



## PSAC WORKS FOR WOMEN

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## PSAC WORKS FOR WOMEN

### Introduction

PSAC women have a reason to be proud! Thanks to their activism and their involvement in the union, the PSAC has been able to win important improvements in the lives of their members.

PSAC women have ensured that a strong commitment to women's equality and to equity for all disadvantaged groups remained high on the Union's agenda throughout the years. To be sure, this has taken a lot of work and dedication on the part of local, regional and national activists and elected leaders.

And it has required a diversity of tactics. From the historical CR wild cat strikes to the long hours engaging the employer at bargaining tables across the country, PSAC members have forced employers to provide decent working conditions and basic respect for human rights. We have been particularly successful in making gains to accommodate the needs of working mothers, with good leave and benefits provisions in our collective agreements.

Filing grievances, human rights complaints and litigating certain cases up to the Supreme Court of Canada, the PSAC has forced employers to respect our members' rights. In some cases, the process was a very long and costly one: 2013 marks the 30<sup>th</sup> year since PSAC members filed a pay equity complaint against Canada Post, and after winning before the Supreme Court of Canada, our members and former members have finally started receiving their checks!

In order to win systemic change, that will benefit all women in society, PSAC members have lobbied and mobilized members and their communities to support employment equity, defend the long-gun registry, adopt pro-active pay equity and establish a pan-Canadian childcare system, for example.

But despite some important victories, challenges remain. The federal government seems poised to attack federal public service workplace child care centers. It is still

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difficult to bargain paid leave when the protective reassignment of pregnant and nursing women is not possible. And we are still at a loss when it comes to helping a woman who is battered by her partner, as the murder of Ottawa Sister Donna Jones so tragically demonstrates.

But together, PSAC sisters will find a way to resist the right wing attacks against the labour movement, and not only defend our rights but move ahead and ensure that all women and men benefit equally from decent working conditions and the full respect for their human rights.

## Collective Bargaining

Over the years, the PSAC has bargained significant improvements in the lives of working women. Some of the biggest victories were won after massive strikes in the federal public service. Many of these victories relate to women's responsibilities around child rearing and families. We have also bargained strong language against discrimination and harassment in the workplace.

After lengthy and costly litigation, we have been able to roll pay equity adjustments into wages before bargaining salary increases, with long term results for our members on their paychecks and pension benefits. We have also integrated strong language on spousal and family benefits that include lesbians and other members of the GLBT communities.

### **Maternity, parental leave and family leave and benefits**

Historically, the PSAC has been a female-dominated union, particularly as regards our members in the federal public service. In the late 1970's, women comprised of 76% of the almost 47,000 "CR" group of clerical workers. Their salary ranged from \$8, 246 to \$14,141 a year. On average, this represented roughly \$200 above the poverty level for a family of three.

Of course, wage increases and pay equity have been important issues for our members. But just as important are the recognition and accommodation of women's child care and family related responsibilities.

When the CR's collective agreement expired in November 1979 and the employer's offers remained unsatisfactory, our members refused to accept the package proposed by the PSAC leadership. They were angered by the fact that the employer had designated more than 7,000 positions as "essential services" that could not go on strike. As a result, the PSAC sisters began spontaneous, self-organized "wild cat" strikes. They wanted to show the employer that they were serious about their bargaining demands. And they wanted to show their union that they were serious about strike readiness.

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Tensions were high, and the leadership asked the striking members to return to work pending the results of the strike vote. On September 2, 1980 the results of the vote were in: 90% of the CR's voted, and 75% of these votes were in favour of strike action.

The PSAC went on a full scale national strike on September 29. The National Board of Directors (NBoD) adopted a motion refusing to sign a collective agreement unless the employer agreed to withdraw any legal or disciplinary actions resulting from activities related to the strike. However, that strike was declared illegal by the PSSRB (Public Services Staff Relations Board) on October 4. Treasury Board also applied for an injunction, and announced that PSAC members who participated in a sympathy walk-out would receive a three day suspension. But government workers ignored those threats, and they joined the striking clerks. In the eyes of many, the PSAC became a "real" union on October 6, 1980.

The following day, the Federal Court granted the injunction sought by the employer. This time the designated workers were to return to work or face contempt charges with a maximum penalty of one year in prison. Treasury Board and the PSAC returned to the bargaining table and after 30 hours of frenzied bargaining, they reached a tentative settlement. This settlement included:

- pay increases of 10%, 9% and 4%, during the 2 year contract;
- a signing bonus;
- adoption leave, paternity leave, care and nurturing leave and family related leave.

And this was just a beginning. Over the years, the PSAC has been successful in negotiating leave provisions to assist with the balancing of work and family care. . Many of these leave provisions are novel, and PSAC is seen as a leader in this area. They include:

- enhanced maternity and parental leave;
- maternity-related reassignment leave;
- leave for custom adoption (Aboriginal families);
- leave for medical appointments for pregnant employees;
- leave for care of immediate family;
- family-related responsibilities leave;
- personal needs leave;

- leave for the relocation of spouse;
- bereavement leave;
- education and career advancement leave;
- personal and volunteer leave days;
- improvements to sick and vacation leaves;
- leave with income averaging;
- other leave, with or without pay;
- flexible work arrangements such as telework, compressed schedules and flex hours.

In addition, the PSAC pushed the employer to provide space for workplace childcare centers. In 1989, a letter of agreement was signed with Treasury Board that provided the basis for the Workplace Daycare Policy that was officially adopted in 1991. This policy provides for start-up costs for the creation of a childcare center, and a full rent subsidy if more than 70% of the children's parents work for the federal public service. This policy is now under threat by the Harper government (more information is provided in the "*We are All Affected by the Conservative policies*" **Workshop #14** materials).

### **No discrimination - no harassment**

Adopted in 1977, the *Canadian Human Rights Act* prohibits federally regulated employers from discriminating in the workplace. In 1985, the Section 15 equality rights provisions in the *Canadian Charter of Rights and Freedoms* came into force. The Charter prohibits any government from engaging in discrimination, including the federal government when it is acting as an employer.

Despite these changes in the law, the PSAC often had to take the employer in court to force them to respect our members' human rights (see next section on litigation). Thanks to the strategic use of litigation, combined with strong bargaining teams, the PSAC has managed to bargain important human rights protections in our collective agreements that greatly benefit women. .

