

IN SOLIDARITY



The newsletter for OPSEU Stewards and Activists

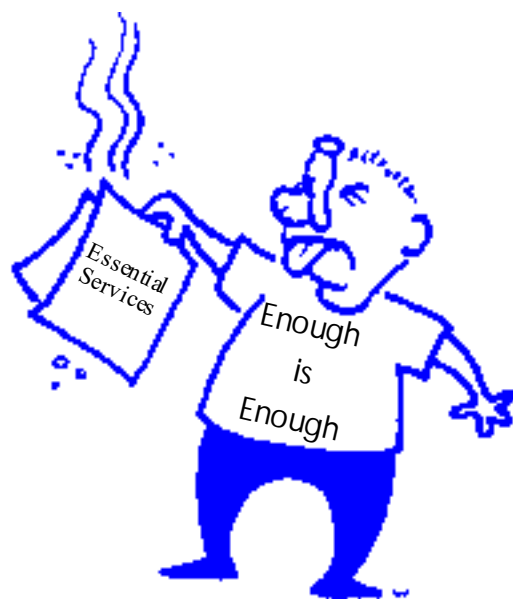
“Essential Services” Who needs them anyway?

by Laurie Chapman, *Downsize This, Local 323*

The entire Ontario Public Service is covered under legislation called “The Crown Employees Collective Bargaining Act” (CECBA). This is the law that we **must** work under. We cannot negotiate outside of it because it is law. Section 30 of CECBA speaks specifically to essential services. It says: “essential services” means services that are necessary to enable the employer to prevent, a) danger to life, health or safety, b) the destruction or serious deterioration of machinery, equipment or premises, c) serious environmental damage, or d) disruption of the administration of the courts or of legislative drafting.

“Essential Services Agreement” means an agreement between the employer and trade union that applies during a strike or lock-out and that has,

- a) an essential services part that provides for the use, during a strike or lock-out, of employees in the bargaining unit to provide essential services, and
- b) an emergency services part that provides for the use, during a strike or lock-out, of employees in the bargaining unit, in addition to those referred to in clause (a), in emergencies.



Section 31 says that ... employees who have or are negotiating a collective agreement shall make an essential services agreement.

The Act says that an agreement must be negotiated, or arbitrated, between OPSEU and the government to identify essential services and their levels, and to provide bargaining unit members who would otherwise be on strike or locked out. There must also be a provision for emergencies.

For each side, the objectives of essential services bargaining is pretty clear. The union wants to be able

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EDITORIAL POLICY

The content and editing of this newsletter is determined by rank and file activists. We want members to feel ownership of *In Solidarity*, and view it as independent of any particular segment of the union.

Content comes from our own huge base of activists, staff and other labour sources.

Where an article has a by-line, the views are those of the author and not necessarily the views of OPSEU.

If no author is identified, the article represents OPSEU policy.

While we welcome your contributions (on disk or by e-mail if possible), we ask that these be constructive. All articles should be signed and include local number, and should contribute positively to the welfare of this union and its members.

It is not our intention to become involved in staff-bashing or member-bashing. If a person or office is named in an article, we will give that person or office the opportunity to respond in the same issue as the article appears.

We encourage thoughtful discussion of all related issues and reserve the right to edit for libel, length and clarity, and to reply to those that seem to reflect a misunderstanding of the union and its policies. ☺



Who we are

The elected members of the editorial committee for *In Solidarity* are:

Laurie Chapman - Editor, Local 323

Len Mason - Designer, Local 737

Larry Farr - Local 559

Vern Silver - Local 670

Laurie Sabourin - Local 438

Ex-officio members are:

James Tocker - Executive Board Liaison

Katie FitzRandolph - OPSEU Public Affairs

Please send mail to *In Solidarity*,
c/o Laurie Chapman, 2241 Foxmead Rd.,
R.R #5, Coldwater, Ontario L0K 1E0 or to the
Orillia Regional Office of OPSEU.

Contact *In Solidarity* at:

lchapman@bconnex.net or insol@opseu.org.

Our fax numbers are: 705-329-4926 and
807-683-6370.

Please send copies of your newsletters to:

Len Mason via e-mail at mason@tbaytel.net or
to 76 Gresley Crt. Thunder Bay P7A 1S7.

* We are also your elected members of Informed Newsletters for OPSEU/Bulletins informés pour le SEFPO. If you require any support, advice or start-up information concerning newsletters, please contact one of the executive members. ☺

Authorized for distribution:

Leah Casselman, President
Ontario Public Service Employees Union

In Solidarity is produced for all OPSEU stewards, newsletter editors of INFO/BIS and certified Health and Safety Representatives.

A stewards training lasts a lifetime

by Frances Lankin

I recently read a book called “*The Tipping Point*.” It explores the theory of social contagion. What are the elements necessary for a good idea to catch on? It is relevant for all activists who work to organize action and build support. It strikes me however, that it is also relevant to our personal lives. When was the moment or what were the conditions that led to a major change in our life’s course?

The tipping point in my life can easily be traced back to my time as a steward and vice-president of OPSEU, local 530. Before that I had spent some time involved in community activities. The seeds of feminism and socialism had been sown but like a three legged stool. It took the exposure to the third leg, unionism, to create the stable base on which the rest of my life would be built.

My years as a local union activist and then OPSEU staffer gave me the skills, confidence and commitment to work for change. I believed there could be a better world and that what I did, in my own community and my own workplace could help contribute to making it a better world. Years later I would hear the motto... “think globally, act locally.” For me that was what being a union activist was all about.

The skills that I learned — naming the problem, researching the issues, identifying solutions, building the case for change, effective advocacy, organizing support and the art of negotiations were the ABC’s of the how to. The opportunity to put these skills to use in a supportive atmosphere with many teachers and mentors helped build my confidence. But it was the people, the relationships and the power of ordinary people coming together with a common vision to improve the lives of families and friends that kindled the flames of commitment.

It was an easy step for me to make the connection between our workplace goals, community goals and

the need for political action. In my life, that connection became real through my work in the New Democratic Party.

When I think of my years as an elected politician, my schooling as a local union activist was the most important education to prepare me for the challenges that I’ve encountered. Whether as a Cabinet Minister, opposition critic or constituency representative, I drew on the skills, confidence and commitment from my OPSEU days time and time again.

Now that I have left elected politics, I find myself coming home to community. The move to my new position, heading the United Way of Greater Toronto, has been an easy and welcome transition for me. Still working for change – just in a different place!

And an amazing place it is! The United Way is like a meeting place. It is where labour, business and community, in all of it’s diversity, come together, where people of good heart and good will, roll up their sleeves and get down to the job of building a better world...individual by individual, family by family and neighbourhood by neighbourhood.

In some ways I feel like I have been in training for this job for years. That training began with my own personal Tipping Point, OPSEU Local 530, Toronto Jail. My gratitude to my union runs deep. My respect for the work of local activists is profound. My commitment to our common vision of a better world still guides me. ☺

Frances Lankin joined the United Way of Greater Toronto in September. From 1990 to 2001 she was the MPP from the ridings of Beaches-Woodbine and Beaches East-York. She held the cabinet posts of Chair of Management Board, Minister of Government Services, Minister of Health and Minister of Economic Development and Trade and a variety of opposition critic portfolios. From 1980 to 1990, Lankin held the positions of Equal Opportunities Co-coordinator, Researcher and Provincial Negotiator on OPSEU staff.

