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Erosion and Renewal of Professional Powers in Public Sector Employment: The Role of Occupational Community

Érosion et renouvellement du pouvoir professionnel dans les emplois du secteur public : le rôle de la communauté professionnelle

Erosión y renovación del poder profesional en los empleos del sector público: el rol de la comunidad ocupacional

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Article abstract

This paper describes a case study of a particular form of knowledge worker; lawyers, and their efforts to achieve collective bargaining. Within self-regulated professions like law, the professional regulatory body controls much of the labour process and defines the body of professional knowledge. Apprenticeships, such as clinical locums in medicine and articles in law, play an important role in the transfer of labour process norms. However, more and more professionals seek employment in large organizations where the autonomy historically enjoyed by the self-employed worker and crafted in the confines of mentorships is increasingly subject to bureaucratic and administrative controls. In large employment settings rules and policies may interfere with workers' exercise of professional discretion and full utilization of their knowledge. The result of the erosion of traditional labour process power under bureaucratic forms of organization leads professionals to seek alternate forms of control. Many turn to collective bargaining as a mean to wrest back control over the application of discretionary judgment from large, often public sector, employers.

In the case of the legal profession in Canada, a great many lawyers are employed in the public sector. The subspecialty of criminal prosecution was broadly framed as a service private sector lawyers once provided on a fee-for-service basis, but until relatively recently it was not a distinct area of practice to which one dedicated a career. The regularization of prosecution in the public sector results in a strong sense of occupational community among public prosecutors. The forces of bureaucratic control and occupational community act together to support collective bargaining among professionals who otherwise have been opposed to this strategy, claiming it is "unprofessional".

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Shelagh Campbell

This paper describes a case study of a particular form of knowledge worker, lawyers and their efforts to achieve collective bargaining. Within self-regulated professions like law, the professional regulatory body controls much of the labour process and defines the body of professional knowledge. Apprenticeships, such as clinical locums in medicine and articles in law, play an important role in the transfer of labour process norms. However, more and more professionals seek employment in large organizations where the autonomy historically enjoyed by the self-employed worker and crafted in the confines of mentorships is increasingly subject to bureaucratic and administrative controls. In large employment settings rules and policies may interfere with workers' exercise of professional discretion and full utilization of their knowledge. The result of the erosion of traditional labour process power under bureaucratic forms of organization leads professionals to seek alternate forms of control. Many turn to collective bargaining as a means to wrest back control over the application of discretionary judgment from large, often public sector, employers.

KEYWORDS: Knowledge worker, professionals, lawyers, workplace control, public sector.

Introduction

This paper contends that professionals are a particular form of knowledge worker and examines the profession of lawyers, their employment experiences in large organizations, and the mechanisms they employ to protect control over their work. The research draws upon two literatures: the sociology of professions and labour relations, and examines the labour relations experiences of a subset of this elite profession, public prosecutors, when they engage in collective bargaining. Two formerly opposing approaches to social closure and protection are combined in the public prosecutors' experience of collective bargaining. The combination of these distinct approaches to collective action is noteworthy from

a theoretical as well as a social standpoint. Sociology of the professions describes the formation and coalescence of occupational groups into social structures whose aim is to establish and protect as close a monopoly as possible on their service. In return for this effort, professionals reap financial and status rewards, retain control over the definition and creation of knowledge in their domain, and often enjoy privileged relationships with state regulators (Krause, 1996).

Collective bargaining is also a form of structure that aims at control, one which pits an underclass against a dominant employer. Professionals have long been considered to reside outside the ideological and representational realm of trade unions (Parkin, 1979; Witz, 1992) as their power derives from their position as social elites (Weber, 1947). Professionals who bargain collectively thus occupy both an elite and a subordinate role. On the one hand, their professional powers are undermined through dependent employment and, on the other, these powers are reinforced through collective bargaining.

Despite the preponderance of literature contrasting the two strategies of professionalism and unionization (Isler, 2007; Rabban, 1991), professionals have been quite content to take on positions as employees under “flat fee” situations, and to bargain collectively. Nurses and allied health professions (Haiven, 1999), teachers, some doctors, and now lawyers do so. This paper uses a case study to develop a theoretical framework to explain this development. The research is based on a study of public sector lawyers in Canada and draws on archival materials and semi-structured interviews with public prosecutors. Participants were asked to tell the story of their careers and the story of the struggle for collective bargaining in their profession. Narrative analysis of those stories reveals how occupational community enables these legal professionals to successfully embrace professionalization and collective bargaining as mutually reinforcing strategies.

Some of the characteristics of knowledge workers—autonomy, independence in the application of expertise, and protection of that specialized knowledge (Davenport, 2005)—are at the heart of professions. Much of the quest for professionalism has been a struggle to define a sphere of knowledge and then limit access to its practice (Abbott, 1988). The legal professional is an excellent example of workers in what Davenport (2005) calls the expert quadrant, with high complexity of work and interpretation/judgment and low level of interdependence. Haiven (2006) refers to this quadrant as workers who are beyond the “union zone” and who prefer individual negotiation to collective representation. Although on the surface many workplace struggles appear to be based on money, research reveals that disputes among professionals and their employers are often based on issues of professional control; particularly control over the exercise of professional discretion and the application of expert

knowledge (Campbell and Haiven, 2012). Rather than consider all knowledge workers (a term without a consensus definition (McKercher and Mosco, 2007) as professionals, a more plausible interpretation is that all professionals are in fact knowledge workers. By examining the case of one well established profession in detail, this paper seeks to identify the mechanisms by which this type of worker achieves control over the exercise of their craft and its attendant rewards.