A first round of victories came in 1986 in the "Master Agreement" that was signed with Treasury Board. This agreement included a "no discrimination" clause, as well as a clause prohibiting sexual harassment. This was a major breakthrough, since sexual

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harassment had not yet been recognized by the Supreme Court of Canada as a form of discrimination.

The current collective agreements between the PSAC and Treasury Board include clauses on sexual harassment, no discrimination, and health and safety. Variations of these prohibitions exist in virtually all PSAC collective agreements. For example, in the collective agreement for the Programme and Administration (PA) group, which covers more than 70,000 federal public service workers, article 20 specifies:

20.01 The Alliance and the Employer recognize the right of employees to work in an environment free from sexual harassment, and agree that sexual harassment will not be tolerated in the workplace”

The collective agreement also includes a no discrimination provision that prohibits all forms of harassment, including sexual harassment:

19.01 There shall be no discrimination, interference, restriction, coercion, harassment, intimidation, or any disciplinary action exercised or practiced with respect to an employee by reason of ... sex, ...”

Despite this good language in the collective agreements, the 2011 Public Service Employee Survey indicates that 31% of all women report having experienced harassment. Clearly, the federal government as employer is not living up to its obligations.

### **Employment Equity**

Employment equity has been an ongoing priority for PSAC women. In the 1980's, the National Employment Equity Network was created by a coalition of equality-seeking groups. The PSAC was part of this network, and we called for legislative action against the under-representation of women and other equity groups in the federal public service.

The PSAC submitted a brief to the Abella Commission of Inquiry on Equality in Employment, along with the CLC and other unions. We also participated in the initial consultations around the proposed *Employment Equity Act*. Justice Abella's report was

tabled in November 1984. As a result of the recommendations in that report, the federal *Employment Equity Act* (EEA) was introduced in 1986.

This law imposes mandatory review of an employers' labour force, and provides for measures to ensure a better representation of the four "equity groups": women, visible minorities, persons with a disability and Aboriginal persons. However, the law did not apply to the Federal Public Service, initially. The Federal Public Service had an affirmative action policy but we were concerned that this was not enough to bring this employer to remove employment barriers against the equity groups. The PSAC played a critical role, during the Employment Equity Act Review in ensuring that the largest employer in the country, the Federal Public Service, would be covered under the Act.

While the PSAC does not actually have to bargain employment equity, thanks to this important legislation, we do participate in a joint bargaining agent and employer committee that oversees the implementation of the Act for the Federal Public Service, the National Joint Council Employment Equity Committee.

This committee provides a national forum where the Treasury Board Secretariat, the Public Service Commission and the Bargaining Agents can consult and collaborate on the preparation, implementation and revision of the public service wide policies and practices that may impact Employment Equity designated groups. The Joint Employment Equity Committee (JEEC) plays a major role in providing analysis and recommendations related to employment systems by:

- assessing the impact of existing policies;
- providing input into emerging policies and practices and those policies that are proposed for archive;
- identifying gaps in EE policies and practices.

In order to carry out its mandate, the Committee accesses data and information within the Employer's control and reports and provides recommendations to the Executive Committee of the NJC on selected priorities. The PSAC was successful in ensuring that the NJC Travel Directive recognized traditional Aboriginal custom adoption practices in this NJC Travel Directive. The JEEC also examines different issues that could be barriers to the participation of equity group members. For example, it looked at the issue of accessible parking for PSAC members with a disability; the JEEC also reviews harassment policies, duty to accommodate policies, and telework policies.

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More recently, the PSAC has been asking the Committee to obtain and analyse data on the impact of the cuts in the federal public services on women and other equity group members

The PSAC was also a strong advocate for *Embracing Change*, a federal government strategy to ensure that significant under representation of racialized persons, would be dealt with. *Embracing Change* required Federal Departments to ensure one out of five hires into the Federal Public Service would be qualified members from the racialized community – until the representation gap is closed. The PSAC has developed education materials to ensure our members are equipped to play a role in advancing employment equity in their workplaces.

The PSAC is also the first union to have negotiated an employment equity plan with its staff unions. Because of our work in this area, PSAC members can be proud of the fact that PSAC staff is representative of equity groups. We were also the first union to have created a staff position dedicated to promoting and advancing employment equity in our membership and their workplaces.

Of course, the PSAC and others must remain vigilant on the application of the *Employment Equity Act*. We monitor its application, and provide recommendations to government periodically. For example, PSAC provided submissions to the Senate Standing Committee on Human Rights. The Committee released its report in 2007, entitled “Employment Equity in the Federal Public Service – Not There Yet”, which found that not enough progress was being made, and contained a number of recommendations for improving the representation of the four designated groups.

And we remain concerned by possible threats to the Act, since the Harper government has just abolished the federal contractor’s Program that required many employers to apply employment equity policies.

### **Pay Equity**

Over the years, most employers refused to acknowledge ongoing pay inequities towards women, forcing the PSAC to file complaints and litigate to obtain pay equity. These legal procedures sometimes had an impact on the employers’ willingness to reach an agreement.

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For example, a pay equity complaint was filed by the PSAC against Canada Post in 1983. In 1994, while this complaint was still ongoing, the PSAC negotiated a new pay grid with Canada Post that significantly reduced the wage-gap for our members working in administrative positions.

Similarly, following many months of intensive bargaining, the PSAC signed a collective agreement with Treasury Board in 1990. Equal pay adjustments for several groups of workers (CR, ST and EU members) were rolled into the base salary before the application of the economic increase. This was of significant benefit to our members. Federal separate employers followed suit and made partial pay equity payments to our members working at CSIS, SSHRC, CSE and the AG, among others.

### **Same-sex benefits for lesbians**

In 1992, the PSAC bargained a travel insurance policy that recognized same-sex spouses. This was one of our first victories at the bargaining table for our GLBT members.

In 1998, after a groundbreaking human rights victory in the Akerstrom case, the Treasury Board collective agreements were amended to ensure that the definitions of common-law spouse include same-sex couples. Since then, the PSAC has been able to bargain spousal leave for lesbians and gay men, as well as a host of other benefits that were traditionally afforded only to heterosexual couples and families.