Goals of a Steward

- Be a responsible leader and a positive example.
- Keep yourself informed about all union matters.
- Keep your co-workers informed about union policies and union activities.
- Get the people in your work location to act as a union – help them understand that everyone gains when everyone sticks together.
- Attend union meetings; Encourage and bring the members from your department. Don't get down on members for missing meetings. Rather, think of other ways to communicate with them about what the union's working on.
- Give the membership respect by listening to their problems and treating them seriously.
- Fight all discrimination. Discourage prejudice of any kind. It does not belong in a union.
- Do not promise what you cannot deliver.
- Support union activity everywhere. Solidarity knows no bounds.
- Have current copies of and always be ready to refer to your union contract, by-laws and local and international constitutions.
- Be sure your co-workers know of all the services available through the union.
- Let no anti-union remark go unanswered. Whenever you meet it, fight the anti-union element with education and information.
- Be proud to be a steward. You are a leader in a movement that affects millions of people and which has a rich history. Learn about it.



- In dealing with management, remember that you are the elected or appointed representative of your brothers and sisters. Despite what management might say or do, when you're dealing with union business, you are always management's equal.
- Wear your union button and encourage other members to wear it as well.
- Investigate every grievance as if it were your own. Keep the member informed. Make sure you keep your deadlines. There is no excuse for missing a deadline or a time limit. Research every grievance as if it were going to arbitration, but try to resolve it at the lowest possible level. Keep the union informed of the status of each grievance.
- Make labour education an integral part of the local union's daily business. An educated membership makes a strong union.
- Remember that your goal is to be the best union representative you can be. ☺

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“Deemed quit clauses”

When is an unauthorized absence a resignation?

by *Vanessa Payne/CALM*

Tom was heading home from vacation when his car broke down in Michigan. Realizing that he would not get back in time for work the next day, Tom called his sister and asked her to let his employer know he could not make it to work. But Tom’s sister dialed the wrong number and left the message on a stranger’s answering machine.

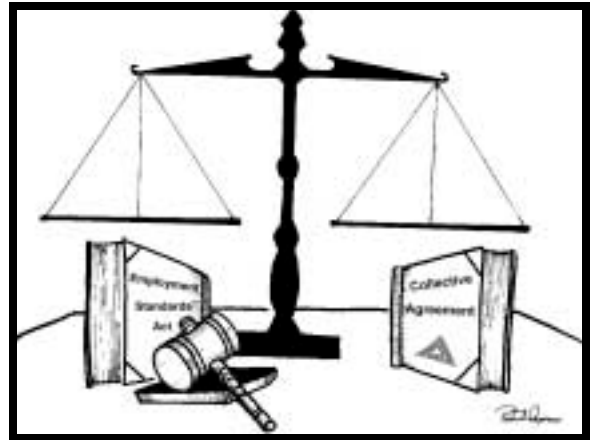
It took longer than expected for the mechanic to fix Tom’s car. Tom did not call his employer. Five days later, Tom arrived home to find a letter from his employer. The letter said that the employer deemed Tom to have quit his job.

Can Tom get his job back? That depends in part on the language of the collective agreement. Most agreements contain a “deemed quit” clause. Such clauses typically provide that a worker may be deemed to have resigned if he or she is absent from work for a certain period of time without notifying the employer. Some deemed quit clauses also require the worker to provide a reasonable explanation for the absence.

Even if there is no deemed quit clause in a collective agreement, a worker may be deemed to have abandoned the position if the worker is absent and does not notify the employer.

The problem with deemed quit cases is that the worker has to convince the arbitrator that he or she did not quit. And unlike normal dismissal cases, the employer does not have to show just cause for terminating the worker.

As a result, if a worker fails to properly notify his employer of an absence, the worker may be deemed to have quit, or may be subject to other disciplinary penalties, even if there was a good reason for the absence. Some agreements also say that a worker can be stripped of seniority rights for an unauthorized absence.



Where a collective agreement requires the worker to give a reasonable explanation for an absence, an arbitrator will consider all the circumstances, including the worker’s explanation and the inconvenience the absence caused the employer. Where an absence is related to a prohibited ground of discrimination, for instance, religion or disability, an arbitrator will also consider the employer’s duty to accommodate the worker.

At a minimum, Tom should have contacted his employer directly as soon as he realized he would not be able to get to work. He should have told the employer what the problem was and how long he expected to be absent. He should also have kept his employer informed of any change in the situation. Tom would also have been wise to consider whether he had any other options besides waiting for the car to be fixed.

If Tom had taken these steps, the problem might have been avoided. But even if the employer had taken advantage of the situation and terminated his employment, Tom would have been in a better position to convince an arbitrator that he did not abandon his job. ☹

Vanessa Payne practises law with Sack, Goldblatt, Mitchell in Toronto.

Selecting text from a PDF document

Editor's Note: This section is a new feature that will have a new tip each issue. If you would like something specific answered, please let us know.

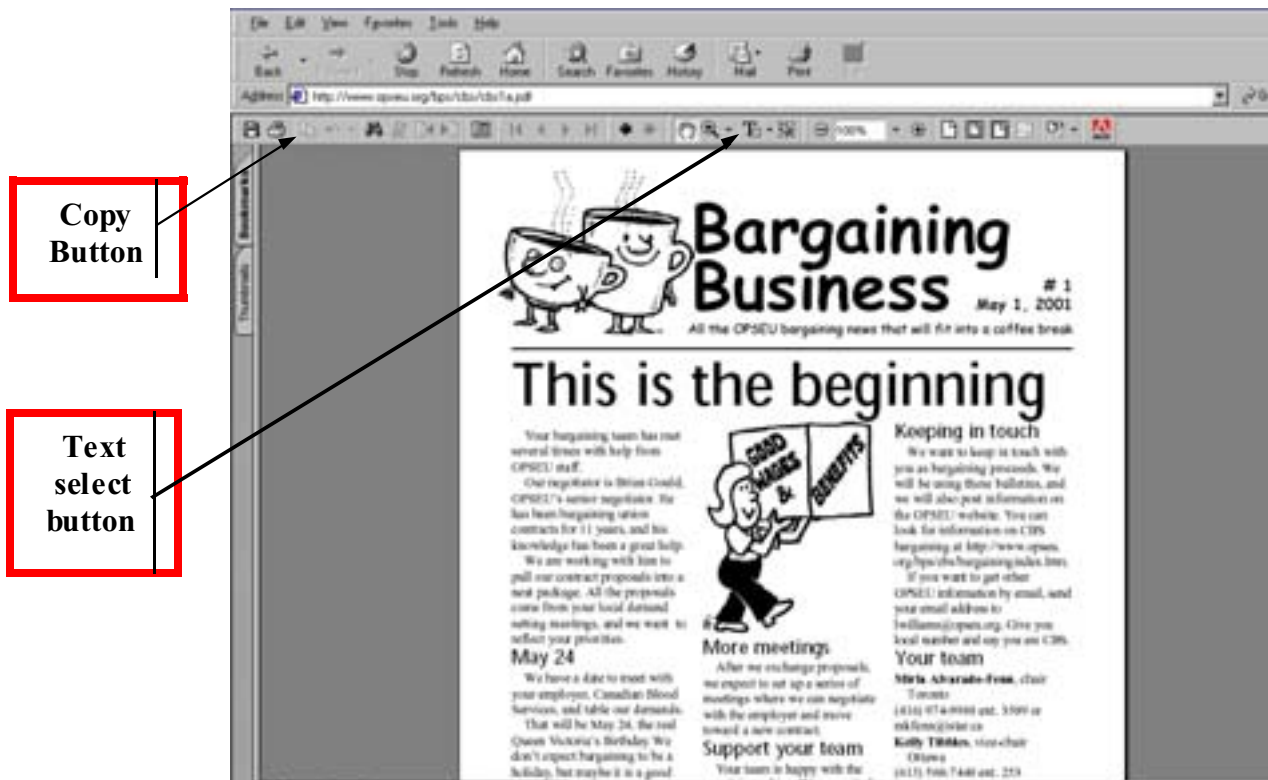
by Vern Silver and Larry Farr, *In Solidarity*

