



ICDD

Patricia Chong, Michelle LeBlanc, and Anna Liu

**Legal Aid Ontario lawyers
organizing against the odds:**

A case study of professional
workers unionizing

The International
Center for Development
and Decent Work

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1 Introduction

Canada is not the first country that comes to mind when thinking about hostilities to organizing labour unions, particularly when compared with countries such as Columbia, with its decades-long campaign of organized violence against trade unionists, or China and its attempts to repress a democratic trade union movement that is separate from the state. However, Canada is far from an ideal environment for organizing. Despite being a member of the International Labour Organization (ILO) since its inception in 1919, Canada only ratified one of the ILO's foundational conventions; namely resolution number 98: Right to Organise and Collective Bargaining in 2017. Remaining countries on the short list of those who have not ratified resolution number 98 include China, Qatar, and the United States of America (ILO, n.d.). There continues to be major organizing barriers in Canada, even though they differ in degree than those experienced in the aforementioned countries.

Canada's economy is largely service-based and includes "labour-intensive" jobs such as food-service work, as well as "knowledge-intensive" or "professional" jobs in education, real estate, finance, information technologies, etc. (Statistics Canada, 2006). While there is no single definition of "professional workers," we use Savage and Webber's (2013) understanding that hinges upon three characteristics: "heightened educational requirements, specialized skills and an elevated perception of social class or prestige to distinguish between professional and other white-collar workers" (p. 116). While unions are often thought of as only representing "blue-collar" workers, professional- or "white-collar"-workers are increasingly becoming aware of the importance of organizing into a union. In fact, professional unionized workers are "one of the fastest growing segments of the Canadian labour movement" (ibid., p. 114). Thus, the organizing of professional workers is crucial to increasing union density rates, building worker power, and maintaining the relevance of unions in the new economy.

Legal Aid Ontario (LAO) lawyers provide legal advice and advocate for low-income individuals in the province of Ontario (1990), Canada, who would otherwise be unable to afford legal representation. As workers, LAO lawyers had limited ability to address workplace concerns with their employer, many of which negatively impacted their ability to advocate for their clients, or undermined their professional and ethical obligations. Lawyers as a job classification are excluded from the Ontario Labour Relations Act (OLRA), and are therefore unable to unionize using a defined legal process protected by legislation.¹ Analyzing the example of a successful four-year long campaign led by LAO lawyers and the Society of United Professionals², IFPTE Local 160 (SUP) for voluntary union recognition, this case study examines organizing a union when labour legislation does not facilitate a unionization process; running a comprehensive organizing campaign for professional workers; framing issues to resonate with the public; and what motivates professional workers to unionize.

It is co-written by three authors; two of which are union organizers who worked on the campaign. Interviews were conducted with several workers who were involved in the organizing campaign, as well as the SUP President.



Legal Aid Ontario Lawyers Organizing Pamphlet (2012)

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- 1 The Ontario Labour Relations Act (OLRA) is the provincial legislation that outlines unionization processes, conditions, and coverage.
- 2 In 2018, The Society of Energy Professionals changed its name to the Society of United Professionals via membership referendum. This change was made, in part, because of the increasing number of members outside of the energy sector. During the time of the campaign, the union was named The Society of Energy Professionals.

2 Methodology

Our focus was to recount a successful organizing campaign of professional workers from the perspective of the workers and organizers themselves, as well as present a case study in organizing professional workers when labour legislation prevents it. As such, this is not a purely academic paper and relies on the following qualitative research methods: participant observation, archival research, and interviews.

Archival Research

At the time of writing, the campaign had happened recently, but there was still a significant amount of archival research to be done to ensure accuracy and to not solely rely on personal memories. Secondary sources such as press releases, internal SUP documents, public documents (e.g. webpage, news articles), petitions, and legal documents were reviewed.

Interviews

Interviews with three LAO lawyers involved in the organizing campaign and the SUP President were conducted. LAO lawyer Kendall Yamagishi and SUP President Scott Travers were interviewed separately, in-person. LAO lawyer Dana Fisher was interviewed over the phone and LAO lawyer Haran Aruliah was interviewed over email. There were set interview questions and these were modified as needed since interviewees were involved with the campaign over different time periods.

Limitations

Due to the scope of this case study, there are limitations that the authors recognize and attempt to mitigate. First, there is minimal review of academic literature. Works cited are directly linked to the case study goal. Second, while the participant observer status of two of the three co-authors greatly deepened the authenticity of the paper, one must acknowledge bias. Third, the selection of the interviewees was limited to workers who were involved in the campaign and collectively cover the breadth of the campaign. The worker's who were interviewed played important organizing roles, and participated in the campaign at different times over its four-year period.

3 Background On LAO Lawyers

The Canadian Charter of Rights and Freedoms (Charter), was designed to unify Canadians around a set of principles that pledges certain political and civil rights to all citizens. The Charter has become a well-recognized part of Canadian identity, and is widely considered to reflect Canadian values (Faraday & Tucker, 2014). As a document outlining values and principles, the Charter is frequently interpreted in legal proceedings, but it also resonates with workers and the general public, who expect their freedoms to reflect a democratic and participatory society.

In this context, a “fair” justice system is arguably a value that is important to Canadians. For example, the guide provided to applicants studying for the citizenship test, *Discover Canada: The Rights and Responsibilities of Citizenship*, (Government of Canada, 2012) emphasizes the fairness of the legal system: “The Canadian justice system guarantees everyone due process under the law” (p. 36)³. The necessary role of legal aid in accessing justice is also introduced in the guide: “If you cannot pay for a lawyer, in most communities there are legal aid services available free of charge or at a low cost” (p. 37).

The Ontario provincial legal aid system is publicly funded. LAO lawyers advocate for Ontario’s impoverished and marginalized, people who are often indigenous and racialized, and also people who struggle with addiction and mental health issues. They specialize primarily in family, criminal, and immigration and refugee law, and work in courthouses and legal aid offices across Ontario, providing legal advocacy and advice to low-income Ontarians who cannot afford their own lawyer.

LAO lawyers are key to ensuring that the “Canadian justice system is fair, relevant and accessible” to all according to the Government of Canada’s Department of Justice (Legal Aid Program, 2017). Despite their importance, LAO lawyers were unable to unionize because lawyers are expressly excluded from independently forming labour unions under the OLRA. However, excluded workers can achieve workplace representation by having the employer voluntarily recognize the union as the chosen representative of the workers. Unfortunately, nothing obligates an employer to do so.

3 Due process means fair treatment through the legal system.

Employees within Ontario's public sector generally, and within the justice system specifically, engage heavily in collective bargaining. Industrial relations are commonplace in Ontario's courthouses: law clerks, judges, court reporters, police officers, correctional officers, court service officers, social workers, and other administrative staff are all represented. There are three major groups of lawyers in the public sector in Ontario: crown prosecutors, civil lawyers, and LAO lawyers. Of these three groups, two enjoy long standing voluntary recognition from the government, which allows them to bargain collectively: LAO lawyers were the last major group of public sector lawyers without access to this benefit.