More recently, the PSAC has been bargaining cutting edge language for trans women and men who need to be accommodated in their gender transition while at work. For more information on what the PSAC has done, please consult the document entitled ***PSAC Works for GLBT Rights***.

## Human Rights Complaints and Litigation

There are some issues where employers have refused to consider the union's demands, hence forcing us to turn to the courts to seek justice.

This has been particularly true of pay equity, where employers have systematically refused to acknowledge the gender pay gaps and compensate women fairly for their work. PSAC spent 15 years in the courts before our CR and other Treasury Board members received their pay equity adjustment checks. And our pay equity case against Canada Post took almost 30 years! This case is a text book example of why we need a proactive federal pay equity law.

PSAC has also represented members who were victimized by sexual harassment in the work place, racial discrimination and racists harassment, and discriminatory definitions of spouses and family.

Finally, PSAC has won an important victory for working mothers (and fathers), thanks to Fiona Johnstone, who challenged her employer's refusal to accommodate her childcare needs. This precedent-setting case could have a significant impact in the lives of many working mothers.

### Pay Equity

The PSAC has filed several complaints over the years relating to pay equity. A few were settled relatively quickly. For example, the complaint filed in 1977 for the Treasury Board Library Science workers was settled in 1980. Another example is the complaint filed in 1979 for the Food Services, Laundry Services within the General Services Group; pay equity increases were won for these PSAC members in 1982.

However, several important pay equity complaints took years to resolve, including the complaint filed against Treasury Board.

- **PSAC v. Treasury Board**

In 1984, a pay equity complaint on behalf of the CR group against Treasury Board was filed with the Canadian Human Rights Commission. A joint pay equity study conducted over a period of four years confirmed that PSAC members were indeed victims of pay discrimination.

When Treasury Board failed to fully implement the study results, the union filed another complaint with the Human Rights Commission, on behalf of the CR's and five other female-dominated groups. The Canadian Human Rights Commission appointed a tribunal to hear the case in 1990. During the hearings, Treasury Board tried to argue that the data collected during the joint study was not valid, but in 1996 the Tribunal ruled that the data was indeed valid and could be used to analyse the complaint.

In June 1998, the Canadian Human Rights Tribunal ruled that Treasury Board did effectively discriminate against PSAC members. It ordered that pay equity adjustments be paid out retroactive to 1985 (on the date the joint pay equity study was announced). It also ordered that pay equity adjustments be integrated into wage rates as of July 1998. In the wake of the decision, PSAC members sound the rallying cry in every region: "Don't delay- just pay!"

The federal government appealed this decision to the Federal Court. PSAC members embarked on a national campaign of protest. In the spring of 1999 while the Federal Court was hearing the appeal, PSAC members in the National Capital Region organized daily events in front of the building. For the entire two week period, speakers were invited, the Raging Grannies sang their protests songs and hot dog lunches were organized.

On October 9, 1999, a decision from judge Evans of the Federal Court confirmed that Treasury Board had discriminated against PSAC members. Twenty days later, Treasury Board and PSAC signed an agreement on the implementation of the Canadian Human Rights Tribunal's order. After more than 15 years of struggle in the courts and in the streets, members finally had their salaries adjusted, and started receiving retroactive pay and interest checks in the year 2000. This is probably the biggest pay equity pay out in history, with a total amount of 3,2 billion dollars in salaries and interest paid out to some 320,000 past and present public service workers, many of whom were PSAC members.

- **PSAC v. Canada Post**

In September 1983, PSAC filed a pay equity on behalf of the Clerical and Regulatory Group (CR). including benefits clerks, accounts payable clerks and frontline contact centre workers at Canada Post. PSAC argued that their work was undervalued when compared to what was being paid to workers in the Postal Operations Group, a male dominated group that included the letter carriers, mail handlers and mail sorters.

The Canadian Human Rights Commission started investigating the complaint in October 1985. From the outset, Canada Post refused to collaborate, and in 1988 the Commission had to threaten to take court action if the employer maintained its refusal to provide the information necessary for its investigation. In 1992 the Commission released its final investigation report, and referred PSAC's complaint to the Human Rights Tribunal for determination.

1993: The Human Rights Tribunal hears the case

The case was referred to the Canadian Human Rights Tribunal in March 1992, but the Tribunal only began hearing evidence in February 1993. In total, there were 415 days of hearings between 1993 and 2003, and the transcripts of the hearings exceed 46,000 pages. There were also additional hearings and arguments presented in 2003 concerning the relevance of a Supreme Court decision in the Bell Canada pay equity case.

In 2004, the Chairman of the Tribunal resigned. Finally, on October 7, 2005, the Canadian Human Rights Tribunal issued a 279-page decision upholding the PSAC's pay equity complaint.

2005: Canada Post challenges the Tribunal decision

Canada Post refused to accept the Tribunal's decision and used every possible legal avenue to have the Tribunal's decision overturned.

Over the years, the employer challenged the independence of the Human Rights Tribunal, contested the validity of the 1986 pay equity guidelines, and argued that other reasons – not discrimination – explained the gender pay gap at Canada Post. The corporation challenged the “comparator group” that was used by PSAC to compare the

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wages of the female dominant group, questioned whether or not the two groups performed work of “equal value,” and picked at the methodology used to calculate the wage gap.

Canada Post successfully appealed the Tribunal’s ruling before the Federal Court. PSAC then appealed the Federal Court decision before the Federal Court of Appeal. After losing at this level, PSAC brought the case before the Supreme Court of Canada.

### 2011: A Supreme victory!

On November 17, 2011, after hearing arguments from PSAC, Canada Post and the Canadian Human Rights Commission, the Supreme Court of Canada ruled in favour of PSAC. In a rare move, the decision was released the same day, directly from the Supreme Court bench by Chief Justice Beverly McLaughlin speaking on behalf of a unanimous court. The Court ruled that PSAC’s pay equity complaint against Canada Post was indeed founded, and it restored the original decision of the Human Rights Tribunal.

### What the decision says

In its 2005 decision, the Human Rights Tribunal found that discrimination against the CR Group had indeed occurred between 1982 and 2002. (In 2002, a new gender neutral and non-discriminatory job evaluation plan was introduced at Canada Post).