A PDF (Portable Document Format) is a file format created by Adobe. It enables documents to be transferred and shared regardless of the operating system, or software application used to create them. Simply put, a PDF is an “image” of the text and graphics that make up the document. In order to view these documents, you need to have Adobe Acrobat Reader on your system. It is presently in version 5.

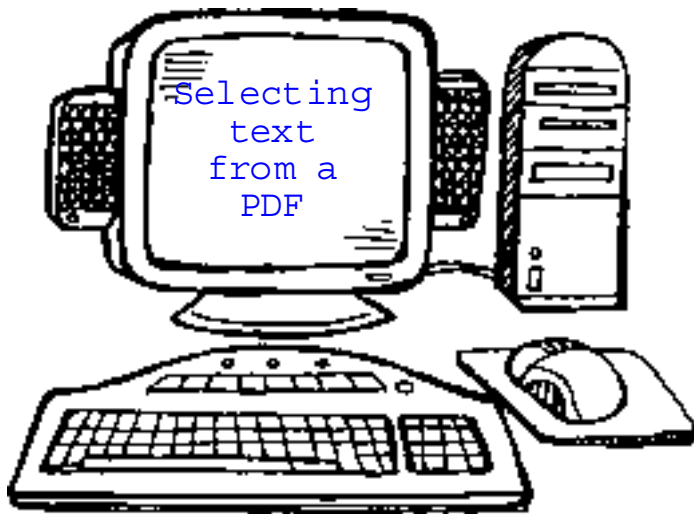
The OPSEU website (www.opseu.org) makes extensive use of the PDF file format. Publications as well as Collective Agreements are available in PDF.

You can print PDF's, and they keep their original design. But you can also copy text from a PDF to insert into another document. It's quite easy.

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An Adobe PDF document opened in Internet Explorer.



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How its done

First you need to open the document by clicking on it. The document will be automatically opened in *Acrobat Reader* in you web browser.

If you look in the middle toolbar located just above the document window you will see the button. When you click on the arrow to its right, a drop down menu will appear giving you two options, *text select tool* or *column select*. The *text select tool* option lets you select text by dragging over it as you would in *Word* or any other word-processing application. The *column select* option allows you to drag a box around all the text you want to copy. Either method will work, but the *text select* option gives you more control over the text that is selected.

Once you have the text you want to copy selected, either choose the copy button at the left side of the toolbar, or right click in the selected area and choose *copy* from the menu that appears. When the text is copied, *paste* the text into your document. 😊

“Essential Services” Who needs them anyway?

(Continued from page 1)

to pull off a more effective strike and therefore wishes to minimize the number of essential services and their levels. The employer wants to limit the union’s ability to wage a more effective strike and wishes to maximize the number of essential services and their levels.

We cannot opt out of this process nor can we ignore it. One of the issues that we struggle with is achieving the balance between safety and having an effective strike. If we severely limit the numbers of people inside, we put them at risk and if we allow too many inside, we put our strike line at risk.

Everything about essential services creates problems. There is always something that someone would have done differently or better. But, what is decided at the bargaining table is always done with the member’s best interest in mind.

The one thing we do have control over is the actual agreement. As part of essential services, an agreement is reached on essential duties. These are the duties that are deemed to be important as outlined in Section 30 of CECBA. Once this agreement is reached, specific duties should be outlined with copies available to staff on strike inside. It then becomes your responsibility to refuse all work outside of the agreement.

It is hoped that should there be a strike, picket captains will police the essential services agreement inside. Only then will there be an effective strike. ♦

*Laurie Chapman is a member of the OPS
Central Bargaining Team from Region 3.*



Unclassified Mobilization Unit

by Neil Fraser and Paul Myers

Are you someone that is presented with a contract to sign every so often by your employer? If you are an Ontario Public Service member, and this description fits, you are called an unclassified contract employee. During the past six years, the Harris government has increased the number of contract staff in the OPS while at the same time decreasing full-time classified jobs.

Despite fighting back concessions in the past two rounds of bargaining, contract staff still do not have the same benefits and entitlements as full-time staff.

The elected bargaining team members have said that we need to take this employer on and fight the increasing use of unclassified staff. The team identified that expanding the number of contract staff was simply not fair to workers. The number one goal has to be to ensure members have access to full-time, permanent jobs.

Paul Myers and Neil Fraser started working with the unclassified mobilization unit on October 15th. Their role is to act as a resource to Darwin Lacelle, who is the unclassified representative on the central bargaining team. Part of their mandate is to attend local meetings throughout the province assisting with everything from organizing rallies to building better communication amongst members. The main purpose of their work is to relay information from the unclassified members, who make up 35 per cent of the OPS, to the central team.

Paul Myers worked as an unclassified employee at the Toronto Superior Court for four years until he converted to classified status in February of 2000. "My conversion required a grievance, but the Collective Agreement worked. "Thank goodness we fought back the elimination of conversions in the last round of negotiations, said Myers, or I would not have been converted."



Paul has served on the executive of Local 526 for several years and is currently the Secretary. He is also vice-chair of the Attorney General ministry employee relations committee.

Neil Fraser worked as an unclassified employee for nine years at Ontario Place and as a correctional officer at Hamilton Wentworth Detention Centre. Through conversion grievances filed at the local and provincial levels, he was converted to classified status in July.

As chief steward and co-chair of health and safety within the local, the employer's agenda regarding working conditions for unclassified members have become crystal clear. "This employer believes that you should be happy to just have a job - I wanted a career," said Fraser.

OPS members have big challenges ahead. One of the top issues is not only protecting but expanding the language around conversion to a full-time job. There are too many loop-holes used by the employer to avoid converting unclassified members. ☺

***If you have any questions or would like to set up a meeting with the unclassified OPS members in your local, just contact Neil or Paul at:
1-877-561-8692.***

Train the trainer inspires member

by Terri Aversa, Local 517
(currently a member mobilizer in Region 5)

OPSEU's train the trainer course spiraled participants into the popular education model of facilitation. The spiral model of education draws from people's experiences with the goal of forming strategies to address specific issues such as mobilization. This approach is central to OPSEU's education program and better educationals make for stronger locals.

Jo-Jo Geronimo, an OPSEU facilitator, led the participants through stages of learning and facilitation techniques. These techniques are designed to provide a safe learning environment that is both motivational and equitable. This in turn will ensure class participation.

Bev Burke is a well-known union educator, experienced in the popular model of education. Born in Ontario, Bev taught secondary school in Canada and Tanzania. She recently returned from Central America, where she was involved in solidarity work with the Latin American Working Group. Bev is one of the authors of the 2001 book, *Educating for a Change*.