There are two significant factors that distinguish LAO lawyers from the other groups of voluntarily recognized public sector lawyers: their role within the justice system and the demographic makeup of the workforce. The roles of crown prosecutors and civil lawyers are to represent the state (crown prosecutors represent the province in criminal cases, and civil lawyers are directly employed by the provincial government). As a result, there is an on-going dynamic wherein power relations are tilted towards lawyers who are representatives of the state. Lawyers who represent the province enjoy more respect, power, and privilege than LAO lawyers who represent the province's poor and disenfranchised. Additionally, LAO lawyers are mostly women, and racially diverse compared to the other groups of public sector lawyers, who are predominately white and male. Of the approximately 350 LAO lawyers in the bargaining unit, it is estimated that two-thirds are female, and more than one-fourth are racialized. These factors created a distinct component of systemic discrimination against LAO lawyers.

While LAO is publicly funded, the funding levels are inadequate, with many people who live below Ontario's poverty line unable to access free legal assistance. The funding LAO receives is subject to accountability measures, and is continually scrutinized by governments, the legal community, public advocacy groups, and even the media (Howells, 2016; LAO, 2017). Prior to the campaign, individual LAO lawyers had repeatedly made attempts to have LAO address issues within the workplace via emails and face-to-face communications with their employer. Issues raised by the lawyers, including insisting on an appropriate work environment, manageable workloads, adequate training, basic health and safety, and workplace transparency, were frequently ignored or the employer's response was that the funds were not available. These factors should be understood within a context of government austerity measures. These measures, in part, created the conditions that caused these professional workers to view a union as a means to protect their professional obligations.

4 What Motivated LAO Lawyers To Organize?

About 2006, LAO lawyers collectivized their approach to industrial relations with their employer. A significant number of LAO lawyers based in Toronto signed cards and pooled money to hire a labour lawyer to negotiate with LAO on a number of specific issues. While some gains were made, this method of bargaining relations was unsustainable. Without a structure, dedicated funds, and a succession plan, the group eventually collapsed without lasting agreements in place. Based on this experience, the LAO lawyers knew they needed organizational support to achieve an effective collective bargaining relationship with LAO.

In 2011, a group of 20 LAO lawyers investigated the option of joining a union. They were frustrated with LAO's lack of response to employee concerns, specifically with respect to: 1) the *Lawyer Workforce Strategy* (a mandatory workplace program that required involuntary relocation and potential change in area of law⁴ practiced); 2) the lack of transparency in salary and how lawyers were placed on the pay scale; 3) concerns that LAO lawyers were underpaid compared to other public sector lawyers; 4) difficulty protecting professional and ethical obligations due to various reasons, including a lack of internal conflict of interest protections, and inappropriate work spaces which made protecting client confidentiality challenging; and 5) lack of employer consultation with employees. As the campaign progressed, broader issues around the deskilling of their work, and the erosion of their professional autonomy also surfaced. Both deskilling and erosion of professional autonomy are examples of workplace issues generally experienced by professionals in today's workforce (Kalleberg, 2011).

4 Legal practice can encompass many diverse areas of law. Legal Aid Ontario primarily provides legal services to the public in the areas of criminal, family and refugee law. Individual lawyers usually specialize in an area of law.

LAO lawyers struggled with several professional ethics issues that contributed to their desire to unionize, including: 1) non-lawyers managing lawyers, which led to conflicts with their professional obligations; 2) quotas for providing call centre legal advice that limited the amount of time spent with clients, and thus undermined their professional assessment of the service necessary for each individual client; 3) the employer removing professional discretion by dictating when to issue legal aid certificates⁵; and 4) forcing lawyers to have their clients sign disclaimers stating the client understood their rights (implemented as a liability measure and not for the benefit of clients) thereby, potentially jeopardizing the professional ethics of the lawyers. The lawyers often felt a disconnect between LAO policy implementation and the experiences of the lawyers themselves as frontline workers. Their frustrations were well articulated in the interviews:

... Legal Aid implemented an app [for client use] to test legal aid eligibility. The idea was that our clients would download an app, go through the options and be able to determine whether or not they are eligible for legal aid. Ultimately even if it said – ‘yes, you are most likely eligible’, you would have to call into the Call Centre, do a phone application that could be upwards of 45 minutes long and then after that submit further documents and go through a further vetting process before you finally find out whether you are eligible or not. For many of our clients, especially those who are extremely vulnerable, extremely low-income like making \$500 on [social assistance] each month, they don’t have smartphones, they might not be extremely literate or especially computer literate and it just wasn’t realistic for most of our clients to use it ... and furthermore to be told that they have to make a phone call in any case. (K Yamagishi 2017, pers.comm., 5 February).

The *Lawyer Workforce Strategy*, which could compel LAO lawyers to move to different work locations and areas of practice with a goal of making the workforce more versatile and flexible for the organization had the effect of both deskilling and undermining professional autonomy:

5 In Ontario, legal aid certificates are issued to individuals who are not able to pay for legal representation. This certificate is a voucher for legal services and lawyers who are retained using this certificate are paid by public funds. There are strict rules for certificate eligibility and individuals who qualify usually live below the poverty line.

... [LAO] lawyers were treated as ‘widgets’ to be moved around and, more critically, that clients weren’t entitled to experienced counsel who wanted to be in those roles. Great lawyers are measured by the depth of their experience, not breadth. Specialization to provide the highest quality service was being devalued, and I felt that the organization could do it because our clients largely don’t have the time or resources to complain (H Aruliah 2017, pers.comm., 5 May).

The *Lawyer Workforce Strategy* was a very unpopular program amongst LAO lawyers. Former LAO lawyer and Inside Organizing Committee member, Jillian Rogin, captures the frustration clearly: “Non-litigating lawyers who had been working at LAO for decades were worried that they would be asked to transfer to a new city and would be forced into litigating in an unfamiliar area of law” (J. Rogin 2017, pers.comm., 2 June). In addition to the forced relocations, the lawyers were also concerned that being forced into a new area of law as an experienced lawyer might put them at odds with the professional standards of the Law Society of Upper Canada (LSUC), their professional regulatory body.⁶ When these issues were brought to management’s attention, the lawyers received little to no resolution on their own:

I spoke to [the LAO CEO] for an hour, and I don’t believe he ever really heard me. He wasn’t obligated to, so he chose not to ... [We] saw protecting high quality client service as being the primary issue. The usage of contract staff, resources (particularly disparate resources based on geography), salary and benefit concerns, and opportunities with the organization were also repeatedly mentioned (H Aruliah 2017, pers.comm., 5 May).

⁶ Like many professionals in Canada, lawyers are self-governing and oversee their own regulation through provincial regulatory bodies. The Law Society of Upper Canada (LSUC) is the regulatory body for lawyers in Ontario. It licenses, regulates, and disciplines its members in accordance with both provincial law and the LSUC’s own regulations and guidelines. Lawyers must be members of the LSUC to legally practice law in Ontario.

5 Why Was This A Fight?

By the summer of 2012, LAO lawyers were working with the SUP to pressure the employer to voluntarily recognize their union. LAO repeatedly refused the recognition despite nearly 80 per cent of LAO lawyers having signed a petition endorsing the SUP as their bargaining agent. Being at the employer's discretion, voluntary recognition undermines the ability of workers to unionize because the employer maintains all the power. Travers summarizes the problem plainly:

The employer's position was simply – 'we don't care.' The law doesn't force us to acknowledge you, so we choose not to. Of course, in their spin, the way they positioned it was - 'we can't.' Which of course was untrue (Travers, S., 2017, pers. comm., 3 February).

