

**GSU  
Local Presidents'  
Council**

**2009**

**REPORT**

**Working Together  
on the Road  
to Better Representation**



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# In Memoriam

Peter Kennedy  
GSU member, Local 70023 -



Brother Peter Kennedy was killed in a workplace accident at the Cliff Street Heating Plant in Ottawa, on Tuesday, October 20th, 2009 at the age of 50.

He will be sadly missed by his family and many friends and colleagues at PWGSC and union sisters and brothers in Government Services Union, PSAC.

# Report of the 2009 GSU Local Presidents' Council

## *Call to Order and Announcements*

Robert Spencer RVP National Capital Region and John Jedrasik President Local 70013 welcomed all participants to Ottawa on behalf of the GSU Locals and Officers in the region.

## *1 - Address of the National President*

The Report of the National President to the GSU National Council was included in the meetings kits. Brother Brunell addressed following additional issues.

- GSU membership is stable, finances are acceptable
- Want to recognize the contribution of GSU staff members to the organization. We owe them a great deal
- many issues facing us
  - PWGSC different business model,
  - divestiture of a number of engineering assets,
  - review of the heating plants in the national capital region,
  - pension modernization,
  - pay transformation exercise,
  - cheque production site consultation pilot now being established,
  - economic times having an impact on members at mint,
  - central agency review for sale of mint,
  - Treasury Board's strategic review over next fiscal year,
- it is important that we work together to represent our members , engage our employers
- the GSU goal is to protect employment and rights of members -- our key concern
- the National Council identified the priorities for the next three years: employment security, union recognition, and work descriptions and classification
- we have a convention mandate to review our structure - we will have a presentation on this today, and then again next year
- UnionWare project is underway -- We are about to sign the contract -- it will be implemented over next 18 months. We will deal with UnionWare a great deal at the next Local Presidents' Council. GSU is pilot component on this for PSAC

- Renewal - GSU officers, members, and staff are aging at the same rate as the Canadian public. We need to make every event a learning opportunity to engage and inform officers.
- The GSU 10<sup>th</sup> anniversary was in August; of the 34 Local Presidents here today, there are only 7 who attended the founding convention in 1999; just over 50% of the National Council and the staff were with GSU in 1999.
- we all must encourage new activists and new officers to get involved and step forward
- we can confirm that the merger was a success - we were two different organizations with different approaches and we have merged into the effective organization you see today
- while we are about the same size, we now have a different membership mix - the trades group is about the same size, as well as the technical group - The CRs used to be our largest group but now it is the AS occupation group - the Mint is slightly larger. We have had a good record representing our members and protecting their jobs.

### Question and Answer session

Q - Local development - when will it focus on Quebec?

A - We have no specific budget for Local development. When National Officers identify Locals in need of assistance, we respond. No Québec Local has been identified yet. If one exists ask your RVP to bring it to the National Council. We target Locals that need specific intervention.

Q - re: the Cheque Production units - is privatization begin considered and if yes are members going to be consulted on this?

A - We have heard no talk of privatization of the Cheque Production Units, but the strategic review next year will examine all aspects of the department. There is consultation with the employer which will continue

Q - The last PA Collective agreement contained an agreement on the PA classification standard. Do you have any information?

A - There is an article on the PSAC website, they have met twice with the employer - objective is to have new definition and standards for the PA group completed by the end of the collective agreement. The PSAC is asking for member support and feedback on an ongoing basis. It is an ambitious project. It is part of the contract, so we have the resources for it

Q - Do you have any further information about consolidation of pay operation for all of government centred in PWGSC in one location?

A - This comes from a leaked document, there is no decision taken on any of the options, we had some brief consultation on this issue, no proposal has been made to the Minister or the cabinet

## *2 - Union Rights, Representation, and Responsibilities*

Mark Brunell introduced Jacquie de Aguayo, Coordinator, representation section PSAC. The following is a summary of her presentation.

- I am speaking today on your role as union activists in the work site, union officer free speech and the duty of fair representation
- When dealing with issues at work I encourage you always to pull back, and look at the big picture. Your rights in workplace exist as a matter of law, not simple as a result of your employer's whim or discretion
- If your employer tries to make you feel they are being nice by listening to you, you should know that they are required to listen. You can work with the strength that comes from the knowledge that the law gives you the right to be there and to express union viewpoint
- The flip side of this is that your voice will die if you don't exercise it. We get the workplace we deserve sometimes. If we don't make sure the employer recognizes our rights the employer will begin to work unilaterally.
- Our role is to represent workers in workplace, union and labour movement generally. It is complicated work, you are volunteers and activists, and you probably find it difficult to balance the demands on your time and your work. You have conflicting demands and often have members wishing you to advance their claims when it may not be in the interest of others
- My first lesson is "the law is not going to save you." Labour legalisation exists to control labour. Before there was labour legislation, we could do anything, more or less, that we needed to do to advance our members interests. Legislation imposes timelines on our ability to exercise our rights.
- Even though we often rely on the law and the collective agreement - it is not there to advance our objectives in most cases. Do not think you are mini legal representatives in your workplace. There is no check list of things to do and say to the employer but you have the right to be involved and to speak.
- Often an employer will suggest that you may be crossing line into insubordination when you speak out. They are wrong. Union officers are entitled to speak freely on issues that are important to union and members - this is a right, it is a matter of law. This right is protected under the unfair labour practice provisions in law and in the Labour code. It is protected under the Charter of Rights and Freedoms as well. We have the right to associate freely.
- The recent supreme court ruling (2005 PSLRB 125) has said that we have the right to freely associate, we have the right to collective bargaining and the right to representation -- this is a huge step forward for labour movement.
- you have pretty wide discretion - don't let any one tell you differently
- You are allowed openly challenge the employer on matters of interest to members, not just issues related to the collective agreement, grievances,