The Tribunal based its decision on the job evaluations that were done by a team of professionals hired by PSAC. However, these evaluations were considered to be on the low scale of what is “reasonably reliable” to prove discrimination, because Canada Post had refused to collaborate in providing information on different jobs during the Commission’s investigation. As a consequence, the Tribunal decided that only 50 per cent of the wage gap would be awarded to the members of the CR group.

Despite this resounding victory before the Supreme Court, Canada Post dragged its feet for another year and a half, until a Memorandum of Agreement was finally signed between Canada Post and the PSAC on the implementation of the Tribunal order. As of August 2013, pay equity payments, are starting to be made to the 6000 current and former employees of Canada Post who worked as CRs between 1982 and 2002.

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Unfortunately, some former members died waiting for their pay equity, and the monies will be forwarded to their estates.

This was a hard won battle for women's equality, but it shouldn't have taken 30 years!

### **Sexual Harassment**

It is fair to say that PSAC leadership on sexual harassment was ignited by the efforts and courage of one of our members, Sister Bonnie Robichaud.

In 1980, Sister Robichaud filed a complaint with the Canadian Human Rights Commission alleging that she had been sexually harassed, discriminated against and intimidated by her employer, the Department of National Defence, and that Dennis Brennan, her supervisor, was the person who had sexually harassed her. This was a bold argument, since sexual harassment was not officially recognized in the Canadian Human Rights Act: back then: it was often considered to be "flirting", a basically "normal" interaction between men and women.

The Human Rights Tribunal appointed to inquire into Sister Robichaud's complaint found that a number of sexual encounters had taken place between her and Brennan, but dismissed the complaint against Brennan and against the employer. Sister Robichaud appealed the decision, and the Review Tribunal found that Brennan had indeed sexually harassed her. The tribunal also ruled that the Department of National Defence was liable for the actions of its supervisory personnel.

The case was appealed to the Supreme Court of Canada, and the court specifically focused on whether or not an employer is responsible under the *Canadian Human Rights Act* for the unauthorized discriminatory acts of its employees in the course of their employment.

In a ground breaking 1987 decision, the Supreme Court ruled acknowledged the fact that sexual harassment is one of the many forms that discrimination against women can take, and that it is prohibited under the *Canadian Human Rights Act*. The Court also ruled that since the Act's purpose was to redress socially undesirable conditions such as discrimination against women, employers are responsible for maintaining a harassment-free work environment. The Court wrote: "*only an employer can remedy*

*undesirable effects and only an employer can provide the most important remedy--a healthy work environment.”*

## **Racism in the workplace**

Sister Mary Pitawanakwat worked as a social development officer for the Secretary of State in Regina until 1986. She had always received favorable performance reviews, until she lodged a complaint for racial harassment against her supervisor. She was fired by the department two years later, after her complaint was rejected by a public service hearing.

Sister Pitawanikwat then filed a complaint with the Canadian Human Rights Commission. The Commission initially refused to hear her case, on the basis that she had filed a grievance that went up to the Public Service Commission Appeal Board. The decision was successfully appealed by sister Pitawanikwat, and her complaint was returned to the Human Rights Commission.

After many stalling tactics from government lawyers, a decision was rendered by a Human Rights Tribunal in 1992, allowing her complaint in part. But the decision was flawed, because she was blamed for the way she had coped with the discrimination that she constantly faced in the workplace. In addition, the remedy that was granted by the Tribunal was insufficient: while she had lost six years of wages during her battle, all she would have received was the equivalent of two years salary. The Tribunal also ordered that she find work in another province, because she could not return to her Regina office since there was “far too much bitterness” in that workplace. In other words, sister Pitawanikwat was banned from working in her own city because she had been victimized at work!

The unfairness of this decision shocked many activists, and a local defense committee was created to support sister Pitawanikwat. The case also sparked outrage provincially and across the country, and galvanized the women’s movement. She received support from the National Action Committee on the Status of Women, the Native Women’s Association of Canada and LEAF, the Women’s Legal Action Fund.

With the support of the PSAC, Sister Pitawanikwat sought judicial review to the Federal Court, with resounding success. The PSAC argued that the Human Rights Tribunal had failed to go far enough to resolve the complaint adequately. The Federal Court

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agreed with PSAC's position. In April 1994, the Court ordered that she be reinstated in her former position of Social Development Officer, and it ordered an award for lost wages and benefits, as well as for hurt feelings. In a subsequent agreement with the employer, she also received a settlement in excess of \$200,000.

*"I believe that our victory is a very significant step in obtaining justice for Aboriginal people, particularly in the area of workplace discrimination"* declared sister Pitawanikwat, who received the Woman of Courage Award from NAC.

Unfortunately, Mary Pitawanikwat passed away in 1995, from breast cancer, at the age of 45. Madeleine Parent, speaking for the National Action Committee on the Status of Women said of her: *"Mary is a symbol of a woman of courage, who never gave up in her fight against injustices and discrimination"*.

In his message of condolences, PSAC President Daryl Bean wrote: *"Her courageous fight will also give others the inspiration to continue to seek justice and equality for all"*.

### **Lesbian Rights**

The PSAC has engaged in a series of grievances and human rights complaints to defend lesbian (and gay) rights in the workplace, which have in turn resulted in several victories. The first is an arbitration award against Canada Post, ordering the employer to include same-sex spouses in benefit plans (1994). The Canadian Human Rights Tribunal then ordered Treasury Board to provide same-sex couples with same benefits as opposite-sex couples (1996).

Finally, in the Akerstrom and Moore case, the Federal Court ordered Treasury Board to change the heterosexist definition of 'spouse' in the collective agreements. For more information, please consult PSAC ***Works for GLBT Rights***.

### **Childcare and the Duty of employers to Accommodate**

In Summer 2010, PSAC member, sister Fiona Johnstone won an important victory for women who need to be accommodated because of their particular family obligations and childcare situation.

Sister Johnstone worked a difficult, unpredictable and frequently variable shift schedule at Pearson International Airport. She was also required to work overtime on an

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impromptu unpredictable basis where seizures were made near the end of her shift. In short, Sister Johnstone worked midnights, weekends and extended hours none of which were possible to predict with any great certainty. Her husband also worked for CBSA, on rotating shifts. This made it almost impossible for her to make childcare arrangements.