SUP leadership and staff expected this response from LAO management. The union's campaign plans included mounting a pressure campaign targeting the employer and the Ontario government in addition to the traditional task of winning support internally to join a union. Internal organizing encompasses the necessary work to build support for unionization amongst the potential union members, in this case, LAO lawyers. Major challenges to internal organizing of the LAO lawyers included the wide geographical spread of the workplace, education on the concept that lawyers can bargain collectively, building and maintaining an Inside Organizing Committee⁷, and maintaining strong support over a four year campaign.

⁷ Inside Organizing Committee refers to the potential members who are the unionization campaign leaders employed in the workplace.

6 Details of the Campaign

The Equity Component of the Campaign

This organizing drive was SUP's first campaign that had an equity focus.⁸ Although this theme was not initially part of the campaign, it became an important component when the employer unjustifiably continued to refuse to recognize the SUP as the workplace representative for LAO lawyers. It became apparent to the SUP that there was differential treatment between the Ontario government's established voluntary recognition of state lawyers versus LAO lawyers. There were concerns about gender and racial inequities given that there are more women and racialized LAO lawyers in comparison to provincial crown prosecutors and civil lawyers.

The SUP used this information to create a public pressure campaign framed as "Stop the Discrimination at Legal Aid Ontario."⁹ The main points of the public campaign were: 1) every other group of public sector lawyers in Ontario already had their collective bargaining relationships voluntarily recognized, except for LAO; 2) LAO lawyers were being treated differently because 2/3 were women, and a significant number were racialized in contrast to the other groups of lawyers who were primarily white and male; 3) LAO lawyers want a union and nearly 80 per cent of them signed a petition to that effect; 4) continuing to deny LAO lawyers their bargaining rights was discriminatory and a denial of their democratic rights.

The focus of this messaging was targeted at LAO's CEO, the LAO Board of Directors, and later, Ontario's Premier, Attorney General, and Minister of Labour. The SUP's assessment was that these were the decision makers who had the power and ability to make LAO give their staff lawyers voluntary recognition.

8 Equity and equality are two strategies that can be used in an effort to produce fairness and balance. Equity means giving everyone what they need to be successful, whereas equality means treating everyone the same. Equality aims to promote fairness, but it can only work if everyone starts from the same place and needs the same help.

9 See Appendix A – LAO Lawyers Support Rally Flyer.

Internal Organizing

At the beginning of any organizing drive, the first task for organizers is to begin communicating with workers and provide education around the unionization process. The majority of LAO lawyers had little to no knowledge of unions, or how collective bargaining could benefit them. The fact that lawyers are excluded from the OLRA added complexity to their understanding of how unionizing is applicable to them. It was anticipated, and confirmed during outreach, that there would be some hesitation among LAO lawyers to join a trade union. This was partly due to the notion that trade unions are for blue-collar workers, and not for professionals, and a fear that belonging to a union would interfere with their professional obligations. On the flipside, LAO lawyers quickly understood unionization as seeking representation from workplace experts, similar to acquiring specialized legal counsel on a legal matter. As lawyers, they appreciated the power of having a legally binding contract instead of relying on employer-controlled workplace policies.

To form a union outside of the scope of the OLRA, the SUP determined that the workers would sign a petition to democratically choose to join the SUP, demonstrating that a majority of LAO lawyers wanted collective representation.¹⁰ The SUP trained the Inside Organizing Committee how to approach and talk to their peers about the need for a collective agreement, how to answer questions, and equipped them with information about unions in general, and the SUP in particular. To collect petition signatures, campaign organizers utilized opportunities where large numbers of LAO lawyers were gathered, such as LAO training conferences, legal conferences, and less formal social events, as well as organizing campaign meet and greets. These efforts complimented the work of the Inside Organizing Committee members, who concentrated on informal, individual conversations with colleagues regarding unionization and gathering petition signatures.

A key difficulty in the outreach process was the vast geographical spread of the workplace. LAO has approximately 50 worksites, dispersed between more than 1000 km in cities and rural communities in Ontario. LAO lawyer and Inside Organizing Committee member Haran Aruliah spent considerable time trying to connect with his LAO colleagues:

¹⁰ See Appendix B – LAO Lawyers’ petition to have SUP recognized as their bargaining agent.

Just the geographic spread of employees alone was a tremendous barrier. There was no easy way to reach out to every end of the province. If calls to the offices were unanswered, we often had no means to connect with staff. As well, it was hard to get a good sense of the number of staff and any turnover, so we simply weren't even aware when we were missing people (H Aruliah 2017, pers.comm., 5 May).

Ensuring geographical inclusion was an important component of the campaign, particularly in understanding workplace concerns as they relate to rural/urban differences. Also, unlike other professional workers, LAO lawyers generally do not have flexibility in their schedules to talk when they are working because they are in court representing clients. As a result, a lot of organizing work occurred during lunch, evening, and weekend hours.

Although the campaign began quietly, awareness of it was high amongst the LAO lawyers working within the city of Toronto and surrounding areas (which accounts for two-thirds of the total group), but to reach the rest of the group, the visibility of the campaign was increased by officially going public. To support the on-the-ground conversations, Organizers and the Inside Organizing Committee developed brochures and created a website for circulation. Then, in January 2013, the campaign organized its first public event, which featured renowned Canadian civil rights lawyer, Clayton Ruby. The event was well attended by LAO lawyers, with many choosing to sign the petition on the spot. For LAO lawyers who could not physically attend, the event was recorded and made available electronically. This event was a springboard for the campaign:

It was a great turnout, a really positive energy in the room, and colleagues I hadn't spoken to before told me they were excited to help out on the campaign. Once people were informed and empowered to be advocates for themselves and their colleagues, it felt like a movement (H Aruliah 2017, pers.comm., 5 May).

Most petition signatures were collected by one-on-one interactions between members of the Inside Organizing Committee and their colleagues. In an effort to reach everyone, committee members volunteered to take time off to travel to different work sites and make phone calls. LAO lawyer and Inside Organizing Committee member, Kendall Yamagishi, recalls:

... the [SUP] was really helpful in providing us with the resources where we could actually go to training conferences and meet these people and actually go out to these regions and meet [our colleagues] and actually explain what our goals were and get feedback from them" (K Yamagishi 2017, pers.comm., 5 February).

The union was able to reimburse LAO lawyers for lost wages, and cover travel expenses, which allowed them to travel to have face-to-face conversations with their colleagues. SUP's willingness to cover these expenses was essential to ensuring LAO lawyers, as potential members, understood the organization and the benefits of unionization.

The success of the campaign is due, in major part, to having a committed, diverse and inclusive Inside Organizing Committee, which was formed at the onset of the campaign, and was composed of 20 LAO lawyers. It is important to note that the composition of the committee was representative of the workplace in terms of gender and racial balance. Emphasis was placed on establishing a committee that was reflective of the different regions and areas of law, and it was understood that this was necessary to be effective in moving the campaign forward. Bronfenbrenner (2003) highlights the importance of representative inside committees in her research assessing the components of successful unionization campaigns. The importance of the work done by the committee members cannot be understated. Their commitment and determination never wavered, despite the length of the campaign and breadth of tactics used.

In the spring of 2013, when most LAO lawyers had signed the petition, the campaign began shifting gears. The SUP notified the employer that nearly 80 per cent of LAO lawyers had signed the petition stating that they wanted the SUP to be their bargaining agent, and requested a meeting with LAO's CEO. The employer did not respond. A few weeks later, SUP President, Scott Travers, along with a delegation of LAO lawyers, went to LAO headquarters to hand-deliver a written request for a meeting, which also received no response. In the absence of an adequate employer response, the SUP attempted to make direct contact with LAO's Board of Directors. Unsurprisingly, LAO's Board was similarly unresponsive.