- or collective bargaining. You can talk about politics, government programmes and initiatives and challenge them on it publicly, directly, in print, it doesn't matter.
- You can speak in public domain, not just for your employer. Employers will try to limit you to raising issues during consultation meetings, but they're wrong.
  - Here is the quote from the Supreme Court. The strength of it surprises even long term union activists

*[50] As I have indicated earlier, the rationale for protecting bargaining agent representatives from discipline for statements critical of the employer unless those statements are malicious or false is that such representatives must be able to make the judgment that it is necessary to forego the ordinary level of deference to the employer in order to carry out a responsibility to represent employees forcefully and candidly. The legislative purpose expressed in the provisions I have quoted here is similar. Discipline which singles out people for having exercised their rights under the Act constitutes interference with union representation. It not only makes it difficult for representatives to perform their representational duties and exacts a personal price that may inhibit them from challenging the employer, it also sends a message to other employees about the dangers of exercising their own rights under the Act. Thus, employers are expected to refrain from making disciplinary decisions that violate the above provisions. (2005 PSLRB 125)*

- Protecting the right to free speech is key to our ability to identify and defend workers' interests, to encourage open debate of ideas and to seek to gain public support for our issues. Union officers' free speech benefits society as a whole because public is made aware of issues that are important to workers and this itself has broad social benefits that deserve strong legal protection.
- So, now you ask - "Can I say anything I want?" Not exactly - you are not protected if you are maliciously or recklessly false. Don't tell people to break the law. Don't go after people personally. Stick to the issues, avoid personal malice or animosity, and speak from what you believe to be true. Set out the facts and say what you need to say, and don't let the heat of moment control you and get into verbal fisticuffs, or even physical ones.
- You may be told by the employer that you are walking the "razor's edge" of insubordination and violating of your duties of values and ethics. This is not true - is not a violation of any of those.
- Of course, obey now grieve later always rules - obey now, and file the grievance. We will defend you and overturn the discipline. PSAC has developed some very strong case law to defend union officer free speech.
- To summarize, you have the right to speak out to represent your members and your union - stick to the issues, speak your mind, avoid personal animosity, you're your remarks on your honest belief of the facts and your union will defend you.

## Use of the employer's e-mail

- If you are using your employer's email system for union or personal issues you might think employer can't access it. You are wrong.
- it is always good to get members' home email addresses, especially member's you're representing on a grievance
- Access to Information and Privacy legislation allows people to file requests for access to information about them. It is based on your right as an individual to know any government information or communication that involves you. So do not use the employer's email to discuss anything that you would not want the person you are discussing to see.
- you can use employer email for simple issues such as scheduling grievance hearings or meetings

## Representation, and Responsibilities

- do not be afraid of the "Duty of Fair Representation"
- Again, look at the big picture - why does it exist?
- A new workplace is unionized if 50%+1 of the employees vote in favour of joining a union. There are always employees who are either neutral about having a union or who disagree that there should be a union. The union will negotiate the conditions of employment for all employees, provides them with representation on collective agreement issues, and receives union dues from all employees. So legislators ensure that those employees who don't necessarily support having a union, but must pay union dues would receive same services recognition and rights as a union supporter. They imposed this DFR to ensure this.
- it's a counter balance to mandatory union dues
- DFR requires the Union to not operate in a discriminatory, arbitrary or bad faith manner in its relationship with the employer
- does not apply to internal union functions or activities
- The requirement to represent all employees could include scabs. If the scab is a member - there are union policies and procedures to deal with them. If the scab is not a member, the DFR rule still applies -- they have a right for the union to defend them
- in the case of representation on internal employer policies DFR does not apply
- we need a definition of "arbitrary, discriminatory and bad faith"
- essentially it means what ever the labour board thinks it might mean
- arbitrary = superficial or indifferent disregarding the interests being brought forward
- So you can exercise poor judgement, make a mistake, or you can be wrong, but don't be indifferent. If you examine a proposed grievance, look at the issues and, for reasons related to the merits of the grievance, if you decide you will not take it forward, you are not being arbitrary or indifferent
- discriminatory = hr rights grounds should never form the basis of a decision not to take a grievance forward

- you can say to someone that this case is not a grievance, it is a human rights case, but you can't refuse to represent someone because they're a member of a minority group -- then you will have acting in a discriminatory manner
- Bad faith = union officer and free speech, do not be guided in your representation by ill will, or animosity towards an individual. Stick to the issues and not individuals
- When you are defending a member's interest you are defending the union. It can be easy to get lost in the personal interplay in a worksite, but don't let it cloud your judgement when it comes to representation
- Don't allow DFR to immobilize you - don't be afraid of DFR. If you know the scope of your authority and avoid being arbitrary, or discriminatory, or acting in bad faith, you have a wide area to operate in
- We recognize it is hard to say no to someone in your workplace - you may see them every day -- it is difficult to say no. The solution is to manage their expectations. It is important to say at level one of the grievance process that you think that issue "A" has merit, but issues "B" and "C" don't. You can advance all the issues but you're already managing their expectations. So they won't be shocked when the PSAC representation sections writes a letter to tell them that issues "B" and "C" don't have merit and won't be advanced.
- DFR Complaints do get filed - remember it is not an indictment of the work you do, it is simply an expression of the frustration members feel when they try to resolve issues that they're passionate about
- there are special considerations for DFR in cases of harassment
- There is a new policy, adopted by the PSAC NBOD called "Representation, Workplace Harassment" It replaces former Policy 23A and will be posted on the web site soon. It changes the process for Locals dealing with member against member harassment complaints.
- once again, remember the big picture - the employer is responsible to ensure that the workplace is free from harassment
- If you receive a complaint about harassment you will deal with it similar to the way the Human Rights Commission deals with HR complaints. You look at it and decide if the complaint "on its face" appears to raise an arguable issue.
- The Local's job now is to decide if the harassment complaint, based on the facts, looks like a case of harassment. If it does, you will represent the member and advance the complaint.
- Do not act with ill will, animosity towards the respondent.
- The employer must investigate the complaint. Your job is to ensure that the employer is meeting its duty.
- It is not our role to stand in judgement of our members
- Our role is to advance the issue, seek a resolution and hold the employer to its responsibility to provide a harassment free workplace.
- when dealing with mental health issues in the workplace are complicated