Closure

At the heart of a profession is protection: protection of a body of knowledge, of access to membership, protection of monopoly in a market, protection of mystique, reputation and elite status (Abbott, 1988; Freidson, 1986; Krause, 1996). Professions achieve protection of these dimensions through social closure (Weber, 1947). When a group protects itself and its activities through rules and restrictions on access it practices closure. Some groups both restrict entry and challenge the entry restrictions of others. Public prosecutors practice this dual form of restriction, called dual closure (Parkin, 1979). As members of a Barrister's Society they participate in control over who can enter the legal profession and prosecutors challenge the limits and rules of the employer through collective bargaining. Parkin (1979), however, views closure as an issue of class; it is thus incongruous that professions join the labour movement and find solidarity in views and values based on class. Traditional class theories highlight a distinction between the owners of the means of production and those they exploit. But many professionals are in what Wright (1978) calls a "contradictory class location." They own their intellectual capital and may work independently but increasingly are found in conditions of dependency and subordination working in large organizations (Leicht and Fennell, 1997). Concurrently, knowledge workers more broadly speaking are riding the wave of credentialism in a wide variety of fields from high-tech work to management consulting and project management (Muzio, Ackroyd and Chalat, 2008; Muzio *et al.*, 2011). The ownership of intellectual capital contributes to a strong professional identity, yet the position of dependency through employment contributes to an urge to unite and oppose the power of the employer. This struggle for control over knowledge generation and deployment and the work conditions under which this knowledge is exercised are becoming increasingly important in the contemporary workplace. Rather than limit the utility of closure theory, this dual development opens up a new perspective on professionalization where the tools of multiple forms of closure can be applied to further a group's professional aims (Campbell and Haiven, 2012).

In dependant employment, professionals give up some measure of control over their own work. One aspect of the closure strategy of collective bargaining is a desire to regain control over workers' labour process. The labour process refers

to the specification of work practices and the application of expertise to solve work problems (Braverman, 1998). Like a mechanic or millwright, the lawyer's work also involves the application of knowledge and skill developed through training and a form of apprenticeship. However, the process of the lawyer's work is somewhat invisible, particularly the application of discretion and judgment; it is knowledge work. Decision making in prosecution involves complex application of legal principles and case law as well as the decision whether or not to proceed with a prosecution. This decision best reflects the concept of public interest in a profession: a professional acts not only in the pursuit of her own living, but also acts in the public interest as holder of a public trust. Some of the autonomy that derives from an unfettered, self-regulated labour process is limited by organizational constraints in dependant employment. Constraints can take the form of rules and procedures, such as a policy manual (Public Prosecution Service, 2006). Public prosecutors choose to bargain collectively over terms of employment in order to protect and reclaim some of their professional power, autonomy, and benefits such as income, which they sacrifice when they choose to practice law as employed public servants.

Hinings (2001) traces an evolution of the study of professions in which he notes different stages of research; stages that focus in turn on definition, structure, monopoly, closure, labour process and politicization of professions. There is a growing body of literature in organization studies related to the nature of professional service firms (Muzio *et al.*, 2008), including the legal profession. Little doubt remains that the tremendous changes to the world of work have touched the professions as well (Chreim, Williams and Hinings, 2007; Leicht and Fennell, 1997; Muzio *et al.*, 2008; Powell, Brock, and Hinings, 1999) and the study of professions is undergoing a renewed focus (Thomas and Hewitt, 2011). Much theorizing about professions and professionals encompasses the self-employed ideal type of autonomous professional as well as the professional service firm (Muzio and Ackroyd, 2005). But many lawyers do not work as self-employed practitioners or in law partnerships. Even though they work as employees of large public sector organizations, yet the employed prosecutor in particular has not been studied in any detail (Gomme and Hall, 1995). The legal oeuvre has considered the duties and conflicts surrounding prosecutors and prosecution (MacNair, 2002) but the employment aspect of the public prosecutor's role is mentioned only in passing, if it surfaces at all. While there have been studies of occupations in traditional employment that are professionalizing (Muzio and Hodgson, 2008), there are fewer opportunities to study cases of professions seeking collective representation in the workplace.

This overview of the literature reveals contradictions when we consider the employment of professionals, particularly in the public sector. Although many

public sector professional workers are unionized, still the literature on professionalism and unionization generally juxtaposes the two concepts as competing options for occupational power (Crouch, 1982; Freidson, 1973; Offe and Wiesenthal, 1980; Parkin, 1979), whether the discussion is based on the traits of the profession, social class and material power, or logics of action. Isler (2007) describes the dilemma as a choice workers must make between constructing an identity as a professional or as an “organizable worker” (443). As we shall see below, an occupational community built upon the shared values of a subset of a professional group is a mechanism that bridges this apparent contradiction.

Public Sector

The public sector is an important site for research into professionals for three reasons: employment in this sector is often regularized around duties rather than around clients, the number of professionals as a proportion of this workforce is rising (White, 1993), and the literature on professions has not dealt with public sector employment in any major way. In addition, the public sector has a single payer for most employment: government. This employer is limited in its ability to raise capital and revenue, does not have access to business development opportunities that exist for private sector firms, and is under close fiscal scrutiny. These features combine to place significant pressure on professional employees; their work results are often difficult to quantify in an age when public accountability and measurement have come to dominate definitions of effective public management. The practice of law in a public sector organization is a specific example of the way these factors impact the professional labour process and illustrates workers’ response to these pressures. The public prosecutor shares the credentialing process with other lawyers and is a dependent employee like many associates in professional service firms. All public sector lawyers share an employer: the Crown. However, unlike public sector civil lawyers, prosecutors have no counterpart in the private sector. Furthermore, prosecutors work in close proximity, often sharing the same files, and are subject to work rules without the benefit of the direct mentoring relationships common in private practice. These features of prosecution work set these workers apart and provide a rare opportunity to explore the evolution of a profession in an employment context.

Prosecution

The work of prosecuting alleged criminals on behalf of the people—public prosecution—has evolved over time in Canada. In the early days of the colony’s justice system there were no public employees who made a career of this type of work (Stager and Arthurs, 1990). Rather, lawyers in private practice took on prosecution cases at the request of the Attorney General who was an elected

member of the legislature. The apprenticeship of all lawyers was then conducted within the private sector bar, and the principal affiliation of the fee-for-case prosecutor was to the partnership or employing legal practice. The fee-for-prosecution lawyer's client was the state and a contract for service was the basis of the work relationship. The engagement of a professional, sanctioned and trained by a self-regulating professional Society, was a guarantee of quality of service. All other aspects of the conduct of the work itself remained the responsibility of the individual lawyers and the public prosecution case was one more in a series of client undertakings that comprised the lawyer's practice. The advent of employing civil servants to conduct prosecutions on a full-time, and a permanent basis changed the nature of this affiliation by removing the external client. It also introduced a new relationship of dependant employment on a single source of work and caused the regulating professional Society to re-examine its relationship with this subset of professionals (Nova Scotia Barristers' Society, 2012).

