary-Treasurer

IH/CAS/ss

c: W. Samuelson, T. Downey, C. A. Sceviour  
OFL Women's Committee  
OFL Labour Relations Committee  
Barb Byers, Canadian Labour Congress  
Mary Cornish, Cavalluzzo Hayes Shilton McIntyre & Cornish  
Emanuela Heyninck, Pay Equity Commissioner

Enclosures  
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