In the face of being ignored, it was time to escalate the campaign. Over the summer months, several tactics were undertaken which focused on motivating LAO's CEO and Board of Directors to acknowledge the SUP as the bargaining agent for LAO lawyers. The SUP organized an information picket, where leaflets were distributed outside LAO headquarters to individuals entering the building and passing by. The objective of the action was to pressure the employer by drawing public attention to LAO's refusal to acknowledge LAO lawyers' bargaining rights. LAO lawyers and SUP members also organized a series of smaller leafleting events targeting LAO's CEO and Board of Directors. Attempts were made to personally impact these individuals by various means. For example, it was discovered that one LAO Board member regularly taught a class at a local university, so flyers were distributed to his class about the LAO lawyers' campaign.



Legal Aid Ontario Campaign First Press Conference (Sept 2013)

On September 24, 2013, the campaign held a press conference at Queen’s Park, Ontario’s legislative building. The press conference panel was composed of a LAO lawyer, and three prominent members of the legal and women’s advocacy community. This marked the official launch of a public campaign, the goal of which was to draw media attention, and therefore increase public pressure on LAO management. Several media outlets featured the story including, Toronto’s largest newspaper, the Toronto Star. The Toronto Star article actually included a favourable quote from Ontario’s Attorney General acknowledging support for LAO lawyers’ right to bargaining collectively (Brennan, 2013). LAO reports directly to the Attorney General, and is funded by the Ministry of the Attorney General. Given this relationship, his statement supporting LAO lawyers felt like a major victory for the campaign team. Unfortunately, at a follow-up meeting, the Attorney General retracted his support, claiming ignorance regarding the exclusion of lawyers from the OLRA. His retraction was a blow to campaign morale.

However, the Inside Organizing Committee’s focus remained strong. With hopes of getting answers directly from the person in charge, the Inside Organizing Committee agreed to meet with LAO’s CEO in March of 2014. At the meeting, the CEO offered to recognize an independent association of LAO lawyers on the condition that the SUP would no longer be involved. That meeting made clear to the LAO lawyers that their employer’s agenda was to be rid of the threat of their representation by a labour union. Remembering the lessons learned from their earlier independent collectivization attempt, the committee was determined to secure real bargaining power by establishing a union and declined LAO’s offer.

Lobbying the Government

At this point, focused efforts were placed on lobbying the Ontario government to educate elected politicians, and appeal to their sense of justice. To support this tactic, the SUP hired government lobbying consultants to craft messaging, arrange meetings, and provide expert advice on dynamics inside the government. The lobbying was designed with three main objectives: 1) engage LAO lawyers in the lobbying; 2) raise awareness about the campaign among elected officials; and 3) develop relationships with elected officials at the constituency level. The goal was to generate a buzz about the LAO lawyers' campaign, and the employer's intransigence and steadfast denial of the recognition request.

The key message points LAO lawyers delivered to their local elected officials were: 1) the importance of legal aid client services; 2) access to justice for low income citizens; and 3) how greater client advocacy would be achieved via collective bargaining rights. The plan was to connect improvements to legal services by achieving a collective voice for LAO lawyers, citing personal examples of issues that had been faced by their clients.

However, in the meetings conversations often turned more pointedly toward LAO lawyers' lack of rights under the OLRA, and the employer's denial of their request for recognition, rather than speaking about the client focus. Most elected officials needed to be educated about why LAO lawyers could not just form a union. Generally, elected officials were sympathetic to the lawyers' concerns regarding working conditions, and purported to be pro-union and pro-collective bargaining, but had difficulty recognizing that collective bargaining rights for LAO lawyers would help LAO clients. While talking with politicians helped to raise awareness of the campaign, it is unclear whether the lobbying efforts had the desired impact of persuading the Ontario government to compel LAO to recognize the union. Additionally, the committee found lobbying less empowering than talking with their peers to gain support internally.

Media Coverage and Legal Action

Media coverage was a significant component of the public pressure campaign and took various forms throughout the unionization timeline, including paid media spots, earned media coverage, and social media reach. Paid media ads were purchased mainly in legal digest publications, with messages highlighting LAO as an unreasonable employer. The media was interested in featuring the story of LAO lawyers, mainly because of the novelty of lawyers attempting to unionize and interest in their motivations. Moreover, the fact that LAO clients represent Ontario's vulnerable populations appealed to the storyline of access to justice for everyone as an important Canadian value.

The media coverage also proved to be important amongst LAO lawyers themselves because it provided a boost in morale over the length of the campaign, reminding them that work was still being done to secure voluntary recognition and that they still maintained public support. Surprisingly, at no point was the employer's perspective or spin on their position articulated in the media. This lack of coverage benefited the campaign immensely, leaving the union and workers to shape the story. Media coverage remained favourable throughout the campaign which helped to legitimize the fight in the general public's perception.

To intensify internal pressure on LAO and the Ontario government, the SUP sought out opportunities to pursue legal action and gather campaign supporting information. Ontario's Pay Equity Act requires employers to identify and correct gender discrimination that may be present in their compensation practices and to adjust the wages of employees in female job classes so that they are at least equal to the wages of employees in male job classes when they are found to be comparable in value based on skill, effort, responsibility and working conditions.

We found out that there was a male Duty Counsel lawyer [whose only experience prior to LAO was articling in a corporate finance firm] making \$10,000 more than us. When we asked about it, we didn't get an answer and were told not to ask questions. We were not shown a pay grid. It wasn't that we wanted more pay, but we wanted equal pay (Yamagishi. K. and J. Rogin, 2017).

Under the LAO's pay equity plan, "staff lawyer" is designated as a gender-neutral job class. However, the Pay Equity Act defines a female job class as one in which 60 per cent or more of the members are female. The SUP supported the filing of pay equity complaints on behalf of LAO lawyers on the grounds that more than 60 per cent of LAO staff lawyers are women, and therefore the job should be considered a "female job class" within the meaning of the Act. At the time of writing, the complaint is still before the Commission, with LAO maintaining that it complies with pay equity legislation. If the complaint is successful, LAO will be required to analyze salaries internally, and implement amendments to the current pay equity plan.

The SUP and LAO lawyers also filed multiple "freedom of information" requests. Under provincial law, public sector entities are required to disclose information to the public when a request is made in writing. The requests asked for LAO Board of Directors meeting minutes, information on the Lawyer Workforce Strategy, LAO salary bands, and reports and policies developed from tendered contracts. This tactic had limited success, as only some of the requested information was obtained. LAO was unwilling to share information and hid behind another piece of legislation which exempts LAO specifically from releasing information they deem as confidential in protecting client files and legal confidentiality.

Nevertheless, the limited information that was received as part of the freedom of information requests was still useful for campaign purposes. One set of correspondences related to the request for information pertaining to the *Lawyer Workforce Strategy* asked the SUP to pay \$13,000 CAD to obtain the information requested. The SUP refused to make the payment, and publicly broadcasted this outrageous condition. Based on website and email readership levels, this had the desired effect of increasing public awareness of the LAO's deplorable tactics. Thus, the freedom of information requests were used to add public and internal pressure on the employer, despite the lack of success in actually accessing information.