Together, Jo Jo and Bev facilitated a great workshop. Their styles complimented each other, and they were able to provide an excellent example of all the techniques they were discussing in the course material.

Mixing experienced OPSEU staff with members provided a rich learning environment. Experienced staff members were rejuvenated by the energy of new members - the future of the organization. Members gained valuable knowledge and insights from the staff members.

Participants left the session with a valuable understanding of the principles of popular education and ready to put them into action.



'Train the Trainer' 2001 participants

Some examples are:

- Equity as a common thread
- Principle of equitable participation
- A safe environment breeds learning and participation
- Education that is geared for social change through action
- The spiral model of learning involves learning from each other's experiences
- The organization learns from participants

Participants were able to meet with and share opinions with the steering committee to discuss the course and the Network for Better Contracts, which is an important aspect of OPSEU's development. The NBC is involved in bargaining team training, member and staff development programs, and local leadership courses. Through the principles of train the trainer and the NBC, OPSEU is on the spiral towards effective social change.

The course was informative and organized. Participants shared meals, walks in the bush, card games, watched *Survivor*, and even shared in a smudging ceremony to conclude their time together. It was an exceptional experience! ☺

A list of those with a farewell message for Mike

by Linwood Barclay, *The Toronto Star*
Reprinted with permission

Needless to say, now that Premier Mike Harris has announced his resignation, there are all kinds of Ontarians who'd like to send him a message as he prepares to leave office.

Here are just a few of the people I can imagine wanting to send such a message:

- The students of Ontario who have spent three or more of the last six years without a school play, or a football team, or a chess club, or a hockey team, and been witness to more turmoil in their schools than any other generation in this province's history.
- The thousands of public service employees who lost their jobs.
- The thousands of public service employees who didn't lose their jobs, but are now expected to do all the work of those who did.
- The citizens of Walkerton, Ont.
- Everyone in the Atlantic Provinces, who were branded as national welfare bums.
- Special needs children, like those requiring the help of speech pathologists, who now must wait weeks and months for help.



- The friends and family of Dudley George.
- The public service strikers who were clubbed and bloodied protesting outside Queen's Park in March, 1996.
- Cancer patients whose lives were disrupted even further by having to travel hundreds of miles for treatment because the waiting lists at their nearby facilities were so long.
- The children of the mothers and fathers who can now be coerced into serving 60-hour work weeks.
- The surviving Dionne quintuplets.
- The province's 120,000-plus teachers who are bailing from the system as soon as they're eligible to retire. (Ditto principals.)
- All the nurses who were fired (back when they were referred to as hula-hoop workers), and then hired back again, and who are working such long hours they can hardly stay on their feet.
- The leaders of municipalities across Ontario who have struggled to provide downloaded services with far less money.
- Mothers who no longer make hot porridge for their youngsters for breakfast.

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- The thousands of people who've sat for hours in emergency rooms, and toured the city in redirected ambulances.
- Welfare moms (*who spend all their money on beer.*)
- The separated and divorced women who waited weeks and months for the province to forward their desperately needed support payments.
- The residents of retirement homes who can no longer count on regular provincial inspections.
- Panhandlers and squeegee kids.
- The health ministry's top five bio-hazard scientists (experts in such things as E. coli and anthrax), who were laid off in November.
- The members of the Walkerton citizens committee, which was studying the effects of the town's tainted water, who just had their provincial funding yanked.
- The homeless, who no longer even have their burial costs covered by the province.
- Students who must share textbooks because there aren't enough to go around.
- The disabled, who continue to wait patiently for legislation with any teeth in it to address their concerns.
- Elderly people who've seen their home care services nicked and dimed.
- The swimmers who used to enjoy the pools in Toronto schools before they had to be closed.



“Sometimes too much knowledge is a dangerous thing, almost, in some areas, in my view” — Mike Harris

- The parents who had to make other day-care arrangements because the province's funding formula for education didn't allow for day-care centres in schools.
- The Grade 12 and O.A.C. students who'll graduate simultaneously in 2003, with no assurances that post-secondary institutions are ready for them.
- The friends and family of the pregnant Sudbury woman who, while trying to get an education and better herself, died in her un-airconditioned apartment during a heat wave, unable to leave because she was under house arrest for a minor welfare fraud.

Whoa, we're out of space, and there are still so many names to add to the list. Anyway, the message I'd guess all these folks would like to send to the retiring Premier is this:

“Don't slam the door on your way out.” ☺

Linwood Barclay is the author of, amongst other things, “Mike Harris Made Me Eat My Dog”, and his column appears Monday, Friday and Saturday in The Toronto Star. E-mail him at lbarclay@thestar.ca

Collective Agreement clear on call back

OPSEU (R. Elliot) vs. Ministry of Labour
GSB Number 1282/97, OPSEU # 97E148
Vice Chair: Felicity Briggs

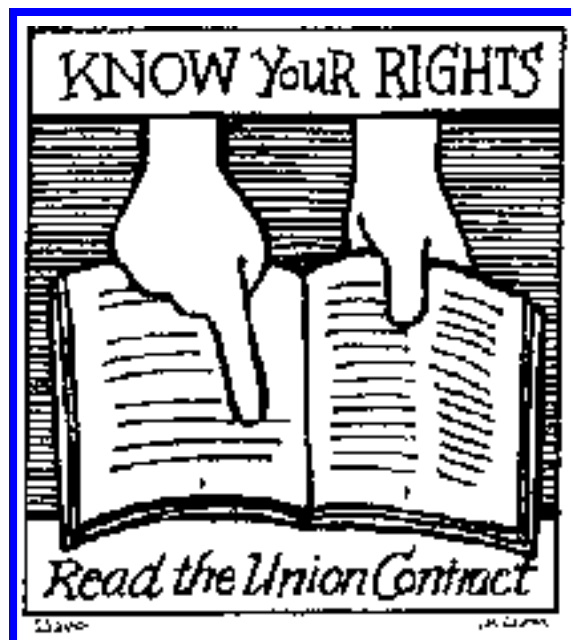
The grievor is an Occupational Health & Safety Inspector with the Western Region of the Ministry. On July 31, 1997, he was scheduled to take calls after hours from the Spills Action Centre (SAC) should they arise.

The grievance alleged that the employer failed to compensate him for a second call-back when the grievor was required to respond to two pages after normal working hours.

Both pages occurred within four hours of each other. Indeed, both pages occurred within about one and one half hours. The grievor responded to each call and was able to handle both situations over the phone. The inspector submitted his time sheet claiming 6 hours of pay for each of the two "callback" occasions. He was only paid for one occasion.

The employer took the position that paying for two callback incidents within the same four-hour period would constitute pyramiding of a benefit. Alternatively, it was suggested that the employer could have required the grievor to remain at work for the entire four hours. It was further submitted that had the parties in bargaining contemplated that it was intended that employees be paid for each occasion when called back, they would have indicated this in clear unambiguous language. In effect, the employer said that the grievor wished to be paid the allowance twice for same period of time, thereby duplicating premiums.

The Union took the position that there was nothing unclear about the language of Article 9.1. There was no dispute between the parties that the phone calls were sufficient to cause the premium



payments. The Union submitted that there were only two triggering conditions that are required under the agreement; namely, an employee has to have left work and has to be called back before the next scheduled shift. The grievor met both conditions twice within a short span of time.