Unlike the private sector lawyers who can build a practice across a variety of sources of work, the public sector prosecutor does not "drum up business" but rather waits for it to come through the door. All criminal prosecution in Canada is now conducted by public sector workers. In each Canadian province and at the federal level of government, there is a distinct organizational unit responsible for criminal prosecutions. The delegation of this activity to professionals within a dependent employment relationship shifts the control of terms and conditions of employment from the purview of the professional to the bureaucracy of the civil service. The autonomy to define one's work and apply one's tools (in this case specialized knowledge) can now potentially be fettered by an employer beyond the scope of the professional body.

Although the lawyer in a professional service firm can also be viewed as a dependent employee, the employing organization is comprised of professionals and ownership of the firm rests with partners who are themselves members of the profession. This is not the case in a heterogeneous organization like the civil service where management policy is ultimately directed by professional managers and elected officials. Though research has noted the control of professional work in all forms is increasingly subject to managerial hierarchies beyond the profession (Leicht and Fennel 2001), yet public prosecution stands somewhat apart as a form of small specialized law firm within government. Prosecutors are generally supervised by other prosecutors and management is promoted, if not from within the specific unit, at least from within another provincial or federal prosecution unit. In several instances, this prosecution unit reports directly to the legislature and not through an elected Minister of the Crown. Yet these prosecution services are embedded within the civil service and subject to human resource policies and management practices developed for the entire civil service (Campbell, 2010;

Ghiz and Archibald, 1994): pay, career mobility and performance evaluation are controlled by the central agencies of government and increasingly focused on demonstrating accountability and fiscal restraint. Public prosecutors are faced with two pressures that urge them to collectivize specifically as prosecutors: the civil service context reinforces their unique status as legal professionals controlled by other legal professionals and the consolidation of all prosecution work inside government isolates them from the rest of the legal profession.

The legal profession is renowned for the extent to which it values autonomy; autonomy which has been closely tied to traditional private legal practice and self-employment. As a result, lawyers have been very reluctant to embrace any form of collectivism in the workplace. The legal profession's values are expressed as codes of ethics and a duty to the public interest. These values are inculcated in students from the earliest days of law school training. Socialization of new lawyers to a common world view perpetuates professional norms and upholds individual discretion in decision making and independence as the profession's highest ideals (Harrison, 1994). Other occupations, such as teachers and nurses, have existed in structured permanent employment relationships with a public sector employer for much longer than the public prosecutors (Campbell and Haiven, 2012). These other professions have developed collective bargaining over terms and conditions of employment, but lawyers have traditionally been statutorily excluded from bargaining.¹

Canadian public prosecutors, however, broke away from professional tradition to form Crown Attorneys' Associations in all ten provinces (Campbell, 2010). In half of these provincial jurisdictions, the associations have achieved collective bargaining while the rest are moving towards this status with the support of a strong national association. In Nova Scotia, the struggle took the extreme step of an illegal strike in June 1998, shutting down the courts for two days. This attempt to pressure the employer into meeting demands for an independent salary setting mechanism was successful and talks eventually led to voluntary recognition of the Crown Attorneys' Association as the bargaining agent for public prosecutors.

Labour Process

Armstrong (1987) challenges whether there is such a thing as a professional labour process because professionals are aligned closely with management interests. Several professionals in this study raise another labour process dilemma when they say their work and sense of professionalism is part of "who they are" and is not separate from "what they do". Their whole being defines their labour process capacity. The professional labour process presents challenges of identity, interests and competing loyalties. These challenges are not insurmount-

able, however. Professionals do unionize and they do bargain collectively over the terms and conditions of their work. They are able to describe their labour process and to delineate their scope of control. This is due in part to the management structure these employed professionals face. Generally, nurses, librarians, teachers, in some instances university professors, physicians, and lawyers all face a management structure of peer and colleague supervision or governance, over which reigns a higher administrative authority typically not drawn from the same profession. While some professionals may be sheltered to a greater extent from contact with this administrative authority, public servants are in direct contact on a regular basis with their employer who is outside of the profession and whose policies and direction stem not from the norms of the profession, but from public management priorities. Public prosecutors consistently identify their grievance with the employer as a distinct aspect of their struggle, and separate it from management and direction of daily tasks and caseload.

The employer of large numbers of professionals in a heterogeneous organization like the public service is able to redefine the scope and form of professional work by limiting some types and aspects of it, by relegating other types of work to “task” status and delegating these to semi- or non-professionalized workers. Nurses in public hospitals are a case in point when they resist the redefinition and restructuring of the patient bed bath, a critical setting for the application of nurses’ tacit knowledge which draws upon her training and experience.

We are very very concerned as a union that our profession is being eroded; it’s unclear now whose responsibility is what. A bed bath now is a ‘task’; doing the bath you may not say is nursing but we kind of think that that’s when we get our best assessments done. (Nurse 1)

A move is being made to take this “task” away from nurses and delegate it to unregulated, non-professionalized personal care workers. The size of government as an employer means such job design decisions affect a majority of professionals in a number of professions. Any move to limit control over the application of specialized tacit knowledge threatens professional autonomy. Professional practice becomes subordinated to bureaucratic control in the public sector through policy directive and work rules. At times, expert knowledge risks being downgraded.

Professionals and their labour representatives contacted in this study consistently stated that the professional bodies regulating professions do not represent the individual workers. Professional societies and colleges take self-interest and cloak it in the public interest which they are charged with protecting through regulation of members. The societies’ control extends only to norms however, and cannot reach to the individual circumstances of workers. So the working conditions, which are the material aspects of professional practice, are under

control of three entities: the professional society for admission and license, the professional manager for task delegation and control, and the employer who enforces public accountability through policy directive (Haiven, 1999). There is compelling evidence then for the existence of a professional labour process in dependent employment in the public sector. The question remains what mechanisms are best suited to establishing and maintaining control over that process? How do professionals navigate the terrain of collective bargaining while maintaining their professional membership and status?

