

bias" remained in the overall adjusted wages. He states that "by my computations, for a job class with 100 percent female composition, this translates to approximately 58.5 cents per hour on average in wages". In other words, the pay equity adjustment of 54 cents that the nurses received was less than the bias that Dr. Kervin estimated remained in the OPS plan (and the OPS methodology didn't adjust for the gender bias resulting from the undervaluing of women's work).

7. For the above reasons I believe that the Applicant group of employees has established that the comparison system used for the OPS/OPSEU plan was not gender-neutral and, therefore, did not comply with the provisions of the *Act*. It could not have resulted in the selection of an appropriate male comparator, except by accident. The Applicant employees are entitled to conclude a pay equity plan which would meet the requirements of the *Act*, with the assistance of a review officer and a mutually acceptable consultant, if necessary.

0679-98 The Hydro-Electric Commission of the Town of Port Hope, **Applicant v. Catherine Mills, Respondent**

0684-99 Catherine Mills, **Applicant v. The Hydro-Electric Commission of the Town of Port Hope, Respondent**

Appearances: John Bray and Jack Fraser, for the Hydro-Electric Commission of the Town of Port Hope; Carrie Gallant, Counsel for the Pay Equity Office

Before: Katherine Laird, Vice Chair, and Members Charles Taccone and Pauline Seville

Cite As: Port Hope Hydro (1998-99), 9 P.E.R. 81

Practice and Procedure - Production of Documents

The employee applicant sought production of certain documents in the possession of the Employer. Prior to the hearing of the motion the Pay Equity Office had provided some of the requested documents to the employee. The Tribunal ordered that job data related to the two male comparator positions be disclosed on the grounds that it was arguably relevant to the issues in dispute. The Tribunal refused the Employer's request for an order against the Pay Equity Office requiring it to disclose materials in its files concerning all other applications made pursuant to the proportional value provisions of the *Act* on the basis that these materials are irrelevant to the questions before it. The Tribunal also declined to provide an interpretation of "representative male job class" at this stage of the proceeding.

Pratique et procédure - Production de documents

L'employée à l'origine de la requête voulait obtenir la production de certains documents se trouvant en la possession de l'employeur. Avant l'audition de la motion, le Bureau de l'équité salariale avait fourni certains des documents demandés à l'employée. Le Tribunal a ordonné que les données d'emploi relatives aux deux comparateurs masculins soient divulguées pour le motif qu'elles étaient effectivement reliées aux questions en litige. Le Tribunal a refusé de faire droit à la demande de l'employeur qui voulait qu'une ordonnance soit rendue à l'encontre du Bureau de l'équité

salariale pour l'obliger à divulguer des documents figurant dans ses dossiers concernant toutes les autres requêtes présentées conformément aux dispositions de la Loi relatives à la valeur proportionnelle pour le motif que ces documents ne sont pas reliés aux questions dont le Tribunal est saisi. Le Tribunal a également refusé d'interpréter le concept de «catégorie d'emplois à prédominance masculine représentative» à cette étape du processus.

INTERIM DECISION OF THE TRIBUNAL, MAY 25, 1999

1. This decision sets out the rulings of the panel in respect of four motions considered by the tribunal in a hearing on May 19, 1999. The motions were brought by Catherine Mills and by the Hydro-Electric Commission of Port Hope ("Port Hope Hydro").
2. On the day prior to the scheduled hearing day, Ms Mills advised the Deputy-Registrar of the Tribunal that she would not be attending to argue her motion or to respond to the motions brought by Port Hope Hydro. Her letter to the Tribunal did not request an adjournment. She asked the Tribunal to review her written submissions in considering whether or not to order the disclosure which she was seeking.
3. The panel proceeded, in the absence of Ms Mills, to hear the submissions of Port Hope Hydro, both with respect to Ms Mills motion, and with respect to its own motions. The panel determined that it was possible to deal with all the motions without hearing further from Ms Mills.
4. The motion brought by Ms Mills sought disclosure of certain materials in the possession of Port Hope Hydro. The Pay Equity Office, in written submissions filed before the hearing, indicated that it had provided Ms Mills with some of the documents sought from Port Hope Hydro as part of a package of materials given to her since the pre-hearing conference.
5. Port Hope Hydro brought three motions. "Motion #1" requested an order requiring the Pay Equity Office to disclose the contents of its file in respect of this matter. This motion was withdrawn after Ms Gallant provided Port Hope Hydro with materials from the Pay Equity Office's files at the outset of the hearing day. The materials given to Port Hope Hydro at the hearing consisted of the same package of documents which had previously been provided to Ms Mills. Ms Gallant described the documents as consisting of: the Pay Equity Plan, (initially provided to the Office by Port Hope Hydro); correspondence between Port Hope Hydro and the Review Officer; and documents relating to the calculation of regression analysis for the purposes of preparing the Plan.
6. Port Hope Hydro's "Motion #2" requested an order requiring the Pay Equity Office to disclose materials in its files in respect of all other applications pursuant to the proportional value provisions in the legislation. Port Hope Hydro specifically relied on the *Freedom of Information and Protection of Privacy Act*, R.S.O.1990 c.F.31 in requesting this order. In addition to seeking

