

Justice: Not For Sale

A submission to the Ontario Ministry of the Attorney General's public consultation on Civil Enforcement Services

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Introduction: Civil Enforcement Officers and the work they do

The Ontario Public Service Employees Union currently represents 49 Civil Enforcement Officers across Ontario. Also known as sheriffs, these public employees enforce writs issued at civil cases heard in Ontario courts and tribunals, such as the Landlord and Tenant Board. They carry out evictions, serve enforcement documents, and enforce seizures and property sales.

On January 20, 2016, the Ministry of the Attorney General began a review of enforcement services, announcing public consultations and calling for input into dramatic changes being proposed. These consultations are hampered, however, by the ministry's restrictive approach. The public is being asked to consider two alternative models of delivery: one in which enforcement services are provided through a privatized Delegated Administrative Authority (DAA); and one in which individual enforcement officers work as independent private contractors. OPSEU's position is that both of these private models raise serious issues of public safety, accountability, and accessibility.

Both have failed dramatically in other contexts in Ontario.

By only considering these two private models of delivery, the government does not take into account the cost of losing civil enforcement officers as Crown employees who are directly accountable to the Attorney General. Civil enforcement officers are integral to the justice system. The privatization of their duties is, ultimately, a threat to the public good.

Key issue: Accessibility

"Without profit, private operators aren't interested in public service for its own sake. Giving someone's mother a bath, or guarding an accused murderer awaiting trial, or restarting your heart isn't something that the people I represent do for money. Sure, we get paid – everybody has to feed their family – but making money isn't the point. Public service is."

Warren (Smokey) Thomas, President, OPSEU¹

In Ontario today, civil enforcement services are accessible and available to the public at large. Public enforcement services are affordable, local and private. All the work done by our provincial inspectors and enforcement officers make our province safe, fair and livable.

Privatized services add an extra cost to every transaction: the cost of profit. According to the Ministry of the Attorney General, both private models being considered will be fully funded by private user fees. In contrast, enforcement services are currently provided at cost in Ontario. The present cost of filing an enforcement is \$240 (Enforcement Fee) plus \$75 (Filing Fee). The cost does not include profit, which makes public enforcement services more affordable than any private alternative.

Another variable to consider is geography. Profit margins dictate where private services are provided because services cost less to deliver in large urban areas. For remote northern, rural and small communities, privatization spells disaster. Higher costs in these areas will mean reduced access to services.

Key issue: Accountability and Oversight

“Decreasing oversight is dangerous for the public as it reduces accountability.”

Carlos Kirk, civil enforcement officer, Toronto

Public enforcement officers deliver services under high standards – and a high level of scrutiny. The ombudsman, the Auditor General of Ontario, and the Ontario Ministry of the Attorney General – their direct employer – all hold provincial employees accountable. Conversely, private services are not held to similar standards.

Delegated Administrative Authorities, or DAAs, are self-regulated entities. In Ontario, these agencies have not done a good job of policing themselves. The Sunrise Propane explosion that occurred on August 10, 2008 in Toronto occurred under the oversight of the Technical Standards and Safety Authority (TSSA), a self-regulated agency. The TSSA failed the public by its inability to enforce its own safety standards.

In the aftermath of the Sunrise Propane explosion – which one observer described as “like an atomic bomb” – a Toronto Star editorial advised that “Premier Kathleen Wynne would be wise to consider the perils of offloading government oversight of dangerous substances onto private organizations.”²

The physical safety of the public is definitely a major concern when it comes to the delivery of justice. Civil enforcement is far too sensitive and important a service to suffer under a similar lack of regulation or enforcement.

The local service provider model does not meet even a modicum of these standards as it fails to include broad regulation or coordinated oversight. Under this model, contractors would be able to provide civil enforcement services without meaningful routine supervision.

In 1997, the Ontario Ministry of Agriculture, Food, and Rural Affairs chose this model to change the way provincial meat inspection worked. At the time, the ministry laid off all but a handful of provincial meat inspectors and began to hire meat inspectors as independent contractors. After the Aylmer meat scandal of 2003, the Haines Inquiry of 2004 found numerous problems with the system, which generated conflicts of interest for inspectors and threatened public safety. The service was returned to the public service in 2004.

Private service models also restrict the public's ability to make direct inquiries, register complaints, or demand accountability.

Another key issue is neutrality. As official arms of the government, provincial civil enforcement officers are independent and are not directly contracted by any party. In the case of evictions, for example, neutrality and independence are essential. When a landlord directly contracts the party delivering an eviction notice, there are few guarantees that the service provider will behave in a neutral way. Stays, like notices, should also be delivered by an independent, civil officer. Defendants often obtain stays in the 11th hour, while evictions are already in progress. When notified of a stay by their office, civil enforcement officers stop the eviction. Private service contractors, who are directly compensated by the landlord, will have a different motivation when performing their duties.

Finally, the privacy and confidentiality of personal information is always a concern when public services are privatized. Civil enforcement services are no exception. Personal information must remain private and confidential, particularly since the delivery of justice requires managing highly sensitive information.

Key issue: Public safety and the public good

“Picture being shuffled out of your house, rushed out, and not being given any time to gather your wallet, money, medicine, identification, or a change of clothes. And then being out on the street with no way to pay for the salvage of your possessions, the rest

of your clothes, your pictures, your income tax and other documents – your whole life down the drain.”

*Jim Jurens, civil enforcement officer, Toronto
and President, OPSEU Local 526*

Civil enforcement services often engage with at-risk individuals and disadvantaged communities. Officers routinely deal with issues related to old age, poverty, marginalization, and mental health. They regularly handle heart-breaking, traumatic, and sometimes dangerous situations.

Civil enforcement officers are trained professionals who perform their duties under careful oversight. They are also Ontario Public Service employees who are keenly aware of their duty to protect the public. For example, when conducting evictions, provincial enforcement officers often allow an extended period of time for people to gather necessities and medicine before they are locked out of their residence. If necessary, public officers will call an ambulance or out-of-the-cold services. Private contractors would be financially motivated to complete all evictions within the smallest time frame possible. Private enforcers will have no incentive to care for the health and well-being of those being evicted or their families.

Provincial enforcement officers conduct themselves in a manner that is sensitive and responsive to the unique demands of diverse communities and vulnerable individuals. Evictions, in particular, require officers to maintain their integrity as public servants. Because profit is not their concern, public enforcement officers perform their job without bias.

OPSEU's recommendations

Given the potential risks to public safety, and the need for accountability, accessibility and direct oversight in enforcement, the government would do well to abandon its plan to privatize civil enforcement services.

OPSEU calls on the government of Ontario to:

1. **scrap** plans to privatize civil enforcement service. Privatization threatens the public good by restricting accessibility, limiting accountability, and putting public safety at risk.
2. **expand** access to public civil enforcement services by hiring more officers and opening more offices throughout the province; and
3. **improve** civil enforcement services by providing public officers with the resources needed to safely carry out their duties.

Notes

¹ Ontario Public Service Employees Union (2014). *Epic Fail: A Short History of Privatization in Ontario*. Toronto: Ontario Public Service Employees Union, Spring.

² Toronto Star (2013). "Ontario needs better oversight of propane regulator: Editorial." *Toronto Star*, June 29.