

PROUDLY PROTECTING CANADIANS: REGULATION AND ENFORCEMENT BY PSAC MEMBERS IN THE PUBLIC SERVICE

On the Front Lines

Every day, across the country, members of PSAC are working tirelessly to protect the health and safety of Canadians, and preserve Canada's natural heritage. Across many federal departments and agencies, across our three vast northern territories, these dedicated men and women are performing demanding tasks that require specialized skills and knowledge. From Food Inspectors to Park Wardens; from Fisheries Officers to Customs Officers, these members are performing a wide array of important roles in ensuring that all of us are safe, secure and healthy in our communities.

Ask any of these members about their jobs and they will tell you how personally rewarding it is to carry out their responsibilities on behalf of Canadians. However, ask them about their work environment, the daunting knowledge and technical requirements, the risks and hazards they must face daily, and you will find that members with these unique roles in the Public Service are frustrated. They feel that they have not been recognized and rewarded for the significant contributions they have made in making Canada safe.

Since September 11, 2001, the world has changed, and safety and well-being is on everyone's mind. One only has to turn on the news, or open a newspaper to see that our governments are responding to these issues. Now is also the time for our governments to respond to the issues and concerns of our enforcement membership. It is these members who are first in line to deal with threats to our health and safety, no matter where they occur and despite whatever form they take.

Who Are These Members?

The PSAC regulatory, inspection and enforcement community consists of members working in occupations such as:

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<i>Coast Guard Crews</i>	<i>Pollution Inspectors</i>
<i>Customs Officers</i>	<i>Probation & Parole Officers</i>
<i>Fisheries Officers</i>	<i>Product Inspectors</i>
<i>Food Inspectors</i>	<i>Tax Inspectors</i>
<i>Immigration Officers</i>	<i>Territorial Child Protection Workers</i>
<i>Occupational Health & Safety Officers</i>	<i>Transportation Inspectors</i>
<i>Park Wardens</i>	<i>Wildlife Officers</i>

- Assess
- Educate
- Enforce
- Inspect
- Monitor
- Protect

These are the core activities that enforcement and inspection members perform on our behalf. These activities are part of a continuum of approaches used by this community. One end involves more cooperative, preventative and educational approaches, while the other involves more law enforcement types of responses including charges, court proceedings, fines and imprisonment.

Where Do These Members Work?

The people who work in the regulatory, inspection and enforcement areas of the public service work in a wide variety of departments and agencies. Here are some examples:

- Meat and other Food Inspectors at the **Canadian Food Inspection Agency** are responsible for ensuring the safety and quality of our food supply.
- Customs Officers at the **Canada Customs and Revenue Agency** and Immigration Officers with **Citizenship and Immigration Canada** are charged with protecting Canada's borders, and the movement of people and goods in and out of our country.
- Fisheries Officers working for the **Department of Fisheries and Oceans** help protect and preserve one of Canada's greatest natural assets – fish habitats and fish stocks.
- Inspectors with **Transport Canada** work to maintain a safe and effective transportation system – rail , road, air and marine – across the country.

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- Wardens with the **Parks Canada Agency** are dedicated to making Canada's National Parks safe and enjoyable for visitors year-round.
- Product Inspectors for **Health Canada** ensure that products and devices intended to improve our health are safe and reliable.
- At **Environment Canada**, Pollution Inspectors enforce Canada's pollution laws, and the Canadian Environmental Protection Act, while Wildlife Officers enforce wildlife legislation to protect bird, animal and plant species.
- Wildlife Officers, Corrections Officers, Highway Transport Officers and various other of enforcement personnel working for the **Yukon, Northwest Territories and Nunavut** governments perform the same challenging roles as their federal counterparts.

Peace Officers in Enforcement

Some of our members, such as Fisheries Officers, Wildlife Officers and Customs Officers, have the status of peace officers under the law. This gives them increased powers and responsibilities, similar to police forces like the RCMP. In some cases, these members work alongside members of the RCMP when carrying out their enforcement duties.