- If you believe an individual you are dealing with is suffering from a mental illness DFR imposes a higher standard on you -- not a different standard, a higher standard. You are required to spend more time on the case and communicate more clearly about what you need from the individual and what the individual wants. Sometimes they may be in a place in their illness where they cannot make decisions. To protect their interests, in that case, DFR requires that you try to put things in abeyance until they can make decisions, but you must keep an eye on it and don't lose track of it.
- You will need to be sensitive to the members' circumstances and their illness. DFR does not require you to be a diagnostician, a social worker, a care giver, or a financial advisor, but you may want to try to refer them to some of the help they need. You can try to be a conduit to some resolution.
- The PSAC is planning a Representation Symposium in April 2010 to deal with the many of the kinds of issues discussed here today and to share the experience and knowledge that has been developed in the Representation Section over the years. We need to spread it out into the union - into your hands.

Q - Can I pass a grievance on to another officer or refuse to handle a grievance?

A - You can refuse a grievance if you believe it does not have merit. If you provide alternate means of representation to resolve the issue it is even better.

Q - Does DFR put any responsibility on grievor to provide case details, evidence, information, and to participate in their?

A - The grievance belongs to individual - union must sign it but if grievor won't provide details of issue, then you don't have to take it

Q - Can I represent a terminated member (2 years ago) especially if you believe they were badly represented?

A - If he has medical evidence to demonstrate he didn't have capacity at the time to know what his rights were at the time and since then until now, then you could try to file a grievance on his behalf. If he does not have evidence like that, and he just didn't get around to filing a grievance two years ago, then it would be unlikely.

Q - When member and supervisor are both union members, how do we deal with it disagreements and complaints? Whom do I represent?

A -to avoid a gripe session, or a gossip session, wear your union hat and say, unfortunately there is no law against being a bad manager. You can try ICMS. If it comes to filing a grievance, you look at the merits of the complaint. If the facts merit a grievance, you file it. If not, you tell the grievor there is no case.

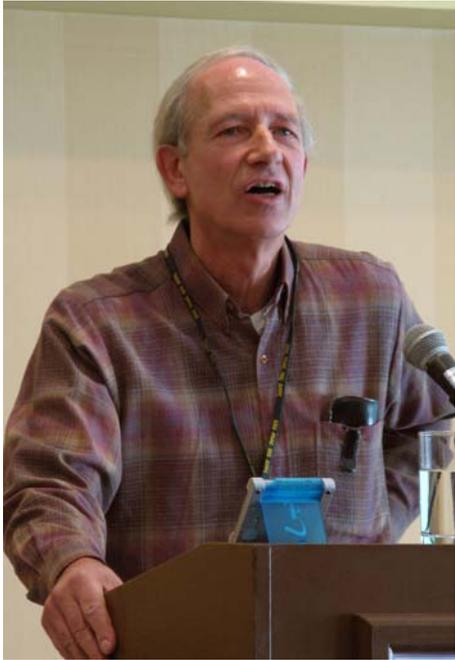
Q - Re access to information - is the GSU Website subject to access to information requests?

A - No it is not

M Brunell acknowledged that this session was suggested by the RVP's in Québec who presented similar information at a recent regional meeting. He thanked Sister de

Aguayo for her presentation. One of the key points that he appreciated from it was the statement that "when you are representing grievances you are defending the union."

### *3 - Guest Speaker*



Brother Brunell then introduced Bob Kipper, who retired very quietly this summer from his position as Executive Assistant to the GSU National Council with 22 years of service to PSAC members through his work with Government Services Union and its predecessor organization, Union of Public Works Employees.

Bob spoke about his experiences with the union as a member, a Local officer, a national officer, and a union staff member.

He remembers many lively events as a union activist. One highlight was, as an RVP in the mid-1980's, picketing at Canada Post facilities to save the jobs of Public Works Cleaners. Bob's work with the Contracting-out Fight Back Committee was instrumental to the development of the agreement that later became the WFA clause in PSAC collective agreements. He found his biggest challenge during

the downsizing in the mid-1990's. As the UPWE representative at the PWGSC Human Resources Advisory Committee (HRAC) he found himself contributing to policy changes being made at the boardroom table on a daily basis.

UPWE and GSU members appreciated Bob's dedication, empathy, and passion while supporting their grievances and complaints. Elected Officers, as well, frequently turned to him for his thoughtful, sage advice. The employer representatives and his colleagues who worked with him on countless committees will miss his contributions. Bob's style is quiet and reserved - holding back until, at appropriate time, he says just the right thing or provides the crucial point that others had overlooked.

Perhaps the greatest trait we appreciated in Bob was his deep sense of justice. Even in school Bob was the kid who spoke out against intolerance. No matter what the future holds for Bob, we know it will contain some social community based activity. First he must, rest, relax, and enjoy the retirement he has earned.

On behalf of his colleagues and friends in GSU and PSAC, we wish Bob a long and happy retirement.

Bob was presented with a GSU Leather jacket with the GSU 10<sup>th</sup> anniversary logo. At the National Council meeting following this Local President's Council, Brother Kipper was awarded the first GSU Associate Membership for his service to the members.

## *4 - GSU Structure Committee*

Alex Sauv , GSU National Vice-president, as chairperson of the Structure Committee reviewed the history of Structure review in GSU. The 2008 GSU Convention approved a resolution calling for a Structure review committee to make recommendations on a new structure at the 2010 GSU Local Presidents' Council.