The Canadian Charter of Rights and Freedoms Challenge

By 2015, the campaign had been active for 3 years, and there was still no indication that LAO was going to recognize the union. After significant internal deliberations, the campaign decided to launch a constitutional challenge against LAO and the Ontario government. This decision was inspired by a Supreme Court of Canada decision in January of that year, where it was determined that the exclusion of Canada's federal police (Royal Canadian Mounted Police) from applicable labour legislation was a violation of their Charter rights (*Mounted Police Association of Ontario v. Canada [Attorney General]*, 2015). The Court ruled that workers have the protected right to bargaining collectively, and to choose their own bargaining agent. Based on this, SUP submitted a complaint, arguing that LAO lawyers' Charter rights were being violated, and that the exclusion of lawyers from the OLRA was unconstitutional. Aruliah describes the effectiveness of the Charter challenge:

[We knew] a legal fight would be costly, but could not be ignored by LAO [and the government]. It was also telling that our employer was dedicated to protecting the rights of low income Ontarians, and yet would not enfranchise its employees' rights until we sued" (Aruliah, H., 2017, pers.comm., 5 May).

Up until this point, the Ontario government had been taking a hands-off approach. Now that the government was named in the court challenge, they became much more interested in the direction of the campaign. There were political considerations for the current government in this legal battle, as they would have been forced into the position of defending the exclusion of lawyers from the OLRA. How LAO funds, and in general government funds, are spent is a politically sensitive topic within public discourse. The use of significant amounts of government funds to withhold bargaining rights from a group of public sector employees would not receive favourable press. It was estimated that the government would incur hundreds of thousands of dollars in expenses fighting against workers' democratic rights, and the SUP were very vocal about it publicly.

Solidarity and Allies

An extremely important facet of the campaign was the support received from labour, community, and legal allies. From the beginning, the SUP identified that the support of allies would be crucial to winning the campaign. Building this support was not a small task, as there were no obvious connections between the labour community and the legal community. Moreover, while a group of lawyers wanting to unionize would draw interest, it would not automatically yield empathy or support. Nevertheless, it was essential to build connections with respected organizations that could lend their voices and collective reach to the campaign.

One key relationship formed was with the Women’s Legal Education and Action Fund (LEAF), a women’s legal advocacy group in Canada, which is dedicated to fighting for equality rights through education and litigation. As identified earlier, LEAF took part in the LAO lawyers’ first press conference in 2013. They continued to play an important role throughout the campaign, attending rallies and other campaign functions. Other groups that endorsed the campaign included the National Association of Women and the Law, the YWCA, Women’s Health in Women’s Hands, Association of Community Legal Clinics of Ontario, and Ontario Civil Liberties Association. These supporters helped in various ways, from writing letters to sharing information to lending their solidarity through social media. The legitimacy and reputation of the campaign was greatly enhanced with their help.

It was easy for rank and file activists of other unions to support the LAO lawyers’ call for collective bargaining rights because the right to belong to a union is so fundamental to their work lives. The labour movement’s support, especially in what ended up being the final months of the public pressure campaign was essential. Unions, such as the Ontario Nurses Association (ONA), brought large numbers of their members to campaign events throughout the four-year campaign. They also used their networks to further the message, raising awareness about campaign issues. The Ontario Federation of Labour (OFL) made space for LAO lawyers by building them into their “Make It Fair” campaign, which lobbied the provincial government to update and reform labour employment legislation. The OFL included a specific demand to remove the exclusion of lawyers from unionization under the OLRA.¹¹

11 “Make it Fair” is a campaign of the Ontario Federation of Labour to mobilize labour unions to fight for labour law reform, in solidarity with the Fight for \$15 & Fairness campaign. At the time of this case study, the Ontario government was conducting a rare review of the province’s employment laws, and actively solicited input from stakeholders about what they considered should be reformed.



Rally Outside of Legal Aid Ontario Head Office (October 2013)

The overwhelming support from labour was significant and extraordinary. The SUP President reflects:

I think it needs to be emphasized that it was a great example of solidarity and evidence that we are stronger together... we had unions write letters, join us at rallies, come to lobby days on our behalf, and it was critical, it really did turn the tide. It was a very long campaign. There was no one activity that did it in isolation, but it was the culmination of efforts, and I want to acknowledge the support of the labour community in Ontario all along the way ... we could not have done it without that support (Travers, S., 2017, pers.comm., 3 February).

Even movements that have no obvious connection to lawyers joining a union, such as the “Fight for \$15 & Fairness” campaign to raise the minimum wage, participated in actions and helped to organize additional support for LAO lawyers.¹² Dana Fisher, LAO lawyer and Inside Organizing Committee member, recounts how she felt about the solidarity received:

Someone from the \$15 and Fairness campaign spoke on our behalf at a rally we were having and I remember kind of being shocked. Being lawyers we didn't think that there would be broad interest for our campaign. So, it was really interesting to see the support that came from all the other groups that were there not because they had nothing else to do, but because [access to labour rights] was really important (D Fisher 2017, pers.comm., 23 February).

¹² The Fight for \$15 & Fairness campaign is an Ontario provincial campaign to increase minimum wage to \$15 per hour as well as other demands that would improve working and living conditions for many workers in low-waged and precarious employment positions.

7 Campaign Successes

Several victories were won over the term of the campaign as a direct result of the organizing efforts. Primarily, the unpopular *Lawyer Workforce Strategy* was changed from being mandatory to voluntary, so LAO lawyers no longer had to worry about being forced into changing their area of practice and relocating. LAO management was pressured to make this change due to the lawyers and the union being vocal in the workplace about the issue.

In the middle of the campaign, a large portion of LAO lawyers received a significant pay increase when the employer decided to implement a new salary grid based on year of call.¹³ A pay freeze had been in effect for several years before this. Implementation of the new grid was believed to be a result of criticism from LAO lawyers and the SUP over the lack of transparency around how individual lawyers were compensated. These pay increases were likely a union busting tactic designed to dissuade LAO lawyers from continuing with their push for a VRA - to indicate that collective bargaining was no longer necessary. It had the opposite effect, and proved to the LAO lawyers that organizing collectively produced significant gains.

Part of the success during the tail end of the public pressure campaign was actually due to the embarrassing fact that LAO and the Ontario government had denied LAO lawyers their collective bargaining rights for nearly four years. The constitutional challenge was making its way through the court system, and combined with a resurgence of targeted rallies, pickets and media attention, formidable pressure was applied on the government. In 2016, LAO finally agreed to recognize the union as the official bargaining agent for LAO lawyers, pending a successful representation vote. Voluntary recognition was secured when the votes were counted on October 26, 2016 with the results showing 76 per cent in favour of unionization.

¹³ Year of call refers to the year a person graduates from law school and has fulfilled all the requirements necessary to practice law which qualifies them to be called to bar.

8 Sustainability

Running a campaign for four years is no easy task. Maintaining engagement over such a long duration was a challenge, as Aruliah explains:

It was draining [for the committee members] to meet every two weeks for four years. It requires giving up some parts of your personal life, and it was difficult to sustain the energy and enthusiasm for it ... People were leaving the organization and we had to actively recruit to get new, committed staff to join the campaign ... I was revitalized when new members came forward (H Aruliah 2017, pers.comm., 5 May).

LAO was known to have high turnover, which made it vitally important to reinforce overall union support within the workplace by keeping track of all new hires and being vigilant about petition signing throughout the campaign. The need to constantly do this was difficult at times, especially when there were slow periods in the campaign. SUP organizers were cognizant of how a long campaign can take a toll on workplace leaders and supporters. It was no small feat that support for the union was maintained at a high level despite periodic lulls in activity.