Very often, these officers are working in environments that expose them to dangerous situations: going after animal poachers, stopping illegal fishing, checking for illicit goods or criminals crossing our borders. These are not easy tasks by any standard. As these activities become more and more important in the post September 11 world, we remain mindful that our members that are peace officers will require additional resources and training to carry out their duties.

Issues and Concerns¹

We have heard from many members working in the enforcement and inspection community about the issues and concerns that they feel are not being addressed by the employer and we have set those issues out below. It is important to note, however, that while we understand and appreciate that there are differences and distinctions between the issues of concern between the two communities, and that some issues may be of more concern to either the enforcement community or to the inspection community, we have not dealt with them separately. For example, we are aware that issues of training, contracting out and health and safety are of particular concern, especially in this post 9/11 world, to the enforcement group. In the preparation of this paper, however, one of the things that has become very clear to us that there is not a great deal of hard data available for the enforcement group, and we believe that among the demands that ought to be made of the employer is a study of those members involved in enforcement, that would give a clearer picture of the issues and difficulties facing this group.

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In the meantime, from our members, we have learned that the following issues are high on their list of concerns:

Classification – many of the workers that perform inspection/enforcement duties feel that they are under-classified in comparison with other occupational groups that have similar responsibilities and/or job requirements. They want their positions to be classified fairly, to reflect the actual demands (knowledge, skill, training) and risks (environmental, personal danger) associated with their work. This is especially true of those employees with peace officer status, and those employees who have had to take on additional work duties without increases in classification or pay.

Pay and Benefits – some enforcement officers, such as Fisheries Officers, have pension benefits that are less adequate than those of the RCMP – particularly in the area of survivors benefits. Fisheries Officers attend the RCMP training centre in Regina and have much in common with them as fellow enforcement officers.

In the North, sometimes inspectors must travel to remote communities, and at times must work overtime that has not been pre-authorized in order to maintain adequate levels of safety and service – a professional judgment call made by the person dealing first-hand with the situation. When they return, often they are told that they will not be paid because the hours were not pre-authorized.

Some enforcement officers, such as Wildlife Officers, Pollution Officers and Fisheries Officers perform undercover work – wearing civilian clothes, instead of their uniforms. RCMP and Corrections Officers receive a clothing allowance for this purpose, and so should these officers.

Training – most members engaged in regulatory/inspection and enforcement duties require specialized training. Not only that, but periodic, continuing training is required for them to maintain their ability to enforce Canada's laws. When legislation, technology, industry or specialized fields of knowledge change sufficiently, workers should have access to training to maintain their competence, especially when changes result in the taking on of new responsibilities.

Health and Safety – the nature of the work that inspectors and enforcement officers do often puts them in dangerous situations. The danger may come from the physical environment (e.g. weather, terrain), from the persons they come into contact with (e.g. law breakers) or from operational circumstances (working alone, working in isolated areas, etc.). The risks to their personal safety mean that they must participate in the assessment of risks, selection of proper personal protective equipment, evaluation of risks and any mitigation measures.

Travel – some staff are required to travel away from home extensively in carrying out their duties. This is particularly true of those who work in northern Canada – Nunavut, the Northwest Territories and the Yukon Territory. This places stress on employees and their families.

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Contracting Out – in British Columbia, some work has been contracted out to charter patrolmen that would normally be done by Fisheries Officers. Also, Aboriginal “Guardians” have been hired to work alongside Fisheries Officers. However, the Guardians have not received the same training as Fisheries Officers, leading to some potentially dangerous situations.

Qualifications and Standards – some workers, such as Pollution Officers, are seeing employers introduce new occupational requirements (such as physical fitness and training standards) for their positions. While it may be acceptable to apply these new standards to new recruits, existing workers should not be adversely affected by these changes.