All Local Presidents received a package from the structure committee this summer that contained three possible GSU structures. The committee asked Locals to examine the package and to be prepared to discuss the issue at this meeting.

The participants were divided into groups to discuss the following questions:

- We would like to know what you think "a larger role for Local Presidents in the governance of GSU" means.
- Does it mean more duties for Local Presidents? What kind of duties?
- Does it mean more responsibility for Local Presidents? What responsibilities

Comments received in the workshops will be compiled by the Structure Committee for use during their discussions. Additional comments and ideas may be submitted to the committee by sending an email to Alex Sauv , the committee chairperson.

Participants were then asked to express their opinions on the three options for GSU structure by placing a green dot on the option they liked the best and a red dot on the option they liked the least.

### **Option A - Eleven Member national Council - green dots - 9 / red dots - 3**

One National President, two National Vice-presidents, one national equity officer - elected by all delegates at convention and seven regional vice-presidents elected in regional caucuses.

### **Option B - Thirteen member national council - green dots - 24 / red dots - 11**

One National President, three National Vice-presidents, one national equity officer - elected by all delegates at convention and nine regional vice-presidents elected in regional caucuses.

### **Option C - Eight member national council - green dots - 4 / red dots - 32**

One National President, one national equity officer - elected by all delegates at convention and six vice-presidents elected in regional caucuses.

## *5 - PSST - An overview of a Representative's Task*

Paulette Michon-Hamelin, GSU Union Representative and Fred Sadori, USGE Union Representative presented this session on representation at Public Service Staffing Tribunals. Here is a summary of their presentation.

The union can assist members with staffing complaints related to:

- Internal appointments, Lay-offs
- the implementation of corrective measures ordered by the Tribunal

- Revocation of appointments

**The Union representative should:**

- Review the facts of the complaint
- decide what the issues are
- Decide what witnesses to call, and what facts they will have to prove.
- Assemble the documents you want to present, and decide which witness will introduce them
- Interview the complainant and the other witnesses exhaustively.
- Prepare the list of witnesses who you think will be called by the adverse party and the points on which you will want to cross-examination them
- Prepare enough copies of your documents for the Tribunal and the adverse party
- The employer must disclose all information in their possession. (PSST Regulations, Section 16 & 17). If the employer refuses, ask the Tribunal to order the employer to provide you with the information before the hearing
- Review the case law and prepare an outline of your introductory statement, your preliminary objections and your closing argument
- Be prepared to change your argument to reflect any unforeseen developments that occur at the hearing

**Be clear about where the burden of proof lies**

- The complainant has the burden of proof on the merits of the case before the Tribunal
- The employer has the burden of proof regarding certain preliminary objections

**Additional resources**

- Public Service Employment Act and the Canadian Human Rights Act ([www.justice.ca](http://www.justice.ca))
- Other important information is available on the PSC website such as;
- "Employment Equity in the Appointment Process, the Considerations and Questions and Answers"
- "Guide to Implementing the Policy on Employment Equity in the Appointment Process"
- "Guidance Series - Integrating Employment Equity in the Appointment Process."
- PSST Decision "Tibbs v DND - 2006 PSST 08." This case identifies the five (5) categories of abuse of authority.

**Fred Sadori**

- members have fewer options to fight against unfair competitions than they used to
- have been over 126,700 staffing actions were made in public service last year - imagine amount of workload

- in the previous year there were about 60,000 and only one complaint made it through to the deputy head
- with recent changes to legislation staffing has been delegated down to the lowest possible level and as a result there is little transparency or control
- to fight this we must present arguments in front of the PSST - but this is an onerous task
- the Tibbs case is important because it lists the five categories of abuse of authority in staffing processes:
  1. When a delegate exercises his/her/its discretion with an improper intention in mind (including acting for an unauthorized purpose, in bad faith, or on irrelevant considerations.)
  2. When a delegate acts on inadequate material (including where there is no evidence, or without considering relevant matters.)
  3. When there is an improper result (including unreasonable, discriminatory, or retroactive administrative actions.)
  4. When the delegate exercises discretion on an erroneous view of the law.
  5. When a delegate refuses to exercise his/her/its discretion by adopting a policy which fetters the ability to consider individual cases with an open mind.

## Discussion - PSST Representation for our Members

Mark Brunell opened this second session on PSST by providing some history of the issue:

- the current PSAC process is to train representatives who will provide PSST representation over a broad regional area and across components. However, there are not very many trained reps - GSU has only one.
- PSAC training is scheduled for first week in November and GSU has two members registered for this course
- GSU does not have the resources to provide PSST representation out of the GSU National Office
- as well, three previous GSU conventions have rejected resolutions to have this service provided out of the national office

## Questions for group discussion

- How does GSU want to deal with PSST representation?
- Is the PSAC representation programme working for your Locals?
- Do your members have access to PSST complaint assistance or do they come to you for help?
- Can we do more to help Locals deal with PSST cases?
- How should GSU deal with PSST representation in the future?

Q - Are you aware of "Fast-track Staffing?"

A - No, I am not familiar with the term, but staffing does peak in certain periods. the tribunal does provide some flexibility. We must pay attention to deadlines. ask for extensions as early as you can, don't leave it to the last day.

Q - If you're complaining about staffing, when is it right to complain to the PSC instead of the PSST?

A - Once you find there has been some injustice, write to the deputy head and copy the PSC

Q - The employer is using too many non-advertised staffing processes - how do we deal with this?

A - Try using your LMC to get their Human Resources Plan and see what it says about non-advertised process. If there are too many you have to get an involved member to complain.

### *GSU 10<sup>th</sup> Anniversary*

The GSU Founding convention was held in Ottawa in 1999. In celebration of our 10<sup>th</sup> year, participants shared a birthday cake. In the picture at the right, Mark Brunell, Martine Mongeon and Daniel Charron cut the cake.