Sister Johnstone looked diligently for childcare that would accommodate such an idiosyncratic schedule. She spoke to day care providers, answered ads in the newspaper, spoke to other BSOs who had obtained care and conducted a very thorough search of childcare availability. Expert evidence at the hearing confirmed that such childcare is unavailable in an organized way. Sister Johnstone's family members were prepared to assist with childcare but required a fixed routine. For this reason, Sister Johnstone requested a fixed shift.

However, the Canada Border Services Agency refused to accommodate sister Johnstone's request for fixed shifts so she could arrange childcare. Their refusal to accommodate her was based on a hard and fast policy that the Agency did not accommodate employees for reasons of childcare. Their solution was that Sister Johnstone obtain the fixed shift that the Agency was offering to part time employees.

On April 23, 2004, sister Johnstone filed a human rights complaint against CBSA, alleging discrimination on the basis of family status. She argued that her employer's failure to accommodate her family obligations, through the provision of a fixed shift, was discriminatory. In 2010, the Canadian Human Rights Tribunal found that the policy to require employees with childcare obligations to become part time employees and lose their full time status and pension entitlements in order to accommodate their child care needs was discriminatory. In addition, the Tribunal found that CBSA had not established that accommodating her would create undue hardship for them.

At paragraph 233 the Tribunal wrote:

*“This Tribunal finds that the freedom to choose to become a parent is so vital that it should not be constrained by the fear of discriminatory consequences. As a society, Canada should recognize this fundamental freedom and support that choice wherever possible. For the employer, this means assessing situations such as Ms Johnstone's on an individual basis and work together with her to*

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*create a workable solution that balances her parental obligations with her work opportunities, short of undue hardship.”*

The Tribunal ordered that CBSA cease its discriminatory practices against employees who seek accommodation based on family status for purposes of childcare responsibilities. It ordered CBSA to establish a written policy to address family status accommodation requests, with a process for individualized assessments. It also ordered that sister Johnstone be compensated for lost wage and benefits, including overtime that she would have received, as well as pension contributions that would have been made had she been able to work on a full time basis. Finally the court ordered \$15,000 for pain and suffering, and \$20,000 for willful and reckless misconduct.

CBSA has filed an application for judicial review of the Tribunal decision. In 2013, the Federal Court rejected the employer’s appeal. CBSA has now appealed to the Federal Court of Appeal.

## Lobby and Mobilization

Over the years, PSAC members have taken strong, progressive positions on a range of issues that advance women's equality –on employment equity, pay equity, reproductive choice, rights for members of the LGBT communities, anti-racism, child care, the rights of Aboriginal Peoples and violence against women, to name only a few,

In 1994, the PSAC Convention adopted Policy 34, entitled *Women and the Alliance: From the Margins to the Mainstream*. This is an extensive policy that provides a detailed blueprint for achieving women's equality in the workplace, in society and in the union. This policy and subsequent resolutions that have been adopted at PSAC Conventions give the Union a clear mandate to fight for and advance women's equality at the bargaining table, in the courts, and through political action,

While important victories can be gained before the courts, changing workplace culture and ingrained, systemic discrimination is usually easier done by way of law reform and proactive legislation, policies and programs. For example, untold years of litigation have been avoided thanks to the federal *Employment Equity Act*, adopted in 1988. But convincing governments to adopt pro-active human rights legislation is difficult in the current political climate. Not only has the federal government rebuked the Pay Equity Task Force recommendations to implement a pro-active pay equity law, it has attacked public sector workers pay equity rights outright (see materials prepared for **Workshop #14**). Still, the PSAC will continue to advocate for a proactive federal pay equity law.

While the PSAC has gone a long way in ensuring safer and more respectful workplaces for women, sexism, racism and violence outside the workplace are still very much a reality. The PSAC has been calling for a National Action Plan against Violence against Women, as well as an inquiry into the missing and murdered Aboriginal women.

Driven by our clear position on choice, the PSAC has informed our members and lobbied in defense of reproductive justice in the face of threats against a woman's right to decide freely on her motherhood. Instead of trying to control women's bodies, the government should ensure that our working conditions do not endanger a pregnancy or harm a nursing child. More specifically, the government should provide paid leave for protective reassignment.

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Finally, the PSAC is starting an exciting new campaign with the CLC and other unions:  
***Let's Rethink Childcare!***

### **- Fighting for a pro-active federal pay equity law**

If anything, the Canada Post workers' victory at the Supreme Court reinforces the fact that the current complaints-based federal system does not work. Unfortunately, the Canada Post case is not an exception: pay equity complaints typically take several years and protracted litigation to resolve.

Despite the fact that it has been 35 years since the *Canadian Human Rights Act* was adopted in 1977, women working full time still earn on average of 70 % of the male wage. The situation is even worse for women of colour, Aboriginal women and women with a disability.

In 2003, the United Nations Committee against Discrimination Against Women noted the slow progress towards pay equity under the Canadian Human Rights Act provisions and it made this recommendation to the Canadian government:

“The Committee urges the State party to accelerate its implementation efforts as regards equal pay for work of equal value at the federal level and utilize the respective federal-provincial-territorial Continuing Committees of Officials to ensure that that principle is implemented under all governments”

In May 2004, after years of research and consultation, the Pay Equity Task Force concluded that the pay equity provisions in the Canadian Human Rights Act are simply not working. In a groundbreaking report entitled *Pay Equity: A Fundamental Human Right*, the Task Force recommended the adoption of a new, stand-alone pay equity law, that would require that employers proactively examine their compensation practices and develop pay equity plans in collaboration with unions.

These recommendations received full support from the labour movement, women's groups and human rights organizations. Unfortunately, in September 2006, the newly elected Conservative government announced that it would not implement the Task Force recommendations.

### Pay equity legislation works!

Ontario and Québec each have extensive proactive pay equity laws that apply to both the public and the private sectors. A review of the Québec law shows that proactive pay equity legislation works:

- In total, 28% of the women working in female dominated professions (mostly administrative assistants, secretaries, service clerks and accounting assistants) received wage adjustments between 1997 and 2007.
- These wage adjustments varied between 2% and 14.4%, with the average adjustment in the private sector being 6.5%.
- While significant for women, these wage adjustment cost less than 1.5% of the payroll in 70% of the cases.

