



Speaking out on cuts to federal public services: Guidelines for union representatives and members

The PSAC has been working to provide Canadians with details about the cuts to federal public services and their impact on the public and local economies. Canadians have a right to this information.

Every public service worker has the right to freedom of expression and other civil and political rights which are enshrined in the *Canadian Charter of Rights and Freedoms*. The Constitutional rights of every public service worker are also a central tenet of the *Public Service Employment Act*.

Our union officers have a right to speak out when they speak on behalf of our members.

However, for members in the federal public service there are some limitations on these rights.

Rights of union representatives - local, regional and national

Members who hold union positions have considerable latitude to comment on cuts to public services and the impact of these cuts in their capacity as union representatives. They are constrained only in that their comments cannot be reckless, such as telling untruths, or malicious, such as making slanderous or libellous comments about individuals, e.g. managers.

Rights of members

Members who do not hold union positions have more limitations on their ability to speak out. They must balance their right of freedom of speech with their duty of loyalty to the employer as neutral and impartial public servants.

There is a federal Values and Ethics Code and there are departmental-specific codes that members must adhere to as a condition of employment. These codes include obligations to avoid potential conflicts of interest and protect confidentiality. The objective is a neutral and impartial public service.

Members generally have the right to speak out as whistle-blowers. They can also speak out if they have proof that the government is engaged in illegal acts or if the health and safety of the Canadian public may be at risk.

However, members could be putting themselves in jeopardy if they comment publicly on policies they administer or on policy decisions (such as the decision to cut certain services) that affect them directly. If they comment publicly, they could expose themselves to possible discipline if their comments are perceived to affect their impartiality or the public's perception of their impartiality.

Members may provide factual information about the work they do and what cuts are taking place.

How to help members speak out

The media are anxious to speak to actual members performing the jobs that are being cut and some of our members are prepared to do this. They need to be aware of the possible consequences. They also need to know that their union can make the comments on their behalf. For example, a Local President can speak out that food inspection services are being cut and the impact this will have on the public, based on information provided by members but without identifying them.

If at all possible, members should contact their union first for guidance before agreeing to be interviewed by the media.

Cautions about speaking out anonymously

In some cases, PSAC can arrange for members to do “protected” (i.e. anonymous) interviews with the media. Members should still contact their union before agreeing to such an interview. One of the concerns with anonymous interviews is that if the workplace can be identified through the interview there could be repercussions on co-workers.

Members should also exercise caution if commenting on web sites or on radio shows even if they are not identifying themselves. Members should not use employer computers to post comments on web sites, even anonymously. Comments on Facebook and on Twitter are also considered public and could put members at risk.

What happens in the event of employer retaliation and discipline

PSAC is committed to protecting the rights of our members and will vigorously defend members and union officers in the event of retaliation or discipline.

Any member who has been asked to meet with management or has been warned about speaking out should contact their union right away - their Steward or Local President, their Component or the nearest PSAC regional office.

Case law references

PSAC has been successful in expanding the rights of our members as public service workers.

Wearing union material in the workplace:

The Board determined that the employer violated the collective agreement and section 5 of the *Public Service Labour Relations Act* when it prohibited CBSA border officers from wearing union bracelets with the message , “support the bargaining team / support à l’équipe de négociation”. Employers can order employees not to wear union material that is derogatory, damaging or detrimental to the employer. In this case, wearing a union bracelet was considered a legitimate union activity since there was nothing illegal or abusive in the content of the bracelet’s message.

Bartlett et al v. Treasury Board (Canada Border Services Agency), 2012 PSLRB 21

Stickers and petitions in the workplace:

The Union filed a policy grievance after employees were prevented from distributing petitions or wearing stickers in the workplace to promote PSAC's "Hands off our pensions" campaign. The Board determined that the employer violated the no-discrimination clause of the collective agreement when it prevented employees from wearing these union stickers or posting petitions on bulletin boards. There was nothing derogatory or detrimental to the employer in the content of these materials. However, the employer did not violate the collective agreement by preventing the use of its electronic network to circulate the petition since the employer had the right to restrict the use of its property.

Public Service Alliance of Canada v. Treasury Board, 2011 PSLRB 106

Right to participate in political activities:

An employee at Canadian Heritage was terminated after she refused to step down as president of a Quebec sovereignist organization and made statements in the media supporting her organization's objectives. The Board acknowledged that public servants have the right to participate in political activities but must also preserve the reality and perception of an impartial and effective public service. The Board concluded that termination was excessive. It ordered the employer to reinstate the grievor and offer her an equivalent position which would not present a conflict of interest.

Gendron v. Treasury Board (Department of Canadian Heritage) 2006 PSLRB 27 - *decision available on PSLRB website*

Publicly criticizing government policy:

A Health Canada employee was disciplined for publicly criticizing a governmental policy to ban Brazilian beef. The grievor's suspension was reduced as it was deemed excessive. The Board admonished the grievor for failing to use the employer's internal recourse mechanism before going public. The grievor's comments did not fall within the exception to the duty of loyalty rule as they were not considered to be legitimate whistleblowing.

Haydon v. Treasury Board (Health Canada) 2002 PSSRB 10 - *decision available on PSLRB website*

Defining an impartial public service

A Revenue Canada employee was fired after openly criticizing the government's plan to adopt a metrification policy and the *Canadian Charter of Rights and Freedoms*. The termination was upheld. This pre-Charter case set the framework for balancing the right to freedom of expression with the employee's duty of loyalty. The Court acknowledged that some speech by public servants about public issues is allowed but emphasized that public servants must exercise a degree of restraint to ensure that the public service is perceived as impartial and effective at fulfilling its duties. In cases where the government has committed an illegal act or a policy may jeopardize the life, health or safety of the Canadian public, freedom of speech prevails over an employee's duty of loyalty.

Fraser v. P.S.S.R.B [1985] 2 S.C.R. 455 - *see paragraphs 41-43 and 50 -decision available on website of the Supreme Court of Canada*