All participants at the meeting also received a 10<sup>th</sup> anniversary shirt and ball point pen. Additional shirts and pens will be shipped to each GSU Local for distribution to members at the upcoming annual general meetings.



### *6 - Grievance File Preparation*

Craig Spencer, GSU Union Representative presented this session on Grievance File preparation. Here is a summary of his remarks:

When a Steward meets with a member they should work to understand the member's story:

- Keep an open mind. Do not let the member frame the question for you.
- The facts, the concern, and the requested remedy will lead you to the question.
- complete a GSU Steward Fact Sheet for every case
  - [http://www.gsu-ssg.ca/e/resources\\_tools\\_grievance.cfm](http://www.gsu-ssg.ca/e/resources_tools_grievance.cfm)
- Clarify the Time Limits: When did this occur? How many days left do you have to file a grievance?
- If extension required, do it in writing and place approval on file. If you run out of time and you run out of luck.

- Clarify the Grievor's status:
  - member or Rand deductee?
  - What is her or his work and classification (Job Description)?
  - Which collective agreement applies?
- Is there parallel legislation? e.g. Canadian Human Rights Act in cases of alleged discrimination/failure to accommodate, retaliation for complaint.
- Are there employer policies involved?
  - Harassment Policy, Security Policy
- what is the history of the concern? Is there something outside the workplace: spousal abuse, addiction, illness, family responsibilities, post traumatic stress disorder?
- Remember: You can go where the employer cannot.

### Other Considerations

- would an Access to Information and Personal Information request be useful?
- would our case be harmed if we use the employer's e-mail system that is subject to Access requests and could be seen by the employer?

### Other Resources

Depending upon the nature of the grievance, the following sites could prove very useful:

- Search Canadian Human Rights Tribunal:
  - <http://www.chrt-tcdp.gc.ca/NS/index-eng.asp>
- Search decisions of Public Service Labour Relations Board:
  - [http://pslrb-crtfp.gc.ca/decisions/search-help\\_e.asp](http://pslrb-crtfp.gc.ca/decisions/search-help_e.asp)
- Search engine for court, tribunal and arbitral decisions:
  - <http://www.canlii.org/en/ca/>
- Source to find any current federal Statute or Regulation:
  - <http://laws.justice.gc.ca/en/index.html>
- Canadian Labour Arbitration Third Edition Brown Beatty (a publication the Local could decide to purchase)

## *7 - ATIP & Personal Information Requests*

Paulette Michon-Hamelin, GSU Union Representative presented this session on the Access to Information Programme. Here is a summary of her presentation.

### How can the Local assist its Members?

- Provide members with guidance, direction and suggestions
- Help them understand the differences between 'Access to Information request' and 'Personal information request' and when to use them
- Help prepare and submit the request
- Follow-up to ensure the request is filed and a reply is received on time

### When is Access to Information Critical to a File?

- Disciplinary action, Written reprimands, Suspension
- Dismissal / Termination, release on probation
- Disability, Injury on duty, Compensation issue, Health and Safety Issue
- Any type of investigation, Harassment, Discrimination

#### **What Type of Information Can Be Requested?**

- Notes from meetings held about the member, including dates and participants and author
- allegations made against the member by colleagues or Management and investigation reports
- message content of memo or letter about the member to any individual
- responses from each individual who claim that they have no information
- Names of other managers who might hold records about the member

#### **Who to contact**

##### **For Members at Royal Canadian Mint**

- Madeleine G. Bertrand, Director of Corporate and Legal Affairs
- Royal Canadian Mint
- bertrand@mint.ca

##### **For Members at PWGSC**

- Tom Makichuk, Access to Information and Privacy Coordinator
- Public Works Government Services Canada
- aiprp.atip@tpsgc-pwgsc.gc.ca

## *8 - Workers' Compensation and Long term Disability*

Paulette Michon-Hamelin, GSU Union Representative and Claudine Leblanc, PWGSC Compensation Branch presented this session and the following is a summary of their presentation.

### **8a - Workers' Compensation**

#### **Employer Responsibilities in case of disability**

- ensure the safety and health at work of every person employed (Section 124, Canada Labour code Part II);
- have program for the prevention of hazards in the workplace and ensure employees are trained in health and safety matters
- investigate, record and report to the authorities all accidents, occupational diseases and other hazardous occurrences known (Section 125.(1)(c));
- Ensure employees are made aware of known or foreseeable safety or health hazard in the workplace
- Ensure that any injured employee immediately receives First Aid and/or Health Care;

- ensure the "Injury on duty form" is completed if an employee is absent for one or more days related to an incident/accident,
- Ensure that the employee is provided with the disability claim forms if the employee is absent from work for more than thirteen (13) consecutive weeks;
- provide the employee with their leave credit balance and assistance completing leave forms as required;
- ensure that the Treasury Board Policy is applied if the injury on duty claim is approved, (i.e. pay salary for 130 consecutive days);
- keep in touch with injured workers to follow their recovery and facilitate return to regular work or modified work as soon as possible;
- may request a Health Canada assessment prior to employee reintegration;
- involve Employee Assistance Program when necessary;

### Employee Responsibilities

- take all reasonable and necessary precautions to ensure the safety and health of themselves and others;
- comply with all instructions from the supervisor concerning the health and safety of employees;
- report any circumstance likely to be hazardous to the safety or health of employees or others and report every accident or incident;
- obtain First Aid or health care immediately,
- Keep supervisor updated on status.
- Complete the "Employee - Injury on duty claim" and return it to Supervisor with medical certificate.
- if in doubt - File a Workers Compensation claim within 3 days of the incident

### Union Responsibilities

- participate in all inquiries, investigations, studies and inspections pertaining to the health and safety of the employees; including consultations with qualified persons as needed
- Participate in monthly Health and Safety meetings;
- assist members when required to ensure they do not suffer financial hardship while off work;
- Participate in the early and safe return to work of the employee;
- Ensure employees with disabilities are accommodated when returning to work

### Important reminders

- No matter how trivial an injury appears to be, it should be reported to the employer in writing.
- If a worker sustains an injury because of another's actions who is not an employee, the worker may elect to collect worker's compensation or may pursue a law suit against the third party

- Worker's Compensation is a provincial jurisdiction so each province has its own compensation legislation.