Conduct Investigations – enforcement officers are often held to a higher standard of conduct than other kinds of workers in the public service. As such, there are times when departments investigate the conduct of officers based on allegations or complaints of improper or criminal conduct. Sometimes, these investigations are carried out without the member having access to union representation. And, when the complaint is determined to be unfounded, there are often no consequences for those who brought forward the frivolous complaint.

Succession Planning - by 2008, approximately 40% of the inspection and enforcement workforce will be eligible to retire. Without proper succession planning, there could be serious implications for our safety and well-being.

Remedies and Actions

Members of the PSAC enforcement community have raised many issues and problems relating to the unique nature of their jobs. Not all of these problems can be remedied at the bargaining table. The variety of issues raised requires a varied response, involving locals, regional councils, components, as well as the PSAC center in finding the right solution to the problem.

Below is a list, grouped by subject, of some of the major issues of the enforcement community, along with possible courses of remedial action.

Classification

Remedies:

- Request employer to undertake a classification review jointly with the union (similar to the one the Environment Component is engaged in) to determine if positions have been properly classified;
- All federal employees working in positions that have the status of peace officers under the law to be classified and compensated in similar fashion;
- Employees taking on increased inspection/enforcement duties have their classifications and job descriptions adjusted to reflect this.

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Actions:

- **Collective Bargaining:**
Classification is not something we can take to a third-party (i.e. a conciliation board) due to the restrictions of the *Public Service Staff Relations Act*. That doesn't mean, however, that we can't try to bargain classification up to the point of a conciliation board to raise awareness of the issue. It also does not mean that there are no issues that can be bargained successfully, such as joint union/employer studies or classification reviews as we did for the CX group. That study provided information and proof that was very useful in achieving benefits for those members.

- **Consultation:**
Another avenue for pursuing classification issues can be via the union-management consultation committee (UMCC) at the local, regional and national levels. Again, a joint union/employer committee, review or study could be agreed to via UMCC in order to study and make recommendations for improvements to enforcement community classification. This has already been done for the inspection/regulatory community, but has not yet been done for enforcement members. The employer could enact recommendations, arising from such a study, and the union could use the recommendations for further action.

- **Other Actions:**
Political action, in the form of mass classification grievances, lobbying provincial, territorial and federal members of government, as well as community-based actions of outreach, education and communication could all help to achieve an enhanced classification for enforcement members.

Pay and Benefits

Remedies:

- Workers with the status of peace officers receive the same pension benefits as the RCMP members;
- Overtime that is operationally necessary (due to safety reasons) while on travel status be compensated without pre-approval;
- Clothing allowances for enforcement officers conducting fieldwork while "undercover".

Actions:

- **Collective Bargaining:**
While changes to the pension plan are not something that can be achieved via collective bargaining, as a result of legislative restriction, modifications to the overtime and allowance provisions can. Members should work with their components to formulate bargaining demands on these issues of overtime and a clothing allowance, complete with rationale and examples of some of the problems that currently exist. The more information that is provided to your bargaining teams will greatly assist the team in achieving improvement at the bargaining table.

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- **Consultation:**
Members should be encouraged to work with their components in discussing pension changes with the Pension Advisory Committee of the PSAC. The issues of overtime and clothing allowance could also be raised at national UMCC, so that departments could create specific policy for the enforcement community, with union input. Amendments to what is included in 'travel status' could also be discussed with our representative on the NJC Travel Directive committee.

- **Other Actions:**
Changes to the pension plan would require political lobbying at the federal level, as it would require the amending of current pension legislation. This is not impossible to achieve, as the former CX membership were able to make changes to allow for early retirement without a pension penalty.

Training

Remedies:

- Employees to receive adequate initial and ongoing (as required) training when:
 - new legislation and/or new policies result in changes in duties;
 - new technology or equipment is introduced on the job;
 - significant changes in technical or scientific knowledge, or changes in industry practices affect employee's abilities to carry out their duties.

Actions:

- **Collective Bargaining:**
There is nothing to prevent the union from bringing specific demands on training to the bargaining table, and members are encouraged to give some thought to bargaining demands in this area. At a minimum, a demand for a commitment from the employer to improve existing practices or to create new training opportunities seems like a reasonable approach.