The Decision

There was no suggestion by the employer that the grievor did not meet the criteria for callback pay. The first callback occurred at 4:45 pm and lasted approximately twenty minutes. The second call was received at 5:37 pm and lasted about thirty minutes.

The arbitrator found that the grievor was called back to work twice and twice met the criteria set out in Article 9.1. She rejected the pyramiding idea saying that pyramiding refers to an attempt to apply more than one premium to the same period. She pointed out that a callback could be for ten minutes' work or three hours work. The premium exists to compensate people for the relative inconvenience. There is no mention in the agreement of hours or time worked.

Accordingly, the grievance succeeded.

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OPSEU fights for members' rights

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Professor gets job back

**OPSEU (S. Bergman) vs. Loyalist College
Arbitrator: Stanley Schiff**

The grievor was hired as a full-time professor in the Early Childhood Education (ECE) program effective August 23, 1999. Her probationary period was to be one year. She was released in June, 2000, for failing to meet certain professional development conditions she had agreed to at the time of hire.

Ms. Bergman had been a sessional teacher in ECE for some eight years prior to her full-time appointment. It was not disputed that she was given very favourable evaluations during her probationary period. The selection committee had interviewed six applicants and in the end, agreed on choosing her if she pursued graduate studies in ECE. She accepted those terms.

The Union argued that the condition of hire was not valid as a matter of law since it is only the Union that can negotiate the conditions of employment. In this case, the Union had no knowledge or involvement in the hiring of Ms. Bergman. Further, the Union submitted that the only basis for probationary release is inadequate performance. The letter of employment added a further condition contradicting the scheme and the purpose of Article 27.02 C.

The Decision

In the view of the majority of the panel, there was no need for Ms. Bergman to satisfy the condition during any particular time period. Since her failure to enrol in a graduate program was the sole basis for her release, the panel ruled that it was simply wrong.

The Board ruled that the release was improper and the grievor was reinstated to her full-time position with full compensation for losses incurred.

Grievor denied holiday pay

**OPSEU (Hai Jin Lee) vs. Aramark
Canada Ltd.
Arbitrator: Jane Devlin**

The grievor has been employed as a general helper at the Ontario Science Centre with this employer (and its predecessor) since February, 1994. From that time until December of 2000, she had taken only one sick day and that was in 1995.

She was scheduled to work 9-5 on December 22, 2000, and her next scheduled shift thereafter was to be December 27. She called in around 7 a.m. on December 22, to say she could not report to work. The message was relayed to a staff person who said the manager would be advised. No one called her back; accordingly, she assumed she had permission not to report for work.

During that day, she went to her doctor who diagnosed her with tonsillitis, prescribed medication for her and provided a note confirming her illness. Although not required to do so, she submitted the note to the employer when she returned to work December 27, 2000.

Based on their interpretation of the stat holiday



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OPSEU fights for members' rights

(Continued from page 13)

article in the collective agreement, the employer paid her for December 22nd, but did not pay her for either Christmas or Boxing Day. The Union maintained that her absence was deemed to have been “authorized” to the extent that the employer did not question her illness. Accordingly, counsel for the Union said that the employee was no longer scheduled to work that day. In the alternative, Union counsel argued that to deny her holiday pay constituted discrimination based on disability within the meaning of the Human Rights Code.

The employer submitted that the language was consistent with minimum Employment Standards and was not a violation of the Act. He further submitted that to so find would lead to a conclusion that the Employment Standards legislation is inherently discriminatory.

The Decision

Ms. Devlin reviewed the history of language that imposes certain conditions on the earned benefit of holiday pay. Historically, the rationale for requiring work on the day prior to and following a statutory holiday was to deter absenteeism around holidays by persons who might seek to “stretch” a holiday a bit further.

The arbitrator pointed out that the parties had not negotiated any exceptions in the holiday pay language (Art. 15.01). She contrasted that with the language of Art. 15.06 that deals with persons who agree to work on a stat holiday but who fail to report. She further noted other arbitration decisions wherein arbitrators remarked that the parties, in not negotiating exceptions to holiday pay entitlement, were intending to have it applied without exception. She concluded that since the grievor was unable to fulfill one of the conditions necessary for payment of the holiday pay, she was unable to rule in her favour and the grievance was dismissed.

She addressed the Union’s submission regarding a violation of the Code by making the observation that the grievor’s illness of tonsillitis, though genuine,

does not reach the threshold of a “handicap” within the meaning of the Code. The payment is a premium people are entitled to subject to meeting certain conditions of work. She made the observation that in compensation matters, distinguishing among employees based on their attendance at work has not been held in the past as being contrary to the Code.

Treat modified worker as other part-timers

**OPSEU (Dupuis) vs Ministry of Northern Development and Mines
Grievance Settlement Board File #
0409/00, OPSEU # 00B215
Vice-Chair: Nimal Dissanayake**

The grievor began a medical leave in October, 1999 and returned on an accommodated work plan at the end of February, 2000. In accordance with the plan, she worked 3 days a week and received LTIP for the other two days for a six-month period. She appealed the failure to continue the two days’ supplement and the insurer denied her appeal.

The agreement language requires that entitlement to sick credits be based (annually) on completion of a minimum twenty consecutive days of work. The Union’s first submission was that the days she did not work because of the accommodation plan (Tuesday and Thursday) constitute days of leave without pay. The agreement expressly states that days worked before or after a leave without pay shall be considered consecutive. This was the basis for the Union’s argument that she should therefore have qualified for paid sick leave under Article 44.1.

The Vice-Chair disagreed with the Union’s interpretation on this point citing the exception in

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Board orders new competition

**OPSEU (J. Nisbett) vs Sir Sandford
Fleming College
File # 98C444, CAAT(S)
Arbitrator: Gordon Simmons
Decision dated: May 30, 2000**

(Continued from page 14)

Article 44.12 that expressly excludes days worked before or after an absence due to sickness or injury. Since the days she does not work are attributed to an accommodation based on disability, those days cannot reasonably be viewed as “leave days.”

The Vice-Chair was more attracted to the Union’s alternative argument concerning a violation of the Code. He ruled that because the grievor’s accommodation meant she was not expected to work full-time hours, she could never satisfy the twenty consecutive day requirement. According to the employer’s approach, she was denied the right to earn paid sick leave altogether unlike regular part-time workers.

Accordingly, Mr. Dissanayake ruled that her “de facto” status must be the governing principle. He ruled that it was appropriate for her to have access to paid sick leave as RPT workers do under the provisions of Article 71.1 and 71.2. While she cannot earn sick leave for work not performed, she must be allowed to earn sick leave in proportion to the work she does perform. Since the employer did not argue that treating this employee in the same manner as other part-time employees would create undue hardship, he concluded that they had discriminated against her based on her handicap under the Code. He directed the parties to agree on the remedy flowing from the decision and remained seized in the event they were unable to do so.

This grievance arose from a job competition for an Atypical Support Services Officer in a newly created position at the College. The grievor (with 22 years of experience) was passed over in favour of a member with 2½ years of seniority.

The grievance also raised a question about the application of amendments to Article 17.1 that had occurred in a recent round of bargaining. The employer asserted that the clause is a relative ability clause with seniority becoming only a tiebreaker when experience and qualifications are relatively equal. The previous article did not require the application of seniority if the candidates were relatively equal. The new language does impose this requirement.