## 8b - Disability Management

### What is Disability Management?

- a workplace strategy to prevent disability from occurring, or failing that, to intervene early following an injury or illness using coordinated, cost-conscious rehabilitation services
- an organizational commitment to continued employment of workers who experience functional work limitations
- the immediate goal of disability management is successful job maintenance, or optimum time for return to work for workers with a disability

### What should the employee do if ill or injured resulting from their duties?

- promptly report to the supervisor who will provide them with the required forms and documents for completion and ensure that they are submitted to Human Resources for processing

### Can the employee use other paid leave during the illness?

- recommended that other paid leave (i.e. vacation) be used only for the purposes for which it was intended
- advanced sick leave may be permitted at the discretion of the Director

### What should the employee do during her or his leave of absence?

- Complete leave applications and provide updated medical information showing anticipated date of return

### Does the employee earn sick leave credits when on leave without pay?

- No -- only if the employee receives pay for 10 days in the month will he or she earn sick leave and vacation credits for that month

### When will the sick leave without pay be granted?

- Sick leave without pay starts only after all sick leave credits and advanced sick leave have been exhausted

### What types of income protection are available?

- Employment Insurance Benefits, or
- Disability Insurance Benefits (Sun Life Financial or Industrial Alliance), or
- Canada or Quebec Pension Plan, or
- Worker's Compensation\Commission Santé et Sécurité au Travail (CSST)

### What will happen to an employee's position when on extended leave without pay?

- position is guaranteed until the return to work if absence is less than 1 year.
- if sick leave extends beyond one year, the employer may fill the position after employee is notified in advance

- the employee will have some priority appointment rights when they return

**When should the employee apply for employment insurance?**

- As soon as the employee knows that he or she will be on sick leave without pay.

**Is the employee automatically covered by Disability Insurance Benefits?**

- No. Some employees opted out of the plan in 1970 and are not entitled to benefits.

**How much are Disability Benefits and when do they start?**

- 70% of an employee's annual salary plus bonuses, rounded up to the nearest \$250.00, payable on the day following the elimination period
- employee receives such as Injury on duty replacement income or a CPP or QPP Disability pension

**What is the elimination period?**

- 13 weeks from the date the total disability commenced, or, upon the expiration of paid sick leave credits, whichever is the later

**When should the employee apply?**

- As soon as possible after the commencement of the disability
- do not wait for paid sick leave credits to run out
- approval can take up to 8 weeks

**What are employees entitled to under the Employment Insurance Plan?**

- Benefits are payable for a maximum of 15 weeks
- Waiting period may be waived if paid sick leave was used after the last day worked.

**How long can the employee receive Disability Benefits?**

- up to 24 months
- benefits continue beyond 24 months if the disability prevents the employee from performing any reasonably commensurate occupation
- Benefits are not paid beyond age 65

**What should a member do when her or his claim is rejected?**

- contact the Union for assistance in determining the reason for the rejection and a resolution

**How do you Appeal the decision to reject?**

- through the PSAC Regional Office

## *9 - Workplace Reintegration*

Lisa Addario, PSAC Legal Officer, Craig Spencer, GSU Union Representative and Michelle Vaillancourt, PWGSC Claims/Case Management made presentations on this subject. The following is a summary of their presentations:

9a - Lisa Addario - Must an employee return to work within two years?

The PSAC has a long history of challenging the "2 year rule." This rule comes from a Treasury Board Policy calling for a person who is on leave without pay for 2 years to either to return to work, to resign or to take medical retirement.

We have filed human rights complaints - in 2005 the courts said the two year rule, on its face, is discriminatory because it distinguishes between employees on disability and those on leave for other reasons and it distinguishes between those on disability who can foresee when they can return to work and those who can not.

This court ruling puts burden on the employer to establish a policy to show that the two year rule is reasonably necessary and not applying it would cause undue hardship on the employer.

We have never tested the employer's ability to justify that policy is reasonably necessary. However, we do know that the courts frown on the automatic or mechanistic application of rules. Employers must take individual circumstances into account. Medical evidence is key to assess if an employee on LWOP is able to perform their duties in the foreseeable future.

An employee who provides no prognosis for their return to work will be seen to have frustrated their employment contract - work is performed for remuneration.

So, does an employee on Disability have to return to work after two years?

It depends. An employee stands the best chance of challenging the rule if the employer applies the policy in an inflexible, rigid way or by not take the individual circumstances into consideration - has the employee's health improved? Does the employee have a medical prognosis of return to work soon?

When an employee receives the "two year letter" they should be encouraged to go to their doctor as soon as possible to get a letter of prognosis - when can they return to work and what accommodations will be required when they do.

Then, our job is to find out if that doctor's letter is a reasonable prognosis. If it is, we have a good chance to push back and to show that it is not an unreasonable burden on the employer. We can file a grievance and a Human Rights complaint. We should file both and then choose the right path for that case

## 9b - Craig Spencer - How to manage a reintegration file - The Role of the Union Representative

- Union is not notified when a member takes extended leave due to workplace injury or health.
- First notice usually arrives at Union when a member asks for help to return to the workplace.