It was important for SUP to remain committed despite having no assurances they would win the campaign. According to Travers:

... [W]e are a very tenacious union. We don't make decisions lightly and when we make them, we stick to them. But really, it was the injustice of the situation that really, quite frankly, angered the [union's leadership]. So, there was never a moment's hesitation throughout the campaign (Travers, S., 2017, pers.comm., 3 February).

Indeed, there was considerable internal pressure to ensure the organizing effort was successful. Because this organizing drive went on for so long, and was quite high profile within the legal community and labour movement, there were concerns within the SUP that its organizing reputation was at stake. While the question of resources, including monetary and staffing, was debated, the SUP's dedication to ensuring the collective bargaining rights of LAO lawyers remained strong throughout.

9 Impact of Campaign on Union and Workers

The success of the LAO lawyers' campaign for collective bargaining rights, as well as the campaign itself, produced a number of positive outcomes for the SUP. It is uncommon for Canadian unions to devote resources to organizing groups outside of the OLRA given the legal hurdles, or to undertake such a lengthy campaign. It was common to hear that "lawyers can not be unionized," because of their exclusion from the act, but this successful unionization through voluntary recognition changed that standard perception.

Throughout the campaign, the union challenged itself by employing a variety of often-militant tactics to advocate for the rights of potential members. Many SUP members are proud of the campaign's success, confirming the importance of building internal support and understanding for organizing new members into the union.

As a result of this campaign, many LAO lawyers, including Inside Organizing Committee members and those who took part in direct actions and discussions with their co-workers, were exposed to new tactics. Fisher reflects on her time spent on the organizing drive:

"... it was a really good experience being involved in the union drive because for one, I learned a lot ... to be part of something – a major campaign – from start to finish ... it was an experience I don't think I will ever forget" (D Fisher 2017, pers. comm., 23 February).

Those actively involved challenged themselves by engaging in public speaking, directly reaching out to colleagues they previously had no contact with, and taking on the daunting task of understanding union membership. Not only did they learn new skills to help with these initiatives, they realized the potential and value in direct outreach in the workplace. Yamagishi shares:

I learned how to get people interested in an idea, more than from an argumentative or intellectual level. I think lawyers get a lot of training on how to make a persuasive argument, but we don't necessarily get a lot of training on how to get somebody excited or engaged in something... I really learned how to organize and implement a public campaign, one that engages the broader labour movement, one that engages the media and how to build excitement that goes beyond just the workplace" (K Yamagishi 2017, pers.comm., 5 February).



Legal Aid Ontario Lawyers Solidarity Picket Attended by Labour and Community Allies (July 2016)

The solidarity that LAO lawyers experienced throughout the campaign from the labour movement and community allies was a sustaining force, and the workers learned that there was an entire realm of power they could tap into by fighting for their collective bargaining rights. Notably, the union itself enjoyed a period of elevated esteem within the Ontario labour movement for continuing to pursue and ultimately securing collective bargaining rights for LAO lawyers. When met with a standing ovation at the Toronto and York Region Labour Council, which several LAO lawyers attended to thank their allies, Michael Story remarked, “as criminal lawyers we don’t often get a standing ovation” (Story, M., 2016, pers.comm., 3 November). Obviously, attendees laughed along with him, but it is a testament to the unconditional support they received from the labour movement.

At the time of writing and completion of this case study (September 2017), the LAO Lawyers had only started the bargaining process for their first collective agreement with their employer. They held elections for their team of workplace representatives for negotiations and representation. During the election process, lawyers who were not previously involved in the organizing campaign, or with unions in general, stepped forward to take on leadership responsibilities, although many individuals who were involved in the organizing campaign also took on leadership roles. They secured their first collective agreement in December 2018.

One of the outcomes of the organizing campaign and the work of the membership at LAO is the transformation in how the LAO lawyers positions are viewed within the legal community. Prior to unionization, duty counsel jobs were generally poorly compensated and considered entry level positions. Collective bargaining changed that partially because of the implementation of a pay scale based on year of call which by this virtue alone has elevated the status of duty counsel positions.

A striking outcome of the lawyer's unionization has been the increased consultation they now enjoy from their employer. The elected representatives meet regularly with the employer to discuss workplace issues and policies. In fact, LAO faced a 30% cut to their budget, ordered by the Ontario government, in April of 2019. This was a disastrous blow to an already underfunded system, but of particular concern to employees who felt the deep fear of corresponding job cuts. Because the LAO lawyers had a strong bargaining unit, there was heavy consultation between them and their employer including discussions on managing the impact of the cuts. These discussions were so successful, that the effects of the cuts on LAO lawyers were mainly dealt with through attrition and no LAO lawyer lost their job.

Another aspect of belonging to a union and the politicization of the LAO lawyers that served this group well was the worker's ability to respond to the government's 30% budget cut with criticism. In Ontario, public servants are not permitted to speak publicly about decisions made by the government. However, as elected union representatives, it was their prerogative and responsibility to do so.

10 Conclusion: Lessons and Insights

This case study provides some key lessons in organizing professional workers. Specifically, it illustrates organizing outside of the existing industrial relations system; running a comprehensive organizing campaign; framing campaign issues to win the “battle of the story”; what union resources are required to organize professional workers; and what motivates professional workers to organize.

Organizing Outside of the Industrial Relations Legal Framework

The legal framework for unionization for most workplaces in Ontario is the Ontario Labour Relations Act (OLRA) and its corresponding government arm, the Ontario Labour Relations Board (OLRB). Under the OLRA, workers are able to go through a standardized two-step process to unionize. First, at least 40 per cent of the workers in the proposed bargaining unit must sign union cards indicating they want a union. Second, a vote is held by the OLRB, generally five business days after the signed union cards are submitted to them, and a simple majority (50 per cent plus 1) of the ballots cast must be in favour of the union.

As lawyers are excluded from the legislation, LAO lawyers were unable to access the legal process by which all workers under the OLRA are able to unionize. This left the lawyers with only one option in forming a union: to pressure their employer to “voluntarily recognize” them, even though there is no legal requirement for an employer to do so. Though nearly 80% of the LAO lawyers signed a petition stating that they wanted the SUP to act as their bargaining agent, it made no difference from a legal perspective. Despite the LAO lawyers indicating that they wanted a union- clearly higher than the minimum legal threshold for the two-step union certification process set out in the OLRA- the LAO lawyers’ right to form a union was legally disenfranchised by their employer. Theoretically, 100% of the lawyers could have signed the petition and it would make no difference from a legal perspective.

This case study shows how the Ontario industrial relations system continues to deny certain groups of workers the right to organize, including farmworkers, domestic workers, so-called “self-employed” workers, etc. This is despite the United Nations’ Universal Declaration of Human Rights (1948) article 23, clause 4 states: “Everyone has the right to form and to join trade unions for the protection of his interests.”

While the LAO lawyers' four-year long campaign would be considered a long campaign by most organizers, hypothetically, it could have gone on forever, given that there is no legal requirement to compel the employer to voluntarily recognize the union. While it is an important labour victory that the LAO lawyers organized, the situation undermined the principle that unionizing should be a choice of workers, not their employer. It also begs the question: how would other workers, who are not so privileged in terms of education, legal savvy, public profile, etc. have fared in this situation? It is a necessary reminder that labour laws do not always protect workers, and as the union organizing slogan goes: we must organize *despite* the laws, not because of them.