The Union argued that seniority continues as a factor that is included with experience and qualifications and must be considered. The evidence disclosed that the issue of seniority was relegated to the conclusion of the interviews. The chair of the interview panel felt that the selection committee would place undue weight on seniority to the detriment of other factors to be considered. For the Union, this alone was a fatal flaw in the competition.

The employer submitted that seniority had been diminished somewhat in the latest amendment. The Board disagreed. They ruled that it not only had not been diminished, it had been reinforced to ensure that the senior candidate was selected when relative equality existed. Accordingly, the Board ruled in the grievor’s favour and directed the employer to conduct a re-run of the competition. ☺

Your pension plan and global economic conditions

by Shirley McVittie
OPSEU Senior Benefits Counsellor

In the past 18 months, many investors have learned valuable and sometimes painful lessons about investing and risk tolerance.

They have seen the value of their personal RRSPs drop as stock markets plunge. On any given day you can see the results of the capital market slowdown in the business section of the newspaper, on the news or the declining value of the Toronto Stock Exchange (TSE) as you ride the elevator to your office.

The TSE tracks the stock performance of many of Canada's largest companies. Canadian equities have returned (-26) per cent as at Sept. 21, 2001. U.S. equities are negative 26 per cent as well and foreign equities (-32) per cent.

What does this mean for the assets in your pension plan and the retirement income you are counting on?

For most pension funds, 2001 was already fast becoming one of the worst years in recent memory. After Sept. 11, the uncertainty has hastened the decline in the market. Investment returns this year will be significantly lower than the outstanding returns of recent years. The first thing to remember is that returns were bad in the 1970s as well and subsequently turned around.

For defined benefit pension plans, there is more to think about than just investment returns on your fund.

A pension plan holds assets to back liabilities. Pension liabilities represent the long term promises to pay monthly pensions. Pension plans like the OPSEU Pension Trust invest for stable long-term



growth, not short-term speculation. The main objective is security.

One of the mechanisms pension plans use in order to mitigate the highs and the lows in the capital markets, is "smoothing" the value of the assets. "Smoothing" means recognizing the investment earnings on the fund over a period of time. Asset smoothing is designed to dampen volatility by spreading gains and losses over time. For example the OPT uses a four-year period to average the investment earnings. This means that three-quarters of any earnings or losses from one year are held back as a reserve. In the three following years the earnings held back are recognized.

This cushions the impact of lower earnings or losses from other years. The CAAT Pension Plan uses a five-year averaging period. In this way, years of strong investment performance are used to help offset the impact of lower returns expected in 2001.

Diversification also plays a crucial role in protecting investments against undue risk. Because pension plans can invest in a wide range of domestic and international markets and types of investments, they are better able to withstand the impact of lower returns in different assets classes or markets. For instance, holding bonds over the past year and a half has provided some protection from equity market declines.

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Your pension plan and global economic conditions

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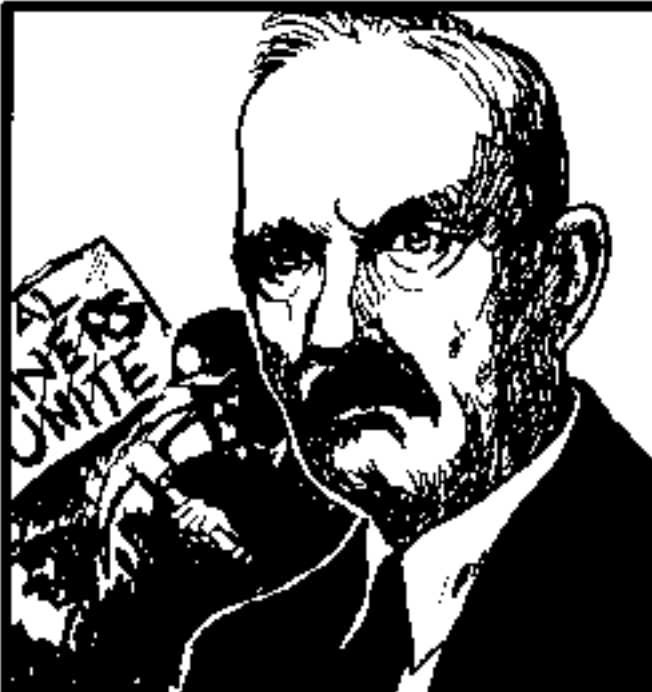
Defined benefit plan members are not individually affected by the investment return on the fund. The benefits are guaranteed and will be paid regardless of how well the investments perform. By law, at least every three years, the actuary does a valuation of the pension plan to ensure there are sufficient assets to pay the liabilities or pension payments promised to date. Should there be a shortfall, and there is not sufficient funds in reserve to cover the promised benefits, then a recommendation may be made to increase contributions. Losses would have to occur over a long period of time before this happened, since, in a plan like the OPT, there are unrecognized gains held in reserve. Most pension plans hold a contingency reserve as well.

However, members in OMERS have recently seen the rollback in proposed benefit increases that were promised this summer. One of the reasons given by OMERS for holding back at this time is the uncertainty in the markets. The other reason is that the government was giving the employers an additional contribution holiday that was costly to the fund.

Members who are in defined contribution pension plans have a different scenario. In this type of plan the amount of your contributions to the plan is defined or fixed. You choose how to invest your contributions along with any employer contributions. Your pension consequently depends on how well your investments perform. If your investments perform poorly, you may receive a retirement benefit less than what you anticipated. If your investments perform well, you may receive more. The key difference between defined benefit and defined contribution pension plans is where the investment risks sits.

It is too soon to know how well your pension plan will do for 2001. Your plan will report on its investment performance for the year-end in the spring. ☺

A Labour Minute



Labour's great militant

Mosses could have learned a thing or two from J.B. McLachlan about leading oppressed people out of bondage.

James Bryson McLachlan was born in a poor family in Scotland in 1870. After four years of schooling he went to work in the coal mines at age eleven.

At sixteen he was recording secretary of his local union and one of the leaders of a miners' strike that led him to the United States.

McLachlan came to Canada in 1902, and found work in the coal mines on Cape Breton Island. He was soon active in the union, the *Province of Maritime Workers Association (PMA)*.

Conditions in the coal mines and nearby company towns were miserable. A dollar and a half was the average pay for a ten-hour day of backbreaking work digging and loading coal by hand. In coal seams often no more than ten feet high.

In mining towns the company houses were unsewered, un-insulated shacks. Kids went mining before they were ten years old to help buy food.

When the PMA's effectiveness waned McLachlan headed up a successful organizing campaign for the United Mine Workers of America in 1909.

For the next three decades McLachlan and his 12,000 miners fought major battles with the coal barons for a living wage and decent conditions. Picketing miners were regularly ejected from their homes and forced to live through the winter in UMW-supplied tents. The companies routinely brought in seals along with the army to protect them.

When pushed too far the miners burned company stores and smashed mine head frames.

McLachlan spent time in jail and federal prison because of his boss-fighting tactics. But it never mellowed him. He devoted his whole life to the betterment of workers.

When McLachlan came to Cape Breton, coal miners were nothing more than serfs. When he died in 1937, of tuberculosis which he contracted in prison, the miners were known and respected as militant trade unionists. That transformation was the work of J.B. McLachlan.