- **Consultation:**
These issues should definitely be raised at the local, regional and national UMCC, in order that proper training is provided, and new policy/practice is created by the employer with union input.

- **Other Actions:**
Educating the membership of their rights under Health and Safety legislation (Part II of the *Canada Labour Code*), the Technological Change language of the collective agreement (which provides for training on employer time), as well as any employer policy on training, will ensure that members stand up for their rights and demand proper training in order to fulfill the obligations of their position, and any relevant legislation.

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Health and Safety

Remedies:

- Where the nature or extent of risks and hazards faced by workers is not known, joint union/employer committees should be trained to undertake a risk assessment;
- Members working under conditions that place them at risk of physical harm to have available personal protective gear and training required to use such gear safely and effectively;
- Members working in hazardous or isolated work environments not to work alone;
- Employers to provide facilities or an allowance for workers to engage in physical fitness activities during the work day;
- Employers and workers to jointly set up workplace wellness programs;

Actions:

- **Collective Bargaining:**
Demands for improvements to the Health and Safety article can be brought to the bargaining table. If changes to the collective agreement were not made, a commitment to new policy, procedure, joint study or committee could be sought. As sometimes an employer can be wary about amending a collective agreement to suit a situation that impacts only a portion of the membership, a memorandum of understanding (MOU) could instead be negotiated by the parties to address these issues.
- **Consultation:**
These issues should definitely be raised at the local, regional and national UMCC and Health and Safety committees, in order that new policy/procedure be created by the employer with union input. Employers and employees are already required to work together under Part II of the Canada Labour Code. All matters that might impact on employee health and safety must be discussed openly with union representatives (adoption of new policies, procedures, risk assessments, etc.). This would also apply to wellness programs.
- **Other Actions:**
Educating the membership on their Health and Safety protections found both in the collective agreement, legislation, and any employer policy, will help to ensure that members stand up for their rights. Where possible, mass grievances can be used, as could the involvement of a Health and Safety inspector from Labour Canada. Consulting others on how to run an effective wellness program may also prove useful.

Travel

Remedy:

- Employees required to travel at employer's request more than 20 nights away from home to receive additional days of paid leave.

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Actions:

- **Collective Bargaining:**
Demands for captive time compensation, such as additional leave and premiums, can be negotiated at the bargaining table, as was seen in the last round of Treasury Board negotiations. Groups that have captive time can seek improvements to the captive time article, while those without such an article can put forth bargaining demands to obtain it. In addition, demands may be put forth that would prohibit employers from sending members on travel without adequate advance notice. Members are encouraged to work with their components to prepare demands, along with complete rationales, and examples of current problems in order to assist with the negotiation of these issues. Should further study be necessary, a joint committee could be negotiated to examine the issue and prepare recommendations for remedy.

- **Consultation:**
The issue of excessive and last-minute travel should be raised at the local, regional and national UMCC, to make the employer aware of the problem and to create new policy/procedure, especially to ensure better scheduling of travel to reduce stress on the membership. This issue can also be raised with the PSAC representative on the NJC Travel Directive committee for possible action.

- **Other Actions:**
Educating the membership on the current travel time provisions of the collective agreement will ensure that members exercise their rights. If the employer is not following the collective agreement, mass grievances could be filed. Facilitating discussion amongst members of the various enforcement groups, sharing experiences, etc, will provide valuable information to the components and PSAC so that we can better address this problem, as well as empower the members concerned.

Contracting Out

Remedy:

- Employees working with and taking on duties of enforcement officers should have the required training.

Actions:

- **Collective Bargaining:**
This is an important safety issue, and demands for appropriate training can be brought to the table to ensure that workers doing the same job have the same training. Alternatively, the larger issue of union and non-union employees doing the same work could be addressed at the bargaining table by negotiating a closed-shop clause. The bargaining certificate could also be reopened to include these non-union members into the bargaining unit.