copies of "all orders issued and all settlements concluded" in respect of other work establishments covered by the proportional value provisions, Port Hope Hydro sought job descriptions, evaluations and mathematical calculations from the Pay Equity Office's proportional value files.

When the Pay Equity Office advised Port Hope Hydro that this would involve well over one hundred files, the motion was revised to seek orders, settlements, job descriptions, evaluations and mathematical calculations for all files involving the utilities industry. Port Hope Hydro submitted that this material was necessary to enable it to determine if the Pay Equity Office had been consistent in its treatment of the utilities industry.

7. Finally, "Motion No. 3" asked that "the Tribunal provide to all parties the interpretation of a "Representative Male Job Class"."

8. The panel made rulings at the close of the hearing on May 19, 1999. We are issuing our rulings in writing due to the absence of Ms Mills.

9. In respect of Ms Mills motion for disclosure of materials in the possession of Port Hope Hydro, we concluded, in the absence of oral submissions from Ms Mills, that some of the requested documents have now been received by Ms Mills as part of the package of materials provided by the Pay Equity Office. We were satisfied that other requested documents should be disclosed on the basis that they are arguably relevant to the issues in dispute: *Kingston and Frontenac Children's Aid Society* (1991), 2 P.E.R. 31; *Windsor (Huron Lodge)* (1995), P.E.R. 223. We ordered Port Hope Hydro to provide Ms Mills with the following:

In respect of the position of Labourer

- history of the position, including number of incumbents and the start and end date for each incumbent between January 1, 1993 and January 1, 1995;
- job rate or wage as it existed or changed from time to time;
- number of hours worked;

In respect of the position as Assistant Line Foreman

- history of the position, including number of incumbents and the start and end date for each incumbent between January 1, 1993 and January 1, 1995;
- job rate or wage as it existed or changed from time to time;
- number of hours worked;
- job description or list of duties and responsibilities or other

available job data.

10. The panel made orders dealing with the two remaining motions brought by Port Hope Hydro. First of all, with respect to "Motion #2", we ruled that the Tribunal has no jurisdiction to make an order pursuant to the *Freedom of Information and Protection of Privacy Act*, as requested by Port Hope Hydro. In considering our own jurisdiction to order disclosure, we held that the materials sought are not relevant to the question before the Tribunal, which is not whether or not the Pay Equity Office has or has not been consistent in its interpretation treatment of the utilities industry, or whether it has otherwise erred in its treatment of this case. This is a hearing *de novo* to consider the issues raised in the two applications before the Tribunal. Even assuming relevance to the issues in dispute, the scope of the materials sought by Port Hope Hydro was held to be overly broad.

11. With respect to "Motion #3", which asks the Tribunal to provide the parties with an interpretation of "Representative Male Job Class", we held that it would be inappropriate for the Tribunal to make an interpretative order at this stage in the proceedings. We provided Port Hope Hydro with a complete set of the reported decisions of the Tribunal, and will provide the same to Ms Mills if she so requests.

12. This hearing is adjourned to be reconvened on one of the following dates: September 13, 14 or 15, 1999. Port Hope Hydro has confirmed its availability on all of these dates. Ms Mills is to advise the Deputy Registrar, by June 10, 1999, which of the three reserved dates is convenient to her. It is unnecessary for Ms Gallant to attend the reconvened hearing. The compliance application of the Pay Equity Office (0673-98), brought pursuant to s. 24(5) of the *Pay Equity Act*, R.S.O. 1990, c.P.7, cannot be considered until the other two applications (0679-98 and 0684-99), challenging the Review Officer Order under s. 24(6), have been dealt with by the Tribunal.

13. When the hearing is reconvened in September 1999, the two applicants, Port Hope Hydro and Ms Mills, will be expected to present opening submissions in their respective applications, and to respond to the opening submissions of the opposing party. The panel will not hear evidence on that date, but the parties will be required to exchange and file a list of their intended witnesses, together with a brief summary of the expected evidence of each witness. Additional hearing dates will be set at the close of the hearing day.