Occupational Community

The mechanism through which this control is accomplished is the occupational community. An occupational community (OC) brings together professionals with shared interests, employment conditions, employer, or technical discipline and forges personal relationships that support the individuals and their careers (Salaman, 1971a; Van Maanen and Barley, 1984). In addition to the bonds of the broader profession itself, an OC develops around the unique characteristics of a particular group of workers. The existence of an OC provides its members with an opportunity to take actions that the profession as a whole would not or cannot. The occupational community creates a milieu in which those actions make sense and in which support for the actions is strong, thereby reducing the risk associated with them. OC is a resource as well for workers who may be or feel marginalized in some way (Salaman, 1971a). Van Maanen and Barley (1984) state that occupational communities may evolve into unionization or professionalization, and they position the OC as a precursor to those other more regularized forms of association and struggle. This paper contributes another view of OC; a view that demonstrates an OC can grow up within a workplace occupied by professionals as a secondary organizing process. Professionalization and resistance to incursions on labour process control are evolving and are based in the social realm as much as in the structural aspects of the profession and the workplace. In the context of a fully realized profession like the law, the subdivision of the profession into distinct specialties provides an opportunity for OC to arise post-professionalization.

Occupational communities (OC) arise among people who affiliate on the basis of their occupation and develop relationships that extend beyond the content of daily tasks to sustain their social lives in a meaningful way. This network of relationships crosses the boundaries of work into personal lives and reinforces the norms of the occupation across different life interactions; these interactions help to create an identity uniquely based on the occupational community (Salaman, 1971b; Van Maanen and Barley, 1984). One of the features of occupational communities is their separation from society as a distinct group (Sandiford and Seymour, 2007). Occupational communities are different from other groups that

form at work due to the intensive nature of their interactions both on the job and outside of the workplace, and the strength of norms and identities that develop based on the nature of the occupation's work. Members of an OC share an occupational value system and culture independent of the employing organization's culture (Salaman, 1971b: 390).

Many studies of occupational community address workers' social relations that extend beyond the workplace. Studies of railwaymen, architects, ship builders, police, fishermen and jazz musicians described by Salaman (1974) reflect the merger of work and non-work lives. More recently, studies of cruise line workers (Lee-Ross, 2008), hotel workers (Lee-Ross, 2004), pub workers (Sandiford and Seymour, 2007) and computer programmers (Marschall, 2002) describe the inclusiveness of work situations that Salaman (1974) says is a determinant of occupational community. For example, organizational embrace may be so extensive that all life activities involve workers at work. Cruise ships, some jails and formerly nurses' residences are instances of this inclusive nature of work situations. Pervasiveness of norms and activities may also bind members together and the professions clearly establish this pervasiveness through training and education, testing, and apprenticeships. Restrictive factors such as time or travel can also limit non-work activities, resulting in workers being out of synch with the rest of their social world and thus completing their non-work activities together or in a similar manner.

Marschall (2012) and Lee-Ross (2008) summarize specific characteristics of occupational communities as follows:

- Occupational culture and job characteristics set norms that extend outside the workplace. In particular, work may be completed under extreme conditions, danger, or place unusual demands on members, and occupation tasks influence friendship and lifestyle patterns.
- There is a clear distinction between insiders and outsiders, and members of the occupation form a reference group for themselves; their social value is defined as a unique contribution they make to society; members control a body of esoteric knowledge, skills or expertise and resist the codification of this knowledge.
- The cultural norms of the occupational community are distinctive and understood by community insiders; occupational culture permeates the lives of members outside of work.
- Members embrace ideologies that favour a positive self-image and confer social value of work tasks ("what we do is good for society" for example, in the case of prosecutors).
- Marginalization or a diminished sense of status also contributes to the formation of an occupational community.

Prosecutors certainly experience the pervasiveness of the profession; their behaviour in many work activities is influenced by their training and the conduct guidelines of the Barristers' Society. But as the literature (Salaman, 1974; Van Maanen and Barley, 1984) indicates, pervasive norms alone are insufficient to forge an occupational community. Furthermore, prosecutors do not exhibit any extraordinary restrictive factors beyond the long work hours many professionals experience in the current economy.

The organizational embrace of most Canadian Prosecution Services does not extend to non-work activities; however, it does restrict the practice of prosecution to those who are employed by the service, closing off prosecutors from the rest of the profession by virtue of their employment. Gathering prosecutors together in a single place of employment is an important structural feature of the occupational community; a feature that reinforces the behavioural norms that govern the work of prosecution. Prosecutors share close proximity to others practicing the same specialty and also share working conditions. These commonalities foster a sense of identity among prosecutors that codes of ethics and membership in the profession's regulatory body alone could not achieve. This is an example of Giddens' (1979) structuration, where the structure of the institution and the actions of individuals are mutually reinforcing. The employment structure gathers the prosecutors together and, in so doing, they grow a bond based on working conditions and on shared professional circumstances. Employees of the Prosecution Service grow together in their unique experience of prosecution and they turn to one another for support and in-house continuing education. This internal mutual support further reinforces the normative power of criminal prosecution and of the employing organization. Prosecutors begin to develop an organizational culture to accompany their professional practice by virtue of being dependent employees. In contrast to the prosecutors' situation, the civil lawyers in the Department of Justice are dispersed across government, often as single solicitors in a client department. The civil lawyers did not develop an occupational community during this period of struggle.

Prosecutors do not experience inclusiveness of work situation in the same way as other occupations cited in the literature; they do not live among their colleagues and are not forced to conduct their non-work activities in unusual times or places. Many contemporary workers find themselves in alternate work arrangements or working extended hours, so this dimension of occupational community is much more difficult to interpret and analyse than has been the case in the past (Lee-Ross, 2004). The impact of social relations on prosecutors' occupational community seems limited to a single aspect of inclusiveness, close friendships. Both qualitative and quantitative studies have

been done of the number of friends and the type of contact members of occupational communities have with other members (Cannon, 1967; Gerstl, 1961; Lee-Ross, 2008; Salaman, 1974). Almost without exception prosecutors interviewed in this study indicate the majority of their five closest friends, and especially their two closest friends, are also prosecutors. These friends are current or former co-workers. Prosecutors base their stories of friendship on the idea of a shared set of values in a manner that echoes the way in which they describe their choice of career. Underneath these strong values lies an ideology of justice and fairness that crosses over from the work practices to other aspects of life.

OC forms in two distinct contexts: within and beyond organizations. OC forms within specific workplace occupations such as composers, typesetters, railway workers (Cannon, 1967; Salaman, 1971b) where workers in the occupation are gathered in one location. OC also forms internally in organizations when workers are part of a broader occupation that is segmented by specialty, and this specialization can, in turn, lead to a new occupational community that spans specific workplaces (Marschall, 2002); OC reaches beyond the single organization and encompasses members in the occupation within an industry or sector.