### What a Local Can Do

- Find out what workplace reintegration protocol is in place in your workplace: Who does what, when and where
- Don't leave the member on their own to sort things out

### Talk to your member

- Find out if any accommodation is necessary
- focus upon any limitations that individual may have upon return to work, for how long and whether a graduated return is recommended

### Who You Should Contact

- contact the person who oversees workplace reintegration in the work area
- advise them that you are working with the member on the return to work
- if there is a Sun Life or Workers' Compensation representative on the file, advise them you are working on the reintegration.

### Things to remember

- Stay in Contact with the Member, keep them updated on progress
- facilitate member's cooperation with management in providing appropriate accommodation
- accompany the members to meetings to discuss reintegration
- the objective is to work together and accomplish a successful workplace reintegration
- Stay in touch with the member after the workplace reintegration and ensure all is going well over the first few months of return.

## 9c - Michelle Vaillancourt - Managing Return to Work and Accommodation at PWGSC

- the PWGSC Claims and Case Management Program was developed and implemented in 1999 (Departmental Policy 075)

### Why a Program at PWGSC?

- Minimize the negative effects of injury or illness;
- Ensure the required support and assistance;
- Identify the roles and responsibilities;
- Encourage a safe and healthy return to work as soon as medically possible.

## Early Intervention is the Key

- the longer the absence from the workplace is, the more difficult the return to work becomes

## Program Objectives

- Coordinate and assist employees and supervisors/managers in situations of workplace injury/illness;
- Coordinate and assist employees and supervisors/managers in return to work processes.

## What is Claims Management?

- Reporting workplace accidents and occupational illnesses to provincial workers' compensation authorities (WSIB and CSST).
  - Early Intervention; Accident Forms; Inform of Leave and Benefit Entitlements; Ensure Medical Care; Coordination of Claim Information and Correspondence; Follow-up.

## What is Case Management?

- Return to Work process after an absence due to injury or illness.
  - Early and Safe Return to Work; Review Functional Information; Consider Flexible Return to Work Options; Adapting to needs and Modifying work; Establish Return to Work Plan/Agreement; Follow-up.

## Multidisciplinary Team Approach

- this approach includes:
  - Employee; Union representative, Claims / Case Manager; Supervisor; Human Resources; Disability Insurance; Medical Community; OHS Committee; Workers' Compensation

## Program highlights

- Early intervention, Centralized point of contact for all;
- Area of expertise;
- Assistance and coordination, Advice and guidance;
- Ensure that obligations are met;
- Monitor and follow-up, Ensure that we all work together.

## Working Together

At PWGSC, all stakeholders work together in a multidisciplinary approach to gain a better understanding of roles and responsibilities and to ensure cooperation, communication and collaboration to meet return to work objectives for the injured or ill employee.

## PWGSC Team in the National Capital Region

National Coordinator

- Michelle Vaillancourt : 819-956-5881

Claims Case Managers

- Christine Pelletier - 819-956-8439
- Micheline Audet - 819-956-6526
- Danielle Lauzon - 819-956-6953
- Carmelina Comeau - 819-956-6977
- H el ene Blanchard - 819-956-2627

## *10 - Reclassification: The Role of the Local*

Craig Spencer, GSU Union Representative presented this session on the Role of the Local in Reclassifications. The following is a summary of his presentation.

Job Content and Classification Grievances at PWGSC:	Job Content and Classification Grievances at Mint:
Governed by Contract and Treasury Board Guidelines	Governed by Contract
<p><b>Step 1</b> Review PSAC Advice on Job Content and Classification Grievances.</p>	
<p><b>Step 2</b> Identify, with the member, which duties do not appear What evidence is available to illustrate the member is performing the duties. Request a meeting with Manager/Supervisor to review Statement and seek her or his support Set Timelines: File a grievance contesting Statement, request in writing that it be held in abeyance pending outcome of meeting</p>	
<p><b>Step 3a</b> If management agrees duties should be added, the revised job description should be forwarded by the manager to classification personnel for consideration of point allotment and classification. Important: get agreement on date when member assumed the new duties</p> <p><b>Step 3b</b> If no agreement and the Local considers the grievance has merit, the job description grievance should be activated</p>	

Job Content and Classification Grievances at PWGSC:	Job Content and Classification Grievances at Mint:
<p>Disagreement should trigger a classification grievance</p> <p>The grievance should be held in abeyance with written agreement, pending outcome of the job description grievance.</p>	<p>Disagreement should trigger a classification grievance</p> <p>The grievance should be held in abeyance with written agreement, pending outcome of the job description grievance.</p>
<p><b>Step 4</b></p> <p><b>Statement of Duties Grievances:</b></p> <p>Four Levels with Third-Party Adjudication</p> <p>First and Second Levels: Local;</p> <p>Third Level: GSU Regional Vice-President.</p> <p>Final Level: GSU National Office:</p> <p>File should contain:</p> <ul style="list-style-type: none"> <li>○ Grievance, Transmittal Slip, Replies from all Levels,</li> <li>○ Statement of Duties and Point Allotment / Classification and rationale,</li> <li>○ Steward's Fact Sheet:</li> </ul>	<p><b>Step 4</b></p> <p><b>Statement of Duties Grievances:</b></p> <p>Two Levels with Third-Party Arbitration</p> <p>First Level: Local:</p> <p>Final Level: GSU National Office</p> <p>File should contain:</p> <ul style="list-style-type: none"> <li>○ Grievance, Transmittal Slip, First Level Reply,</li> <li>○ Statement of Duties and Point Allotment / Classification and rationale,</li> <li>○ Steward's Fact Sheet:</li> </ul>
<p>If unsuccessful at Final Level, GSU National Office will transfer to PSAC for review and consideration of Arbitration (Mint) or Adjudication (PWGSC.)</p>	
<p><b>Classification Grievances</b></p> <p>There must be an amendment of the current job description before a classification grievance can be argued. If the job content grievance is lost, the matter is at an end.</p>	
Job Content and Classification Grievances at PWGSC:	Job Content and Classification Grievances at Mint:
<p>Any amendment to a Statement of Duties triggers a classification review by the employer.</p> <p>Member has 35 calendar days to file a</p>	<p>"Article 46.01(b): A classification decision is required when the Mint creates a new position or when a significant change in the position description of an existing position is implemented." (Emphasis</p>