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- **Consultation:**
This issue should be raised at the local, regional and national UMCC, as well as the Health and Safety committees, as the employer does have to be made aware of their Health and Safety obligations. The larger issue of the same work being performed by union and non-union employees should be challenged by the components, and if the case can be made, the bargaining certificate could be reopened by the PSAC to include these non-union employees in the bargaining unit.
- **Other Actions:**
Members should be encouraged to speak to these non-union colleagues to find out if they are satisfied with the current arrangement or if they would prefer joining the union, as action could be taken to include them into the bargaining unit. Educating these non-union colleagues, as well as the community at large, about the benefits of unionization, as well as the Health and Safety risks that exist with the current arrangement would also be beneficial.

Qualifications and Standards

Remedy:

- New occupational requirements (e.g. fitness standards) not to be applied in such a way as to adversely affect careers of employees.

Actions:

- **Collective Bargaining:**
When negotiating Health and Safety and No Discrimination / No Harassment language, the employer can be reminded of current Human Rights jurisprudence regarding this issue, as well as the employer's Duty to Accommodate.
- **Consultation:**
This issue should be raised at the local, regional and national UMCC, as well as Health and Safety Committees, to make the employer aware of their Human Rights obligations. If policy/procedure needs to be amended or created, it should be done jointly, with input from the components and PSAC.
- **Other Actions:**
If the employer is currently using discriminatory tactics on this issue, grievances need to be filed and the employer challenged. Members should be encouraged to speak to their colleagues in the enforcement and firefighter communities to learn how they have tackled this issue.

Conduct Investigations

Remedies:

- When employees are the subject of investigation into their conduct on the job, whether formal or informal, and whether or not the alleged misconduct is criminal

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in nature, employees have the right to have a union representative present during meetings and other proceedings related to the complaint;

- Employers must be held accountable, and provide penalties for those who bring frivolous complaints against enforcement officers.

Actions:

- **Collective Bargaining:**
Enhanced language could be negotiated to address the issue of investigations, and complaints, as was done for the former Table 4 CX group. Raising the issue via negotiations could also result in an MOU on the issue, or new policy/procedure being jointly developed.
- **Consultation:**
These issues should definitely be raised at local, regional and national UMCC, in order for the employer to be made aware of the problems, and new policy/procedure jointly created and applied nationally. This would also be the avenue for creating a joint committee to examine the problem if necessary.
- **Other Actions:**
Educating the membership of the current protections of the collective agreement will help to ensure that members stand up for their rights. If the employer is flagrantly disregarding the collective agreement in these matters, mass grievances can be filed. Through the components, members could work with representatives of other enforcement groups (such as the RCMP and other police forces) to learn more about how they have dealt with these issues, and to create possible solutions.

Succession Planning

Remedy:

- If workers are properly compensated and accorded good working conditions, there is not likely to be a problem recruiting and retaining qualified staff.

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Summary

PSAC members who work in regulation, inspection and enforcement face hazards and challenges on the job that are often unique to their circumstances. Their contributions to keeping our country safe and protecting our health are often underestimated, or not properly recognized. As we approach another round of bargaining, we hope this paper stimulates some healthy discussion about which issues and demands can be pursued via collective bargaining, and which issues need other possible avenues for resolution. It is hoped that this may lead to developing a longer-term strategy for addressing the concerns of this important community of PSAC members.

The best chance of success in making changes for these members is by working collaboratively, both within and outside the PSAC. Collective bargaining, combined with consultation, collective action, political lobbying, and building community alliances can all work together to help remedy the issues of the regulatory and enforcement community of the PSAC.

We hope that this information is useful. For any comments or suggestions, please communicate with Kate Rogers or Shawn Vincent - negotiations section of PSAC in Ottawa.

¹ Information obtained from documents at the Regulatory/Inspection Community website, interviews with PSAC component staff, media articles, minutes of meetings of Component Presidents and a variety of other internal PSAC documents.