OC also develops beyond employing organizations, as in the case of architects, dentists, and advertising executives (Gerstl, 1961; Salaman, 1974) where the occupation acts as a network linking individuals who have shared a common training and early occupation, but not common employment. There are varying degrees of professionalization (Krause, 1996) of these occupations, with different levels of formalized rules and self-governance. Yet clearly each occupation shares common characteristics. When a profession is more fully realized the independent workers, like dentists (Gerstl, 1961), still exhibit the strength of weak ties across social networks (Granovetter, 1983). The strength of ties literature supports the notion that cross organizational bonds support shared values and enable action, which is also a feature of occupational communities.

Research shows that occupational communities are instrumental in achieving a variety of ends. They reinforce identity and cultural norms (Davis, 1986), aid in conflict resolution and collaboration (Elliott and Scacchi, 2008), support information seeking (Pickering and King, 1995; Sundin, 2002) and support collective bargaining strategies (Nelson and Grams, 1978). OC may also facilitate the ability of professionals to embrace both an exclusive (professional) and a subordinate (collective bargaining) closure strategy, explaining why public prosecutors form associations and seek collective bargaining even though their socialization leads them to believe otherwise.

Methodology

Data for this study were collected in two ways: through focus groups with professionals including nurses, lawyers in private practice and university librarians; and in a series of semi-structured interviews with members of the legal profession across Canada. Interview participants had work experience as provincial or federal public prosecutors or as private practice lawyers who conducted prosecutions under contract with a provincial government. Candidates for interviews were identified through personal contacts within a national federation of associations representing crown counsel and snowball sampling guided by the research question generated a diverse group of responses. Interviewees worked in Nova Scotia, Ontario, and British Columbia. Data collection continued until saturation was achieved, with no new themes emerging from the discussions. A total of sixteen prosecutors provided data for analysis, 11 men and 5 women with experience ranging from less than 5 years to 30 years in prosecution. Five additional lawyers in private practice and four nurses also contributed their stories to the study.

Two broad questions were posed to study participants: tell me the story of your career and tell me the story of the prosecutors' struggle for collective bargaining. The resulting personal narratives were transcribed and complemented with archival material from the media and employing organizations, as well as histories of the legal profession. Data analysis was based on the whole story (Reissman, 1990), as well as its component parts, using a thematic and structural analysis (Reissman, 2008), noting themes, common stories, critical events and specific language. Four themes illuminating occupational community are discussed in detail below: shared values, key relationships, marginalization and injustice.

A Distinct Group

In an OC, workers share a common life and are separate, in some way, from the rest of society (Salaman, 1971a). Participants in this study reflected their common life through training and a shared language:

you identify yourself in a certain way because you're trained in a certain way. It's a way of life ... it's easier to have a conversation with a lawyer in a lot of ways than it is to have a conversation with a non-lawyer mind you, because you are trained to think a certain way (Lawyer 1).

In my life I guess I think that my wife and kids would say that it's not so much a question of what I do for a living, it's what I am. (Lawyer 2)

Crown Attorneys, Legal Aid – they are experts, outstanding people... in court all the time... [they] deal with criminal law all the time. There aren't really any [criminal law] dabblers in private practice. (Lawyer 15)

Another characteristic of occupational community is a sense of involvement in work and an insider's view that differs significantly from outsiders (Van Maanen and Barley, 1984).

It's an area of practice [where] a small group of individuals come together and work together closely and interrelate on a daily basis. And you do develop a little niche; it's a specialty. You become insulated or isolated from the greater practice of the law. [Y]ou have different issues, you don't have the same issues as the private practitioners would have. So the group [prosecutors] works together much more cohesively and socially are close because of the smaller number. (Lawyer 3)

There's no surprises (sic) when I come to the court, for the other side. Family litigation, all that kind of stuff, there can be surprises back and forth... you can manipulate, you can do what you want as long as you stay within the ethical boundaries, right? But we're bound by different rules that don't allow us to do those kinds of things. (Lawyer 4)

Values

Members of an OC share values as well. A common refrain among prosecutors included "I never intended to become a lawyer" and "I did not plan to work in prosecution/criminal law". Only one lawyer of all the prosecutors in this study indicated that they knew they wanted to be a lawyer from an early age, and one other lawyer said he knew through law school that his preferred field was criminal law; the rest did not know they wanted to practice criminal law until they had completed their articles and had begun work. In most cases, it was a chance exposure to a criminal case, or a short assignment in Legal Aid, that attracted prosecutors to the Criminal Bar.

I'd always wanted to be a lawyer ... I expected, you know, cymbals and fireworks when I was called to the Bar and actually didn't feel any different so I thought maybe 'what about this [prosecution]? (Lawyer 5)

When I was in commerce (laughing) oh I was going to be a chartered accountant whoppee, and, and then I took a course in commerce called law and business administration in Canada and that was just 'oh wow I love it' and I aced the course; so I did apply to law school and I got in and so that was that. (Lawyer 6)

Well, I certainly didn't have any plans growing up to be any kind of licensed professional. (Lawyer 7)

I was in third year law school – I was 22 years old. I stood before the judge, and swallowed hard. I was so friggin' nervous I couldn't get any words out – I probably read from my sheet (laughter). I couldn't imagine myself being a crown attorney. (Lawyer 6)

In telling the stories of their careers, participants set prosecution apart as a hidden and mysterious aspect of an already mysterious profession; they further distance themselves by disavowing any initial motivation to practice this type of

law. As their stories progress, however, they become embedded in their chosen practice, and clearly cannot escape it. The practice of law becomes integral to their support network. Many describe criminal law as a calling, and talk about their personal values and a moral code.

And we're all dealing with the same subject matter. You know, it can be very emotional and difficult at times, dealing with the stuff we deal with, so it's sort of unique that way as well. You see a lot of hurt and a lot of pain when you're dealing with criminal law and it's a certain segment of society that you see often, too, unfortunately. (Lawyer 3)

It's more of a calling. (Lawyer 4)

A key informant talked about the variety of ideological perspectives present in the Criminal Bar, and how individuals seek out environments, such as court rooms with specific judges, in which to practice.

We usually kind of gravitate to the judge and court that you feel is appropriate for your personality and ideological slant... Attila the Hun is a little to my left. (Lawyer 4)

He admits his is an extreme position and other prosecutors fall at different places along a range of ideologies. Another participant described his career as a desire to be some kind of professional, to give back to his community and to "do what's right". The focus of participants who are prosecutors lay beyond their own career in a way that other professionals in the study, including private sector lawyers, did not express. The centre of career for these other studied participants was themselves and their own practice.