In addition, pay equity has turned out to be good for the economy. Statistics Canada showed that in 2007, the pay equity settlement for the Quebec public sector had resulted in a five per cent increase in sales for business owners.

PSAC is committed to keeping up the fight for a federal pay equity law. This is the only way to ensure that all workers in federally regulated workplaces can be assured that their right to equal pay for work of equal value is effectively respected.

### **- Violence against Women**

Like all women, PSAC sisters were shaken and outraged by the massacre at the École Polytechnique on December 6, 1989. We gathered together and mourned our dead, and we promised to work against violence against women. December 6 was declared *National Day of Remembrance and Action on Violence against Women*, and everywhere across the country PSAC sisters, and brothers, gather to mark the day in vigils and other events.

In 1994, the PSAC National Convention adopted *Policy 34 on Women*, entitled “*From the Margins to the Mainstream*”, with an action plan against violence, harassment and discrimination. The policy specifically calls on the union to keep violence against women as an ongoing priority for political action, and put pressure on all levels of

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government to commit resources to shelters, rape crisis centers and develop policies which support community efforts to support women. There are several other resolutions of record committing the PSAC to working against violence against women.

Over the years, PSAC members have organized December 6 vigils and participated in *Take Back the Night* marches. In 1996, we supported *the Bread and Roses March*, and in the year 2000 we were actively involved in the organization of the *World March of Women against Poverty and Violence against Women*.

The PSAC worked hard to save the long-gun registry from abolition by the Conservatives, without success. The PSAC submitted a brief to the Standing Committee on Public Security in May 2010, against Bill 391. In September, PSAC members from Miramichi employed at the Gun Registry came and met members of Parliament to discuss the dangers of this bill. The Bill was defeated, but after the 2011 elections, the Harper government managed to adopt a similar bill thanks to the Conservative majority in the House of Commons. With the end of the gun registry, Canada lost an important tool for keeping women safe from violence.

On December 6, 2012 the PSAC joined the December 6 Coalition, calling for a National Action Plan on Violence against Women, and an inquiry into the tragedy of the missing and murdered Aboriginal women. The United Nations has called for countries to adopt Action Plans against violence against women by 2015.

The PSAC has a long-standing commitment to ensuring our members are free from sexual harassment. Our Constitution recognizes that every member of the PSAC is entitled to be free from harassment by another member, both within the union and in the workplace. The first sexual harassment policy of the PSAC dates back to 1984. And as we have seen, in 1986, we negotiated the first sexual harassment clause in a PSAC collective agreement.

A PSAC member who has been sexually harassed will usually seek support from her local union shop steward, or another component representative. The PSAC will support a sexual harassment complainant through the various options that are available to our members: a complaint under the Treasury Board harassment policy; a grievance under the collective agreement; a complaint to the Canadian Human Rights Commission; and a health and safety investigation. All of these mechanisms play different roles, and taken together, they are essential in ensuring that sexual

harassment – indeed all forms of harassment in the workplace are properly investigated, and that appropriate sanctions are imposed on perpetrators.

Unfortunately, the most recent Public Service Employees Survey indicates that 31% of women working for the PS suffered one form of harassment or another. That proportion increases dramatically for women of colour and women from the other equity groups. Clearly, Treasury Board is not living up to the expected standards, of providing a workplace free of harassment and discrimination. In January 2013, the PSAC appeared before the Standing Committee on the Status of Women, to denounce how sexual harassment cases were being dealt with by Treasury Board.

The PSAC National President, sister Robyn Benson, explained to the Committee that while ideally the grievance process results in resolution in the workplace at the earliest level, the process can become lengthy and conflict laden. It can result in additional stress and hardship for victims who are engaged in protracted litigation. She recommended that Treasury Board review the process and the outcomes of all settlements, internal investigations, arbitrations and human rights complaints involving sexual harassment, and to report back to the Standing Committee within one year.

PSAC was also very active in the international trade union delegation to the UN Commission of the Status of Women that was meeting on the theme of *Violence against Women* in March 2013. Working with international trade union sisters from around the world, we obtained strong language on violence in the workplace that prohibits sexual harassment, recognizes the importance of trade unions and acknowledges the spillover effect of violence – i.e. the importance of support measures in the workplace for workers who experience domestic violence.

### **- Violence Against Aboriginal Women**

The issue of violence against Aboriginal women is an important one for PSAC activists. For several years, PSAC sisters have been supporting and participating in the Sisters in Spirit vigils that are held across the country on October 4<sup>th</sup>.

At the 2010 National Women's Conference, delegates adopted a resolution calling for a lobby of the current government to ensure effective responses from the police, the courts, victim services, the media and other service providers when Aboriginal women and girls go missing or are found murdered.

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### - Lobbying for an inquiry into the missing and murdered Aboriginal women

Working in Coalition with the Native Women's Association of Canada and the Feminist Alliance for International Action, the PSAC, the Canadian Labour congress and other unions have been pushing the federal government for an inquiry into the tragedy of the missing and murdered Aboriginal Women. In February 2012, the PSAC joined several organizations in a collective letter to the United Nations Committee on the Elimination of Discrimination against Women, urging them to inquire into this situation:

'As time goes by, and there are still no effective measures in place, there is an increasing sense of urgency and frustration. Aboriginal women and girls continue to disappear and be found murdered. We believe that external intervention and examination is necessary. The Committee's presence in Canada can instruct governments and the public of the gravity of the human rights violations. The Committee can also identify the measures that need to be put in place immediately to satisfy Canada's obligations to prevent, investigate, prosecute and remedy violence against Aboriginal women and girls.

As Aboriginal women and girls, and their representatives and allies in Canada, we believe it is crucial that the Committee move forward with its inquiry into the national tragedy of missing and murdered Aboriginal women and girls as expeditiously as possible. We request that the Committee seek permission for a visit to Canada in order that members undertaking the inquiry can speak directly with some Aboriginal women in Canada and visit some of our communities. We believe that a visit to Canada is essential for the Committee to be fully informed about the social, historical and geographical context in which the disappearances and murders of Aboriginal women and girls are taking place. We stand ready to assist the Committee in any way we can."