Dishaw — Roy (CALM)

What the labour movement means to me

by Julia Digby

The following are excerpts from the winning essay written for a Communications, Energy and Paperworkers union scholarship. Julia's mom is an OPSEU member who works at local 340 in Oshawa.

I can remember pulling up my scarf as the blistering wind pierced my barely exposed face in the winter of 1996. I could hardly walk due to the layer after layer of warm winter clothing that my mom had negotiated with me to put on earlier that morning. I held her hand tightly as we walked around her building in a circle for what seemed like an eternity. Bright eyed and curious, I tried hard to keep up with the sea of people who were singing a montage of political protest chants that had been cleverly reworded to some of my favourite nursery rhymes. We would cheer as cars zoomed by honking their horns in support. It was March, and my mom had taken my younger sister and me out of school for the day. I did not understand why, though I was not about to protest, as there was probably a math class that I certainly did not mind missing! The reality, however, was that she wanted to show me and my sister why she was suddenly home for us at lunch, and just what all of the buttons and pins that she wore on her lapel really meant. She wanted to show us that people have rights in the workplace and deserve to be respected. We were going out on the picket line for the day, and

frankly, I had no clue what to expect. Her union, the Ontario Public Service Employees Union (OPSEU) was protesting the fact that they had been left without a contract. We each brought a tray of steaming hot coffee to hand out to our fellow protestors. As we gave them out, the looks of both relief and gratefulness overtook the picketers severely wind-chapped faces. I arrived home that evening simply exhausted, but I went to bed not only with an understanding of the importance of the labour movement, but with a new-found respect and admiration for my mother.

My day out on the line in March was not my first experience with the labour movement in my 13-year-old life. Just a few months prior, my dad and his union, the Communications, Energy and Paperworkers Union of Canada, local 333, went on strike to try and ratify their first contract. He and his

co-workers protested on rotating strike shifts, and my dad took a lot of night shifts. I remember anticipating the next day when he would tell us wonderful stories about the numerous food delicacies that he had tried the previous night. I almost fainted when he told me that he had actually eaten and enjoyed moose stew! I can remember taking coffee and hot chocolate to the people on the line with my

mom and sister. We arrived to a group of people huddled around a tin barrel with a blazing fire. I looked across the field and saw their bulky shadows dancing across the night.

As a history student in high school, I have studied the evolution of mankind from the pyramids of Ancient Egypt to the modern technological age of the Twentieth Century. The labour movement was only touched upon briefly and it was not until I

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What the labour movement means to me

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participated in a class activity to do with working conditions before unionization that I could even begin to imagine the horrors of the working class in the late nineteenth and early twentieth century Canada.

As a young Canadian today, I support the labour movement and I would like to see it develop because, thanks to personal experience and the knowledge of my parents, I now understand that unions generate stability in power and a better quality of life for both the workforce and society.

I can finally say that I am part of the workforce, as I have recently obtained a part-time job at a clothing store in order to save money for my education. We do not have a union, and at present cannot complain about the way that I am treated by my employer. However, I wish I could say the same thing for a great deal of my friends.

So what does the labour movement mean to me? The labour movement is my security blanket in the sense that, through unions, my parents have provided my sister and me with the standard of living that we have grown up with and expect in our futures. Were it not for their involvement in their respective unions, I may not be able to attend university. It has also served as a wake-up call because I have seen the injustices that my friends and peers have experienced, and it is because of the labour movement that I realize that it does not have to be like that. Though I did not know it as a child, the labour movement has played a major role throughout my life. ☺



Letter to the Editor



Ten Commandments of bargaining

by *Lorraine Menard, Local 468*

We are about to embark on a huge community effort. The negotiation of a new contract in this climate is about as stressful and scary as it comes.

It's a law of nature that communities have rules and guidelines to live by in order to keep and stave off destruction by predators.

Here are my Ten Commandments of bargaining:

1. I will stand up to an employer whose agenda is to dispose of me at will.
2. I will say a resounding "No" to being traded like a baseball card to the private sector.
3. I will refuse to be treated as unworthy of a decent contract.
4. I will stop feeling responsible for the employer's financial blunders.
5. I will not allow the employer to disrespect me as an individual, as a resource and as a member of a proud workforce.
6. I will contribute my strength and resolution to the process.
7. I will do everything in my power to show support to those brothers and sisters at the negotiating table.
8. I will make it my duty to inform and be informed.
9. I will be counted.
10. I will only accept the best contract I can get. ☺

A history of pride

The Rainbow Alliance, OPSEU

Did you know?

1933 – When Hitler took power, he launched a campaign to persecute gays and lesbians. Thousands were sent to Nazi concentration camps where they were identified by a pink (gay men) or black (lesbians) triangle. Today the triangle has become a symbol of pride for gays and lesbians.

1950 – Throughout the 1950s and 60s, the RCMP carried out a campaign to identify gays and lesbians in the military and the public service. The security panel spied on, interrogated, and blackmailed gay men and lesbians, destroying many people's careers and lives.

1964 – *Maclean's* magazine ran an article titled: "The Homosexual next door" by Sidney Katz. This article was acknowledged by many gay and lesbian activists to be the first reasonable depiction of gays and lesbians to appear in the Canadian mass media.

1976 – Homosexuals are no longer barred as immigrants to Canada under the Immigration Act.

1977 – Quebec becomes the first jurisdiction in Canada to prohibit discrimination on the basis of sexual orientation.

1988 – The United Church of Canada, Canada's largest Protestant denomination, decided to permit the ordination of gays and lesbians.

1989 – The Federal Court of Canada accepted



Rainbow Alliance

sexual orientation as a prohibited ground of discrimination under the Canadian Charter of Rights and Freedoms, in a decision to grant a gay prison inmate the right to conjugal visits with his same sex partner.

1990 – Toronto became the first municipality in Canada to extend same sex benefits. Vancouver soon followed suit.

1994 – Immigration policy allows, in certain circumstances lesbians and gays to sponsor same sex partners.

1995 – Canadian Parliament amends the Canadian Human Rights Act to include sexual orientation as a prohibited ground of discrimination.

2000 – Bill C5, a Federal jurisdiction omnibus bill changed a number of statutes by removing their discriminatory impact on same sex partners.

2001 – The first publicly conducted gay and lesbian marriage ceremonies took place in Ont. ☺

CAAT-Support's Strategic Enforcement Symposium

*by Janice Hagan
Chair, CAAT Support Division*

On a rainy weekend in October, CAAT Support delegates assembled in Toronto for a strategic enforcement symposium. Delegates shared their concerns for the future, and enforcement experiences around issues such as employment stability, the growing number of part-time, and other non-union workers within our community colleges.

The purpose of the symposium was to develop a shared understanding of the issues we face individually and collectively. It was also meant to unify our 25 locals in preparation for the structural and legislative changes we face in the future.

It's expected that the provincial government will table legislation, as early as November, which may change the way we bargain, and the way our respective Colleges compete for students and funding. The impending closure of College de Grand Lacs, possible college mergers, and the creation of new post-secondary institutions (with shared support services between colleges and universities) are just some of the challenges our sector faces.

Our symposium combined a traditional divisional meeting, including local and committee reports, with a Network for Better Contracts educational component and a general debate. The theme was enforcement. Delegates, alternates and observers participated in their choice of nine strategic workshops, each related to a specific article of our Collective Agreement. OPSEU staff and divisional committee members led the workshops on such topics as:

- Organizing
- Classification System
- Accommodation of injured workers
- Recent arbitration wins and losses

The workshops provided an opportunity for delegates to learn valuable enforcement skills,

discuss best practices, and develop more unified enforcement policies, at both the local and provincial level.