In the legal profession, apprenticeships (articling) are often located within the private practice of a senior member of the profession, and traditionally lead to offers of employment. The prosecutors in this study all completed articles in the private sector, in small to medium sized law firms in most instances, with a rotation or assignment to some aspect of the criminal court. The social norming of the apprenticeship experience is thus general to the profession. It is within the practice of prosecution, beyond the apprenticeship stage, that additional norms and characteristics emerge to unite this sub-group of professionals. Prosecution emerges as a calling, a more noble form of legal practice, without the focus on billable hours and business drive. This both compensates for the lower financial status and also mobilizes prosecutors to collectivize in order to address their perceived financial inequity. In public practice there is less pressure for business development, "billable hours" and client recruitment, however the legal profession appears to rank subspecialties in a hierarchy, with public sector work and prosecution fairly low.

Well if you base it on pay rates, the crown attorneys are at the bottom! Government lawyers are at the bottom. Civil lawyers are at the top, in private practice [then] the Barristers who go to court. Corporate lawyers would be next. (Lawyer 6)

Within the criminal Bar are career choices: private defence work, public prosecution and publicly-funded defence work known as Legal Aid. There is a distinct division between the public and private sectors. Most lawyers have chosen one or the other environment, and the few who have moved between public and private practice tend to prefer one over the other, and they tend to gravitate back to where they feel most comfortable. It is also not easy to make such a move.

There is not a lot of work there [in the private bar] that you could just leave government and start up a practice. That's a long way to say you can't just open up a boutique criminal practice. It's hard to leave. (Lawyer 6)

The captive aspect of dependent employment further reinforces the OC among prosecutors and is entwined with the move to collective bargaining:

There was a groundswell among crown attorneys to say look we're professionals and we're not being treated in a way that's proper. We were employees of government and after you have worked for a while it is hard to leave, you are captive here. We did not receive compensation for the fact that we had devoted ourselves to careers to a particular practice of law. (Lawyer 6)

Marginalization

Prosecutors also indicate that they are to some extent marginalized within the profession and within the workplace, another feature of OC (Salaman, 1971a). The choice to pursue a career in the public sector is trivialized; "you were just considered as ...throw-aways. And if you couldn't get a job, then you were a crown attorney; if you couldn't get a job, then you were a government lawyer" (Lawyer 11). Marginalized workers also often engage in "dirty work" as indicated by this participant: "Right in the meat grinder courts, you know" says Lawyer 12, describing the baser side of human behaviour encountered on the job. Compared with other legal professionals, prosecutors had limited access to resources:

We didn't have any support staff. We didn't have computers. We used to have to ... document notice saying you want to admit probation orders and stuff into evidence, and we used to handwrite them. (Lawyer 13)

The physical facilities were a problem. And of course that is the largest criminal court house in the province and about a third of the prosecutors would be there. I mean the office space was cramped and inadequate. The criminal records and the file keeping were all done on a recipe card system with drawers of recipe cards. (Lawyer 14)

Key Relationships

Participants refer to prosecution as a "subculture" with strong interpersonal support for the demands of the work as well as the demands of work/life balance. The line between work and personal lives was blurred in many of the sto-

ries; participants might begin to describe a situation involving a legal decision and weave into it personal aspects of their friendships with co-workers.

So, when I say criminal law I mean our criminal bar is a very small collection of individuals who specialize it in and it's a very close, warm bar because of the nature of the business. (Lawyer 3)

This closeness is contrasted with other lawyers in general practice when this same participant says:

General practice is...much broader and wider, so you would have different sub specialties within that but they [criminal lawyers] have a lot more in common collectively because you're applying the same law, the same procedures. ... it's a smaller group. So the [criminal] group works together much more cohesively, and socially are close because of the smaller number. (Lawyer 3)

That's one of the great things about working here, there's a lot of camaraderie, a lot of discussion about whatever problem we have (Lawyer 9)

Many participants described the amount of frequent contact with opposing counsel as an important differentiating aspect of the criminal bar, and of prosecution. Prosecutors will see the same faces on a daily basis whereas in private practice, especially in civil litigation, repeated contact is very infrequent.

In describing the problems with one particular manager/leader, I challenged one participant when I said "now, this is someone who is a member of the profession" at which the subject laughed and said: "Well, he's a lawyer". Lawyers have multiple affiliations and in this case the leader was part of another very dominant organization and culture that represented his first affiliation. The rank and file public prosecutors were part of a second affiliation, still within the broader profession of law. This was an important moment in the subject's story because it distinguished between the idea of specialization within the profession as simply a further evolution of professionalization, and the notion that OC arises from a different set of characteristics and circumstances that are linked to the profession, but do not evolve in the same way directly from it. In other words, an OC is not an automatic outcome of being a member of the profession and of sharing a specialty.

OC develops through a camaraderie built on trust and shared experience within the confines of a very small, select group of individuals that practice in places and in ways that are unknown to most others within their community and within their profession. The legal profession in general is mysterious to the general public, and this feature contributes much to its identity as a profession, but the OC in prosecution emerges because the circumstances of employment isolate workers. Public prosecutors do not form an occupational community solely because they practice a specialized form of law. They are gathered into an employment

setting where their circumstances of human contact and material conditions of work forge a subgroup within the organization itself that unites these workers within their professional boundaries, highlighting the application of discretion in particular. Yet OC is rooted in the material conditions of employment and features that are quite distinct from elements that contribute to professionalism. Prosecutors describe their experiences in terms that highlight their professional expertise and specialty and at the same time grant them freedom to exercise a usurpatory strategy within their employing organization.

Professionals are concerned for the protection of their discretion and how discretion is exercised in the workplace: “basically our job is all about discretion and independence” (Lawyer 10). They are also concerned about interaction with their regulatory body and with their scope of practice.