For International Women's Day 2013, PSAC members sent postcards to Prime Minister Harper, asking *Where are my Sisters in Spirit?* with the following message:

*"Mr Harper,*

*How many more Aboriginal women have to die or disappear before the federal government takes action?*

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*I urge you to support the Native Women's Association of Canada and establish a national inquiry into the missing and murdered Aboriginal women, our sisters in spirit.*

*I also urge you to adopt a national action plan on violence against women now"*

In July 2013, the Premier of the Provinces and Territories joined their voices to call on a National Inquiry into the missing and murdered Aboriginal women. Yet the federal government still refuses to take action on this shameful situation.

### - Defending Aboriginal women's access to housing and access to justice

On a similar issue, the PSAC has been lobbying the federal government to respect CEDAW Committee recommendations to the federal government in the Cecilia Kell case.

Ms Kell is an Aboriginal woman, mother of 3 children, who after studying in the city returned to the Rae Edzo nation, in the NWT. She was in an abusive relationship with a non-Aboriginal man, who manipulated the Housing Authority and eventually gained control of their house and kicked her out of her own home. Cecilia Kell fought for years in the courts, without success, and she had many difficulties finding and keeping her legal aid lawyers.

Finally, she courageously filed a "communication" before the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW Committee), claiming that Canada allowed its agents to discriminate against her on the basis of sex, marital status and cultural heritage in that it failed to provide equal treatment to women applicants for housing and enjoyment of their property.

The Committee found that Ms Kell's property rights were indeed prejudiced as a result of an act of a public authority acting together with her partner. It concluded that an "*act of intersectional discrimination*" had taken place against her, and that since she "*is an aboriginal woman who is in a vulnerable position, the State party is obliged to ensure the effective elimination of intersectional discrimination*". It also concluded that the Canada had "*failed to ensure that its agents provide effective legal protection*" of her housing rights. Finally, the Committee recalls that Canada has an obligation under

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CEDAW to “*adopt measures that ensure women’s equality with men, including measures that ensure that women have access to effective remedies*”.

The Committee recommended that the federal government provide Ms Kell with quality housing as well as compensation for damages. Most importantly, it recommended that the government recruit and train more aboriginal women to provide legal aid to other women from their communities including on domestic violence and property rights. Finally, the Committee recommended that Canada review its legal aid system to ensure that aboriginal women who are victims of domestic violence have effective access to justice.

This decision represents a major victory that could have a significant impact on many Aboriginal women, in regards to their right to security from domestic violence, housing and access to justice. In 2012, PSAC National President Robyn Benson has asked the federal government to implement the CEDAW Committee recommendations. Not surprisingly, no action has ensued from the Harper government...

### **- Reproductive Justice**

The PSAC has been a strong ally in the defense of women’s reproductive justice. We celebrated victory at the Supreme Court in 1988, when Canada’s abortion laws were declared unconstitutional,, and joined with other trade unionists to thank Dr. Henry Morgentaler for his lifelong commitment to fighting for the right for women to choose when the CLC awarded him with an Award for Outstanding Service to Humanity at its Convention in 2008.

PSAC has been an active partner in coalitions against the re-criminalization of abortion. While the government professes that it will not re-open the abortion debate, private members have been tabling bill after bill that have as an effect to reopen the abortion debate one way or another.

Bill C-484 sought to create a new crime of harming a fetus while beating your wife, so to speak. By creating a specific offense, distinct from the crime of assault, this bill would have introduced legal personhood for the “unborn child” through the back door. In 2008, the PSAC worked with the CLC and affiliates, the Abortion Rights Coalition of Canada (ARCC), and other organizations, to mobilize and lobby against the Bill. It

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passed second reading, but in the face of widespread opposition, Prime Minister Harper was forced to withdraw the Bill before the election.

The PSAC was also active against Motion 312 that was tabled in 2012 by a Conservative MP. The Motion proposed the creation of a Parliamentary Committee to examine when a fetus becomes a human being. Again, this private member's bill was a thinly disguised attempt at re-criminalizing abortion in Canada. PSAC worked successfully with the CLC, the Abortion Rights Coalition of Canada and a Québec based coalition to oppose this motion and defend women's reproductive rights.

Although we have been successful so far, the anti-choice movement is gathering strength, and recruiting young women who say they are "pro-women". It may only be a matter of time before we encounter the next threat to women's reproductive justice.

### **We are ALL affected by the lack of quality affordable child care services**

Fighting for better childcare has been an ongoing priority for the PSAC. We have lobbied the federal government for a national, pan-Canadian childcare policy that would support the creations of quality childcare centers in all regions and communities.

Affordable, quality childcare is still hard to come by, despite the fact that an overwhelming majority of mothers are now working: outside of Québec, only 20% of the child care space are regulated. Access to childcare is an important factor for most families' economic well-being, in addition to being essential in promoting women's equality. Childcare is an issue that concerns all women, from all communities, regions and nations. And quality childcare is increasingly recognized as being good for children.

Achieving a national childcare program has been a longstanding demand for the PSAC. Several resolutions of Record mandate the union to mobilize and lobby in favour of a quality, not for profit pan-Canadian child care system. In the 1990's and the first decade of this new millenium, the PSAC has worked with child care advocates, women's groups and other unions in the labour movement to push the federal government to provide funding to help the provinces and territories develop a comprehensive public childcare system. In 2005, the federal government had finally signed a series of funding agreements with the provinces and the territories, and we seemed to be moving toward a more coherent system.

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However, after their election, the very first thing that the Harper government did was to abolish those funding agreements, and replace them with the so-called “Universal Child Care Benefit”, that gives parents \$100 a month for every child under age 6. In 2009 and 2010, the PSAC consulted our members in Regional Forums on childcare, and they clearly told us that this amount does not come even close to helping cover the real costs of childcare. It is an insult to working women, and of no help in providing quality child care for their children.