<p>classification grievance after receipt of result of the review</p> <p>Classification grievance goes directly to Final Level:</p> <p>PWGSC -Problems with Classification Files</p> <p>Too often the PSAC learns of a grievance from PWGSC</p>	<p>added)</p> <p>If there are amendments, "significant change" becomes the issue and there may be no classification review by management if, in the opinion of the Mint, the duties added are not significant</p>
<p>A proper grievance file must be prepared and forwarded to the GSU National Office.</p>	
<p><b>Acting Pay Grievances</b></p>	
<p>Initially the PSAC advised the filing of such a grievance at the outset to address retroactive pay issues if the grievance should succeed.</p> <p>Today: The PSAC advice is to negotiate a date when the member began performing the duties during the job description review with manager and set out that date in written agreement.</p> <p>An acting pay grievance would make sense when there is agreement the member has been performing specific duties in addition to those set out in the Statement of Duties for some time; however, he or she is told to stop performing those duties when the matter is raised during a job content review. This grievance might provide a remedy for the services rendered in the past.</p>	

## *11 - Local Development Committee*

Bill Walsh, GSU Regional Vice-president reported on the activities of the Local Development Committee over the last year. Local Development sessions have been held in the national capital region and in Shediac. In the next year there will be sessions in the national capital region, in Ontario and in Winnipeg. Officers who feel their Local or region would benefit from programme should send an email to the Committee (care of Bill Walsh) and the committee will review the request.

The members of the GSU Local Development Committee are Alex Sauvé, Ron Le Blanc, Bruce Roy, and Reni Stein.

## *12 - Local Presidents' Issues*

Q - What we do to get action on Job Description Review? Should we file individual grievances?

A - if they're not working on it and you can't get a current job description, yes file a grievance. In Real Property there is a project on job descriptions. We understood that the regions would be working on them at the same time as the national capital region, but that seems not to be happening. It is a lot of work and a slow project.

Q - Local web pages? When will we have access to our Local Web pages?

A - We held a pilot session in April 2009 to test the Local web site manual and trained three Local representatives and a member of the Communications Committee. Next phase is translate manual provide access to a few more Locals

Q - Re: time for Local AGMs - will GSU make an agreement with the department to treat all Locals equally?

A - This issue will be raised at meetings with the employer about union recognition

Q - Is the union involved in the RPBAC review of project management job descriptions and engineering degrees?

A - Our position is that project manager jobs should be both technicians and engineers, not all engineers. This should be raised at your Local LMC meetings

Q - Re: parking policy - never applied but now are doing so, is there any room for negotiation at the national level on this?

A - We're not sure yet. It is a topic of discussion at the national level. it is an employer policy and they have right to apply it. This is another topic for discussion at local consultation meetings

Q - PWGSC employee orientation sessions do not allow enough time for us to brief new employees. Is there a standard across country?

A - This was an issue raised at the NLMCC seminar to be examined. In addition, the GSU Communications committee is preparing a document for all Locals

Q - What is GSU position on privatization of our members' jobs?

A - The GSU position is to maintain continuing employment for our members. We recognize that the employer is privatizing by attrition and we are opposed to this loss of bargaining unit work. It is very hard to fight but we're fighting it. However, PWGSC has about 5,000 long-term vacant positions and we're not opposed to abolishing those positions - they will never fill them. Your representative at RPBAC should bring those kinds of issues to the table and you should raise them at your Quebec region LMCCs

Q - Re: Local Development - have you considered a national level course?

A - We are not funded for Local development. We have moved funds around to address critical issues in the organization. Locals may be able to fund a retreat for themselves with some resources from GSU. We need to target Locals in crisis with the funds that we have.

## *Presentation of GSU Bursaries*

The A.F. Wood Memorial Bursaries (\$1,000.00 each) for the year 2009 have been awarded to Nicolas Gauthier, son of Silvana Quagliano, Local 10060 Matane, and Natasha Mercier, daughter of Monica Mercier, Local 70019 NCR.



The Jim Williams Memorial Bursary (\$1,000.00) for the year 2009 has been awarded to Cristina Comeau, daughter of Carmelina Comeau, Local 70015 NCR.

In the picture above, Brother Brunell presents these bursaries to the Local Presidents Pat Strizzi, Local 70015 NCR, Monica Mercier, Local 70019 NCR and Marc Robichaud, Local 10060 Matane.

## *Presentation of Awards*

Mark Brunell announced that Brother Ron Godkin has been awarded a Merit Award for his service to his Local as well as a PSAC 25 year Long Service Certificate. Brother Godkin was not able to be present to receive his awards.

Bother Kevin Bassett was awarded a PSAC 20-year Long Service Certificate and Brother Gil Drummond was awarded a PSAC 30-year Long Service Certificate. They are pictured below receiving their certificates from Brother Brunell.



Kevin Basset, President Local 90031 - 20 year service Certificate



Gil Drummond, President Local 80052 - 30 year service Certificate

## *Retirement*

Pierre Alarie announced that Sister Lyne Desjardins, a long time member and President of Local 10141 in Montreal, will be retiring soon. On behalf of her Local members he thanked her for her dedication to GSU members.

## *Museum Workers Strike*

PSAC members at the Museum of Civilization and the War Museum in Ottawa were on strike during the Local Presidents' Council. GSU participants joined the strikers on their picket line on Oct 20 and donated \$1,000.00 to their strike fund. GSU President Mark Brunell is shown below with GSU Officers and other picketers at the Museum of Civilization in Gatineau.



## *Adjournment*

The GSU 2009 Local Presidents' Council adjourned at about 4:30 pm.