The most common strategy discussed in the workshops and the general meeting was the need of the division to improve communications around enforcement. It will now be up to the divisional committees to develop cost-effective ways of improving communications across the province. We decided to begin with a series of email lists, linking specific local activists, such as chief stewards or local presidents. To improve the security of this strategic link, CAAT Support delegates will be pushing for OPSEU to develop the technical capabilities to allow for the administration of such email lists.

It was also agreed that all sector communication, including minutes, workshop materials and policy roadmaps, be simultaneously provided in English and French. It's been next to impossible for delegates from the French language colleges to unify their approach to enforcement when they must continuously wait for French language materials and information. This has been a recurring issue in the CAAT Support sector, and needs to be resolved once and for all.

Thanks to the many staff members who took time away from their weekend to help us with this important event. The delegates were truly grateful for the information, techniques, and suggestions you organized for us, in most cases, with a very limited amount of notice. Participating staff members, including Ruth Hamilton, Tina Furman, Brian Gould, JoJo Geronimo, Shirley McVitie, Marnie Niemi, Connie Huziak and Robin Gordon, were able to provide participants with the confidence that they are supported by quality and dedication, as they endeavour to enforce the rights of their members, in Ontario's community colleges. 😊

Agnes Macphail — MP

www.coolwomen.com

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On December 6, 1921, at the age of 31, Agnes Campbell Macphail was the first woman in Canada elected as a Member of Parliament. Her election as a Progressive was less than two years after many women were granted the right to vote and hold office federally (see the CoolWomen feature “Women Take the Right to Vote”), and after her first political speech. For 15 of the 19 years Agnes served in Parliament, she was the only woman among 244 members. She was defeated in 1940, a year after the start of the Second World War, possibly because her pacifist views were not well received with the country at war.

In 1943, she was one of two women, again the first, elected as members of the Ontario Legislature. Representing the Toronto riding of York East for the Cooperative Commonwealth Federation (CCF), she



Kelsey Studio/National Archives of Canada/C-6908.

“A women’s place is anywhere she wants to be.”

was defeated in 1945, re-elected in 1948 and defeated in 1951. She died in 1954.

The fact that she was the “first woman” has assured her place in Canada’s history books. These remarkable achievements, however, give us only a glimpse of her strength, her diligence, her farsightedness.

“When I first came to the House of Commons and walked out into the lobby, men sprang to their feet. I asked them to sit down since I’d come to walk around. I didn’t want them doing me favours. I figured I was going to have trouble enough. I was right. I found that I couldn’t quietly do my job without being ballyhooed like the bearded lady. I was a curiosity, a freak. And you know the way the world treats freaks.”

Agnes never was prepared to let society’s view or treatment of women determine her direction or her actions. She fought to do the work allocated to men and boys on the family farm, she fought to go to high school (which required money from her family, as she had to board in Owen Sound and pay tuition) and she developed an approach to teaching that was designed to involve her students in the wide world around them. Although she always respected farmers and the rural way of life, and worked hard in her political life to support both, she did not want to be a farmer’s wife. She said she never married because “the person could not be subjected.” Marriage would have meant the end of any career in teaching or politics.

Agnes Macphail understood communities under stress, whether it was farmers or miners in Glace Bay, Nova Scotia or prison inmates or people living in the aftermath of war. She took action on what she learned. Her “firsts” were not limited to her elections. She was Canada’s first woman delegate to,

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Agnes MacPhail — MP

(Continued from page 22)

the League of Nations in 1929, where she served on the Disarmament Committee. She was instrumental in the appointment of the Archambault Commission in 1935 which studied Canada's prisons.

“When I hear men talk about being the angel of the home I always, mentally at least, shrug my shoulders in doubt. I do not want to be the angel of any home: I want for myself what I want for other women, absolute equality. After that is secured then men and women can take turns being angels.”



Paramount/National Archives of Canada/PA-127295

“I believe the preservation of the home in the future lies almost entirely in the hands of men. If they are willing to give women economic freedom in that home, if they are willing to live by the standard they wish women to live by, then home will be preserved. If the preservation of the home means the enslavement of women, economically or morally, then we had better break it.”

From the beginning of her political career, Agnes recognized that women were a unique community, with unique needs. She spoke out for women's equality wherever and whenever she could, integrating her feminism with her other beliefs on democracy, social justice and equality. One biographer, Terry Crowley, has noted: “.during the late 1920s Agnes Macphail emerged as the country's

foremost advocate of women's rights based on fundamental human rights. To Macphail, feminism implied a willingness to human rights first, to tackle women's special concerns as well as the questions that men confronted, and to challenge stereotypes with humour.” She fought for women to have equal access to divorce, for family allowance and old age pensions, and for pay equity.

“Most of the women who have offered themselves for public office over the years have done so, I believe, more because of the “dirt” than in spite of it. They have been women with convictions, about education, welfare, peace, temperance, or just plain social and economic justice.

Whatever is dirty, it is a woman's job to clean up, or drive some man to clean it up, and that goes for everything from cellar to senate.” ☺

Night work and breast cancer

ICFTU/Trade Union World/CALM

Women's risk of developing breast cancer increases by 60 per cent if they work at night for more than three years, an American study has revealed.

According to the Seattle-based Fred Hutchinson cancer research centre, constant exposure to light during the night causes the secretion of melatonin to fall and increases the production of estrogen, which favours this type of cancer. The risk rises with each additional hour of night work. The Seattle researchers compared the life styles of 763 women suffering from breast cancer with those of 741 healthy women.

A second study at the Brigham Hospital in Boston analyzed the work of some 78,000 female nurses between 1988 and 1998. The study revealed that those nurses who had worked an average of at least three night shifts a month for 30 years were eight per cent more likely to contract breast cancer. Beyond 30 years the risk jumped from eight to 36 per cent. ☹

Attention: OPSEU Pension Plan members...

Important news about pension buybacks from OPTrust

Have you applied to buy back pension credit at any time since January 1, 1990?

Under the OPSEU Pension Plan, there is a strict 24-month deadline for submitting a buyback application. Once your buyback is approved, you have up to 10 years to finish your payments.

So, if you applied within the deadline but did not finish your payments, you may still be able to complete your purchase. This opportunity applies even if you originally made no payments, provided you submitted your application within the 24-month time limit.

The OPSEU Pension Trust (OPTrust) has established a transitional payment deadline to ensure that all affected members have the opportunity to complete their purchase. Provided you submitted



OPSEU Pension Trust

**Fiducie du régime de
retraite du SEFPO**

your application after January 1, 1990, and within the 24-month deadline, you can complete your payments before June 30, 2002 or the end of your 10-year payment period, whichever is later.

For more information and a form you can use to request a review of an incomplete buyback, please see OPTrust's *OPTions Update*, mailed to members in November. The *OPTions Update* and form are available on the OPTrust Web site at www.optrust.com. You can also contact OPTrust at: 1-800-906-7738 or 416-681-6161 in Toronto. ☺

Ontario Public Service Employees Union
100 Lesmill Road, Toronto, Ont. M3B 3P8
www.opseu.org / www.sefpo.org

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