In the last 3 years, PSAC members have strategized and built significant organizational capacity on childcare issues. The 2010 National Women’s Conference adopted an extensive Women’s Action Plan, where childcare was a central issue. The 2012 PSAC Triennial Convention unanimously adopted a resolution calling on the PSAC to prioritize the organization of political actions, forums and campaign to promote a pan-Canadian childcare system

Following the adoption of this resolution, the PSAC worked with the CLC and a few key affiliates (CUPE, CUPW, and the CAW) to develop a three year pan-Canadian child care campaign. This plan was discussed by the Women’s Working Group of the National Human Rights Committee in December 2012. A detailed summary of the proposed campaign was then approved by the Alliance Executive Committee (AEC) in April 2013. The theme of this campaign is: *We are ALL affected by the lack of quality affordable child care services: Let’s Rethink Child Care!*

This campaign will be discussed in greater detail in **Workshop N. 15, “Child Care Kitchen Table Conversations: starting a campaign with our stories”**.

### **Job cuts Hurt Women... and we are fighting back!**

Since being elected, the Conservative government has waged an all-out attack on our rights, our jobs and our security. The Harper government has announced billions of dollars of cuts to public services, which have already resulted in thousands of layoffs in recent months.

These reductions are undermining the government’s ability to protect public safety, the common good and the environment. Stephen Harper’s Conservatives are sacrificing public safety and the common good. And women are particularly hard hit by these cuts!

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Everywhere across the country, PSAC sisters are mobilizing to fight back, because we are ALL affected by the Harper government policies.

Please refer to **Workshop 14** materials for more information

## New Challenges

While the PSAC and our activists have won many important victories for women, more remains to be done.

Over the years, the PSAC has bargained significant improvements in working women's lives. Among the challenges remaining to be achieved at the bargaining table, this document addresses two:

- receiving paid leave when protective reassignment is not possible; and
- exploring how we can bargain leave and benefits for women who need to take time to deal with domestic violence.

### Protective reassignment

In the 1998 round of bargaining with Treasury Board, the PSAC won maternity-related reassignment leave for 5 tables: when a job represents a threat to a women's pregnancy, the employer must modify a worker's job functions, or reassign her to another position from the beginning of her pregnancy, to the end of the 24<sup>th</sup> week following pregnancy. If such modifications are not reasonably practicable, the employee is entitled to leave without pay.

In 2001, protective reassignment for pregnant workers was extended to Technical Table at Treasury Board, and was also recognized the Corrections Canada. While this does represent a victory, PSAC members have been pushing for paid leave for protective reassignment.

During the 2004 round of bargaining, the PSAC argued that the employer has an obligation to provide a safe work environment, as established through health and safety and human rights/no harassment jurisprudence. It would stand to reason that if this safe work environment cannot be provided by the employer, then the employer should pay for the employee's period of leave.

We argued that we are simply seeking what is already offered to any staff working in correctional facilities, and what is currently offered under Québec legislation to workers covered in that province. In Québec over 20,000 women go on "retrait préventif" to

protect their pregnancy, and the security of their baby for the first few months after childbirth. This leave is paid by the workers compensation office.

We are still fighting for this demand at the bargaining table, but given the limited success that we have encountered so far, we are also trying to win progressive law reform on the issue. At the 2004 PSAC National Health and Safety Conference, the PSAC launched a campaign calling on the federal government to pass legislation that will ensure full protection for pregnant and nursing workers. A petition to Parliament was circulated asking for federal government action to ensure paid leave for women cannot be re-affected to another job and have to stay home to protect their pregnancy or breastfeed her child.

Delegates to the PSAC National Convention 2012 recommitted PSAC to its ongoing campaign to achieve protective reassignment for pregnant and nursing women. They directed the union to put pressure on the federal government to work out an administrative agreement with the government of Québec to extend the protection currently provided to women in Québec to all women workers across the country.

### **Domestic violence: the Australian model**

The tragic death of Sister Donna Jones, a member of the Agriculture Union in the NCR region who was tortured by her husband Mark Hutt, is a stark reminder of the dramatic consequences of domestic violence. Donna's co-workers reached out to her, and friends and family tried to get her to leave her murderer, but her husband's hold on her was overpowering, and at 33 she died a horribly painful death after two weeks of unimaginable suffering. What can a union do to help women who like Donna are trapped in abusive and violent relationships?

In Australia, the labour movement has devised very interesting strategies in collaboration with the Program "Safe at Home, Safe at Work", of the Australian Domestic and Family Violence Clearinghouse. Their project was developed in recognition of the fact that our response to domestic has got to go beyond providing temporary safety and shelter to women who experience abuse, to take into consideration the long term economic implications.

Research has shown that women with a history of domestic violence have a more disrupted work history, are consequently on lower incomes, have had to change jobs

more often and are employed at higher levels in casual and part-time work than women with no experience in violence. Being in employment is a key pathway for women leaving a violent relationship. The financial security that employment affords women can allow them to escape becoming trapped and isolated in violent and abusive relationships, and to maintain, as much as possible, their home and standard of living.

A first breakthrough came in the Australian university sector, where the unions bargained 20 days of paid leave to deal with issues of domestic violence. This initiative gathered support from the Women's and Labour Ministry at the time, as well as from local governments. The Australian Law Reform Commission on domestic violence also studied the question, and the Australia Council of Trade Unions supported this initiative. The Labour party included it in its policy platform.

A national domestic violence and work impact study was conducted in 2011: 3,600 working women responded to this survey -- a critical first step to providing evidence that domestic violence affects attendance at work, performance and safety.

All this work resulted in the amendment of labour standards legislation, providing for unlimited paid leave to deal with the consequences domestic violence. The Australian experience shows that women are not abusing the new system: they are taking very limited strategic amounts of paid leave to deal with specific issues. Women are now telling their employers what is actually happening: why they are coming in late, why they are receiving so many calls at work, and so on.

In Canada, the PSAC has initiated discussions on this issue with the CLC and affiliates. We are also developing a survey with the Centre for Research and Education on Violence against Women and Children which is attached to Western University in Ontario.

This survey will try to identify the consequences of domestic violence in the lives of our members, and the impacts on their well-being at work. It will also try to identify if and how the employer and colleagues respond to domestic violence, and what kind of support is being provide. A separate set of questions will also track what, if anything, unions are doing on this issue. We hope to launch the survey on December 6, 2013.