The crown [prosecutor] makes quasi-judicial decisions and can't be influenced by outside bodies such as the Court or the Bar Society. They can't say on the one hand you're independent, we trust you to be independent from political interference, but not from the Bar Society? No! (Lawyer 6)

We're to proceed on all domestic violence files, even if the victim is not cooperative. So, instead of letting us use our discretion, which we're being paid well for, we're told to put a set of blinders on and move forward until we run into a brick wall. [whispers] but we don't. You know why? Because it's stupid and my common sense trumps what somebody sitting in an office far, far away believes should be going on and really, you know what? If you don't like it, come down and tell me. (Lawyer 4)

So participants looked for ways to protect this discretion. Professionals can retrench into a professional society with further segmentation of work, specialization and credentialing, they can resist, and they can also look for alternate means of closure, namely collective bargaining. Faced with workplace policies that limit prosecutors' professional discretion, prosecutors mobilized to seek collective bargaining as a way to protect their professional power. They accomplished this by using specific language that made sense in both the professional and labour contexts.

Injustice

It became apparent that the prosecutors in this case study reconciled their competing loyalties to two different forms of collective action through the use of very specific language around injustice. The notion of justice is at the heart of the prosecutor's work role, and is also an essential rallying point for collective bargaining. Many lawyers noted they never believed they would ever engage in job actions: “I thought going to law school meant I would never have to do something like that [go on strike]! I thought going to law school just exempted

me from labour issues" (Lawyer 14), yet this person actively supported a strike in her workplace. Prosecutors expressed a sense of injustice over pay, over working conditions generally, and over the application of policies.

The thing that bothered me the most during all of that [time] was that people that practice criminal law spend their professional lives making sure that everybody gets their rules applied the same way to them. We get paid to make sure that fairness and transparency and the rules of natural justice apply to the person charged with the most egregious thing out there and it didn't feel like we were getting that in return. It drove me crazy. So I supported [the strike] completely... there was no grievance mechanism other than going back up through the same people that would have imposed the discipline. [T]he fact that we had to fight so hard to get such basic things was astonishing to me, just astonishing. (Lawyer 14)

Occupational community often provides social support in work contexts that are isolating (e.g. dentists, railway workers). For prosecutors, dimensions of OC other than the social support rise in importance. Control over esoteric knowledge and a sense of marginalization dominate their OC. An OC can nurture mobilization for collective representation (Kelly, 1998) because it draws on elite, independent features of the profession, the control of esoteric knowledge and its application, to reinforce professional values while it permits the use of collectivist strategies that draw strength from the dependent or subordinate place of prosecutors relative to their employer.

Conclusion

Shared values are strongly evident among study participants and, for some, these values are rooted in a faith community or moral code that they expressed quite openly. Several studies participants who are prosecutors did not plan to be lawyers, demonstrating almost a reluctance to enter the profession. Establishing this point helped participants to distance themselves from pecuniary motivation for their work and their collective bargaining struggle. This distance facilitates the development of a distinct occupational community among prosecutors. Financial gain was clearly an important part of the early motivation to bargain collectively:

there was a pretty sizable [wage] gap between people of the same vintage in our service and people who had gone on to practically anything else, whether it was the federal government or private practice (Lawyer 10)

Lest the case of public prosecutors be criticized as merely a case of labour activism in pecuniary self-interest, it is worth noting that financial considerations alone did not sustain collective action. Many prosecutors indicate that the salary situation has resolved itself and wage setting mechanisms now operate success-

fully. The collective bargaining process continues with demands for further workplace control. The various Crown Attorneys' Associations across Canada have maintained energy and focus on the struggle for control, expanding the scope of bargaining and winning incursions into management rights (Radio Canada, 2011). In addition, the national association of Crown Counsel continues to gather strength and credibility. The existence of an occupational community among public prosecutors has fostered this collectivism (Campbell, 2010).

Prosecutors are motivated by the norms and expectations of their professional membership and by comparison with others in their law school class push for material gains and better working conditions; success at the bargaining table enables them to maintain their status as members of an elite profession. Collective labour action, as a result, places prosecutors in a conflicted position. Prosecutors balance conflicting loyalties to profession and collective labour action through an occupational community, one which coalesces around a notion that resonates with both the professional and the unionist: justice. OC based on a discourse of justice facilitates the mobilization of prosecutors.

Professionalization, collective bargaining, and occupational community are all instruments used by prosecutors in an attempt to control their labour process. These professionals develop an OC based on their professional specialty. The occupational community is rooted in an ethos that speaks to both professional ideals and the dependent employment condition. The OC bridges the apparent gap between two worlds of closure. OC allows professionals to move back and forth between closure strategies, negotiating different identities as professional, prosecutor, employee, and bargaining association member.

Collective bargaining was not achieved solely because crown prosecutors moved from self-employment to dependant employment. This change did focus attention on prosecutors' diminished power to control their labour process; however the status of permanent employee led to a strong occupational community among criminal prosecutors. An OC emerges among workers when they share an occupation or a workplace. Such a community is drawn together through a number of distinct elements, including intensity of involvement in work, extended relationships with co-workers that bridge home and work life, and socialization to a work identity (Salaman, 1971a). The current study of prosecutors indicates that intensity of involvement and socialization to a work identity are very strong elements of the profession in general. Salaman's work on architects reveals how professionals will form an occupational community beyond their own workplaces, which is often true of lawyers in private practice. However, marginalization also plays a role in nurturing OC. Members of marginalized groups share a common view of the role and importance of their profession and will be drawn together in an attempt to highlight the value of their occupation (Salhani

and Coulter, 2009). The existence of an OC among crown prosecutors draws on the foregoing aspects of their employment experience to support their pursuit of collective bargaining.

Public prosecutors share a strong social network; most of their friends are prosecutors, the result of friendships developed through workplace interaction and support. This is not unusual in and of itself. OC is a precursor to professionalization, and its strong social component can be expected to endure through formal professionalization processes and apprenticeships. However, when examined more closely we see that there is a subset of the profession that is coalescing as an occupational community post-professionalization. The stories collected in this study reveal the existence of occupational community that developed in just this way. The result of the move to captive or dependant employment and the erosion of the individual professionals' control over their labour process, a labour process based largely on esoteric knowledge, both contribute to the rise of an OC. On the one hand, the traditional forms of professional power are eroded, and, on another, new instruments of control emerge. The forces of bureaucratic control and OC act together to support collective bargaining among professionals who otherwise have been opposed to this strategy, claiming it is "unprofessional". Though knowledge work is at the heart of professions, professionals are organizing in new forms for delivery of knowledge intensive expertise (Muzio *et al.*, 2008). OC is an existing instrument we now see emerging within traditional professional forms of organizing. Further exploration of the operation of OC may assist us to understand in more detail how professionals bridge their two distinct strategies of social closure and how these notions might be applied to other types of professional workers and workplaces.