Running a Comprehensive Organizing Campaign

Organizing outside of the industrial relations framework forced the SUP and the LAO lawyers to run a different kind of union recognition campaign (i.e. for voluntary recognition). In addition to traditional organizing tactics that focus on the workplace, comprehensive organizing campaigns take a broader approach. It involves building coalitions with community groups (e.g. LEAF), unions and labour bodies (e.g. ONA, OFL), respected community leaders (e.g. Clayton Ruby); conducting corporate research; and applying public and political pressure (e.g. targeting LAO's CEO and the Minister of Labour via rallies, information pickets, press conferences); and launching legal challenges (e.g. Pay Equity challenge, Charter challenge).

It is significant that a professional union ran a comprehensive campaign for voluntary recognition given that the SUP was recognized as a union in 1991 by a pro-labour provincial government after an earlier voluntary recognition agreement, which is a sharp contrast to the "militant" history of industrial labour unions that "shed blood, sweat, and tears to build their unions, win them recognition, and defend their continued existence" (Savage & Webber, 2013, pp.115-116). However, as Savage and Webber point out, while a union's history naturally impacts their approach to industrial relations, it is inaccurate to depict all professional unions as fervent believers in business unionism who prefer to avoid conflict at all costs, and are unwilling to change.

Framing Campaign Issues to Win the ‘Battle of the Story’

A goal of a comprehensive union organizing campaign is to pressure the employer on multiple fronts. Thus, the campaign’s framing of the issues (i.e. the story) is different because the focus is broader than the workers themselves. While one may typically think of a ‘story’ in terms of fictional narratives, a story can also reflect social values and thus provide people a way to understand the world and their place within it (Reinsborough & Canning, 2010). In short, stories provide meaning. For example, consider the issue of poverty. Within a story/narrative where the rich have earned their wealth through hard work, risk-taking, and ambition; the poor are then seen as lacking discipline, innovative ideas, and a strong work ethic. However, if poverty is understood through a story/narrative that views society as consisting of warring classes with the upper classes benefitting at the expense of the lower classes, then poverty is seen as a structural issue rather than a personal failing. Stories have power because they can be used to justify the status quo or act as a call to change it.

As discussed earlier, the organizing campaign focused on the concept of “fairness” and how it was interpreted to be a key component to Canadian social identity (Faraday & Tucker, 2014). Within this narrative, the LAO lawyers can be understood as participating in the social production of “Canadian identity”, and more specifically, how Canadians understand their country on a symbolic level as being “fair”. In other words, if there were no legal aid lawyers it would be difficult for Canadians to reconcile the image they have of a fair Canada with a justice system that further marginalizes the poor.

The campaign’s messaging clearly connected the LAO lawyers’ demand for rights offered by the OLRA and improvements to legal services for low-income citizens.¹⁴ The stated reason for denying demands for appropriate work environments, manageable workloads, adequate training, etc. was the chronic underfunding of LAO as a whole, but by focusing on the social issue of improving services for vulnerable populations in Ontario, the employer had to risk social and political consequences by restating this reasoning, particularly when LAO funding was compared to the funding provided to state lawyers who had collective bargaining rights. Added to this situation was an equity analysis, so that when monetary issues were discussed, the issue of pay equity was consistently highlighted. Thus, the LAO lawyers campaign became a fight for social justice for both the LAO lawyers and their clients.

¹⁴ Messaging refers to the main story points that are repeated throughout a campaign.

The importance of the story is also illustrated earlier in the case study, when the LAO lawyers met with elected members of the Ontario Provincial Parliament and the discussions focused on the legislative hurdles that the lawyers faced, rather than discussing how collective bargaining rights for the lawyers would benefit LAO clients. Unsurprisingly, the Inside Organizing Committee found lobbying the government, with its legalistic focus, less empowering than organizing internally with a social justice focus because the stories, while interrelated, are very different in terms of values.

It is important to recognize the existence of a public story, or general discourse, around unionized workers, and how campaign messages will be interpreted within that framework. Unionized worker issues, especially those in the public sector, are often portrayed negatively in the media as being “out of touch” as they “whine” about paltry wage increases, cuts to benefits, threats to “lifetime job security”, etc. which all comes out of the pocket of the taxpayer, while many people are struggling to find any job at all. This contrasts with the story that the rights and benefits trade unionists fight for and are fighting to keep are part of an ongoing struggle to increase the standard of working conditions for everyone. In this context, framing campaign issues designed for a public audience as issues of fairness and societal betterment are important for resonance, but also in furthering a basic understanding of union principles.



Rally Outside of Legal Aid Ontario Head Office (October 2013)

The Resource Investment Needed to Organize Professional Workers

Unions seeking to organize workers, professional or otherwise, must ensure they have the adequate organizational resources and long-term political vision to do so. The LAO lawyers organizing campaign stands out because it was four years long, with no guarantee of success or even an end date, but the organizing challenges they faced (e.g. geographical spread, employee turnover), financial costs (e.g. travel expenses, reimbursement of lost wages, legal fees), and the cost of lost opportunities (i.e. a commitment to a campaign even if other organizing opportunities arise) are common. Perhaps less recognized, but no less important, is the emotional investment made by the workers and the organizers of the campaign. When asked if she ever thought of quitting the campaign, Yamagishi responded by emphasizing how much she cared for her clients:

No, I never felt like I was going to quit the campaign. I think, for most of us who are lawyers, if we have time, we're going to keep fighting... I knew that it was really important, I care about my clients so much and I think actually partially because it had been going on for so long was even more of a motivation to keep going (K Yamagishi 2017, pers.comm., 5 February).

Yamagishi also explained that the campaign had its positive aspects and emphasized the importance of the union organizers in keeping the workers engaged:

The other thing was that it was quite fun actually, it was frustrating but it was fun. I really liked the other people who were on the campaign committee, I was learning a lot, the union was great like I love Omar [Latif], Michelle [LeBlanc], and Anna [Liu] [organizing staff on the campaign] - they were so supportive of us and they really kept us motivated and also I just did not want to back down against Legal Aid (ibid.).

It is unsurprising that the workers and staff established strong connections, which helped to reinforce the workers' dedication, and vice versa. More research is needed to recognize the importance of emotional support and emotional labour in the context of union campaigns, but that subject extends beyond the scope of this paper.

Deciding to end an organizing campaign comes with its own costs, as SUP President Scott Travers explains when asked if the union ever considered terminating the organizing drive:

... [W]e think organizing professionals is really important and it is something we want to do more, and this was something of a beachhead for us. If the message got out that employers could get away from the whole process just by hiding behind loopholes and dragging the process out, we were worried about the negative impact that it would have on any future campaigns in other workplaces. So, we felt it was very important to see it through to the end (Travers, S., 2017, pers.comm., 3 February).

Learning What Motivates Professional Workers to Unionize

Fundamentally, are professional, ‘white-collar’ workers unique in terms of what motivates them to organize? While it is beyond the scope of this case study to adequately address this question, part of the answer lies in examining how professional workers view unions in relation to their occupation. Savage and Webber (2013) point out that, of the literature that does exist in the understudied area of professionals and unions, much of it tends to portray professional workers as not seeing themselves as having much in common with unionized workers.