Note

- 1 The BC Health Services decision of the Supreme Court of Canada had the effect of removing this limitation; to date the threat of invoking this decision has been enough to advance the bargaining agenda of specific groups.

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SUMMARY

Erosion and Renewal of Professional Powers in Public Sector Employment: The Role of Occupational Community

This paper describes a case study of a particular form of knowledge worker; lawyers, and their efforts to achieve collective bargaining. Within self-regulated professions like law, the professional regulatory body controls much of the labour process and defines the body of professional knowledge. Apprenticeships, such as clinical locums in medicine and articles in law, play an important role in the transfer of labour process norms. However, more and more professionals seek employment in large organizations where the autonomy historically enjoyed by the self-employed worker and crafted in the confines of mentorships is increasingly subject to bureaucratic and administrative controls. In large employment settings rules and policies may interfere with workers' exercise of professional discretion and full utilization of their knowledge. The result of the erosion of traditional labour process power under bureaucratic forms of organization leads professionals to seek alternate forms of control. Many turn to collective bargaining as a mean to wrest back control over the application of discretionary judgment from large, often public sector, employers.

In the case of the legal profession in Canada, a great many lawyers are employed in the public sector. The subspecialty of criminal prosecution was broadly framed as a service private sector lawyers once provided on a fee-for-service basis, but until relatively recently it was not a distinct area of practice to which one dedicated a career. The regularization of prosecution in the public sector results in a strong sense of occupational community among public prosecutors. The forces of bureaucratic control and occupational community act together to support collective bargaining among professionals who otherwise have been opposed to this strategy, claiming it is "unprofessional".

KEYWORDS: Knowledge worker, professionals, lawyers, workplace control, public sector.

RÉSUMÉ

Érosion et renouvellement du pouvoir professionnel dans les emplois du secteur public : le rôle de la communauté professionnelle

Cet article présente une étude de cas d'un type spécifique de travailleurs du savoir, les procureurs de la Couronne, ainsi que leurs efforts pour parvenir à négocier collectivement. Dans les professions autorégulées comme le droit, l'ordre professionnel exerce généralement un contrôle sur la plupart des processus de travail et détermine l'ensemble des connaissances professionnelles. Les modes d'apprentissage, tels l'internat clinique en médecine ou la rédaction d'articles en droit, jouent

un rôle important dans le transfert des normes de travail. Toutefois, de plus en plus de professionnels obtiennent leur emploi dans de très grandes organisations où l'autonomie, naguère si chère au travailleur autonome et développée dans le cadre du mentorat, s'avère davantage sujet au contrôle bureaucratique et administratif. En effet, dans ces grandes organisations, les règles et les politiques établies par les administrateurs peuvent venir interférer avec l'exercice de la discrétion professionnelle de ces travailleurs et la pleine utilisation de leur savoir professionnel. Le résultat de l'érosion du pouvoir dans le processus traditionnel de travail, sous la pression des formes bureaucratiques de l'organisation, conduisent ces professionnels à chercher des formes alternatives de contrôle. Plusieurs voient dans la négociation collective un moyen de reprendre à l'employeur le contrôle dans l'exercice du jugement discrétionnaire.

Dans le cas de la profession juridique au Canada, un grand nombre d'avocats sont employés dans le secteur public. Le domaine des poursuites criminelles, comme sous-spécialité du droit, a d'abord été le fait d'avocats qui fournissaient leurs services en contrepartie d'honoraires. Ainsi, dans le passé, cela ne constituait pas un domaine de pratique distinct permettant d'y effectuer une carrière professionnelle. Par la suite, la régularisation des poursuites criminelles dans le secteur public a eu pour résultat l'apparition d'un fort sentiment d'appartenance à une communauté professionnelle chez les procureurs de la Couronne. Les forces liées au contrôle bureaucratique et la communauté professionnelle agissent de concert pour inciter ces professionnels à adhérer à la négociation collective, des travailleurs qui, autrement, étaient opposés à cette stratégie, la jugeant « non-professionnelle ».

MOTS CLÉS : travailleurs du savoir, secteur public, professionnels, avocats, procureurs de la Couronne, contrôle du travail.

RESUMEN

Erosión y renovación del poder profesional en los empleos del sector público: el rol de la comunidad ocupacional

Este artículo describe un estudio de caso de una forma particular de trabajador del saber; los abogados y sus esfuerzos por lograr negociar colectivamente. Dentro de las profesiones auto-reguladas como derecho, el cuerpo regulador profesional controla gran parte del proceso de trabajo y define el conjunto de conocimientos profesionales. El aprendizaje, como el internado clínico en medicina y la redacción de artículos en derecho, juegan un rol importante en la transferencia de normas del proceso de trabajo. Sin embargo, son cada vez más los profesionales que obtienen un empleo en las grandes organizaciones, donde la autonomía ejercida históricamente por los trabajadores autónomos, y modelada en los confines del mentorado, es cada vez más sujeta a los controles burocráticos y administrativos. En las grandes organizaciones, las reglas y políticas pueden interferir con el ejercicio de la discreción profesional de dichos trabajadores y con la plena utilización de su

saber profesional. El resultado de la erosión del poder en el proceso tradicional de trabajo bajo formas burocráticas de organización lleva los profesionales a buscar formas alternativas de control. Muchos se inclinan por la negociación colectiva como un medio de recuperar el control en la aplicación del discernimiento discrecional propio a las grandes organizaciones incluyendo las del sector público.

En el caso de la profesión jurídica en Canadá, una importante cantidad de abogados son empleados del sector público. La subespecialidad de la persecución criminal fue durante largo tiempo asignado a abogados del sector privado cuyos servicios eran remunerados bajo la forma de honorarios. Pero, esto no constituía un campo distinto de práctica profesional a la cual dedicar una carrera. Desde hace poco, la regularización de la persecución criminal en el sector público ha llevado a la emergencia de un fuerte sentimiento de pertenencia a una comunidad profesional en el seno de los fiscales públicos. Las fuerzas del control burocrático y de la comunidad profesional actúan conjuntamente para obtener la adhesión a la negociación colectiva de parte de estos profesionales, quienes, de otra manera, estarían opuestos a esta estrategia, calificándola de no profesional.

PALABRAS CLAVES: trabajador del saber, sector público, profesionales, abogados, fiscales, control del trabajo.