Professional workers may more commonly view unionization as a threat to their professionalism because of a perception that unions would undermine “professional standards” by protecting “less than competent workers”, and splinter the “loyalty and a harmony of interests between professional workers and the organization for which they work” (ibid., p. 116). Tellingly, LAO attempted to justify its refusal to voluntarily recognize the LAO lawyers’ union using the same type of logic in terms of “loyalty”, as explained by Yamagishi:

There was another challenge that we faced because we were professionals ... that our employer raised that we might have an allegiance to the rules set out by our union, which might ... take precedence over our professional obligations to the Law Society of Upper Canada. I don't think there's a lot of credence to that argument. We wouldn't have made any agreements at the union level to comply with any policy or rule that would put us in violation of the rules or policies of the Law Society of Upper Canada ... But it did give our employer an argument that they could tender against us (K Yamagishi 2017, pers.comm., 5 February).

When that very professionalism is under attack by neoliberal governments implementing austerity measures that suppress “professional autonomy and expertise” to protect the bottom line, professional workers have turned to unionization or their professional unions to combat this. Thus, Savage and Webber (2013) argue that the “discourse of professionalism” has the ability to both constrain and facilitate professional workers’ union activism and thus, it acts as a “paradox” (p. 114).

This paradox is illustrated in the LAO lawyers campaign via the professional obligations issue. While the employer was trying to argue that joining a union would undermine the lawyers' obligations, the lawyers themselves viewed their employer as undermining their professional standards:

... one of the reasons we wanted to unionize was that we were concerned that some of Legal Aid's policies were being implemented with a lack of understanding of our professional obligations to the Law Society because some of the policies that we were being asked to follow and some of the programs that were being implemented were being implemented by people who are not lawyers, who don't have that background and who don't know our professional obligations in an intimate way – they might not have been able to foresee how, for example, asking us to go from practicing criminal law to family law, with relatively little training, could put us in conflict with what the Law Society's competence guidelines and standards are. (K Yamagishi 2017, pers.comm., 5 February).

In conclusion, the LAO lawyers organizing is a significant victory for the Canadian labour movement, and hopefully an encouraging sign of things to come in terms of the organizing of professional workers. While the organizing of professional workers may still be seen as an exception to the rule, the reality is that the majority of Canadian Labour Congress members now come from the public sector (56 per cent) and have a post-secondary education (65 per cent) (PIPSC, cited in Savage & Webber, 2013, p. 122). As Savage and Webber point out, "the reality of the Canadian labour movement no longer reflects the popular cultural image of the male, hard-hatted, private sector industrial worker ..." (ibid.) While the Canadian labour movement must continue to actively organize all workers, especially the most vulnerable ones, the organizing of professional workers brings with it new opportunities and challenges that must be addressed head-on as the number of knowledge workers continues to grow. Whether the number of organized knowledge workers will also continue to grow is open for consideration.

Glossary

IFPTE – International Federation of Professional and Technical Engineers

LAO – Legal Aid Ontario

LSUC – Law Society of Upper Canada

OFL – Ontario Federation of Labour

OLRA – Ontario Labour Relations Act

OLRB – Ontario Labour Relations Board

SUP – Society of United Professionals, IFPTE Local 160

VRA – Voluntary Recognition Agreement

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Appendices

Appendix A



STOP THE DISCRIMINATION AT LEGAL AID ONTARIO

FAIRNESS FOR LEGAL AID ONTARIO LAWYERS

- Except for Legal Aid, every other group of public sector lawyers in Ontario, including Crown Attorneys, are already allowed to collectively bargain.
- The biggest difference is that Legal Aid lawyers are two-thirds women and the most racially diverse group of public sector lawyers
- It shouldn't matter if you are a man or woman; and you shouldn't be treated differently based on the colour of your skin. It's only fair that Legal Aid lawyers get the same collective bargaining rights as other public sector lawyers.
- Legal Aid lawyers want a collective voice to help create a better Legal Aid for clients who are among the lowest income and most marginalized people in Ontario.
- Attorney General John Gerretsen supports Legal Aid lawyers' right to bargain collectively: **"They have a right to bargain and hopefully the employer will sit down with them."** Toronto Sun - Sept 25, 2013
- Bob Ward, CEO of Legal Aid Ontario, refuses to recognize the rights of Legal Aid lawyers or even show enough respect to meet with them, even after hearing from the Attorney General.
- Is Mr. Ward's behaviour what we should expect from a public sector CEO?

Tell Legal Aid Ontario CEO Bob Ward: It's time to treat Legal Aid lawyers with respect; it's time to recognize Legal Aid lawyers' right to collectively bargain!

END DISCRIMINATION AT LEGAL AID ONTARIO
For more information: laolawyers.ca

LEGAL AID ONTARIO LAWYERS
Campaign to Secure Collective Bargaining Rights

Appendix B

Petition for Legal Aid Ontario to Recognize The Society as Bargaining Agent for LAO Lawyers

Whereas, lawyers and judges, through collective organizations such as The Ontario Crown Attorneys Association (OCAA), The Association of Law Officers of The Crown (ALOC), The Ontario Conference of Judges (OCJ) and The Canadian Superior Court Judges Association (CSCJA) have been voluntarily recognized and have all secured bargaining rights and the right to collectively bargain with their employer;

Whereas, Legal Aid Ontario lawyers are the last remaining group of provincial public sector lawyers in Ontario to not have collective bargaining rights;

Whereas, the Charter of Rights and Freedoms entrenches within our Constitution the enforceable right of Freedom of Association, including the right to collectively bargain;

We, the undersigned, authorize The Society (IFPTE Local 160) to act as our exclusive collective bargaining agent for the purpose of negotiating the terms and conditions of our employment, including negotiating a framework agreement with our employer providing for the recognition of The Society as our bargaining agent and the negotiation of collective agreements. *

Name	Signature	Witness	Date

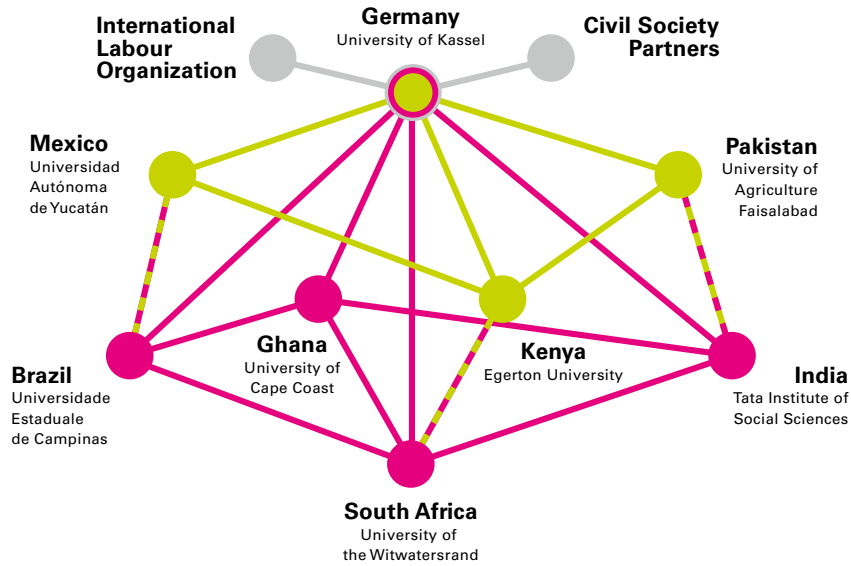
*Note: The Society is committed to holding the identity of individual employees signing this petition in confidence from the employer.

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