

**AGREEMENT BETWEEN THE CANADA BORDER SERVICES AGENCY
AND
THE PUBLIC SERVICE ALLIANCE OF CANADA**

**Review of reasonable necessity for CDT training and arming in order to accomplish
the various duties of CBSA Officers**

Overview

1. On July 27, 2007, the CBSA adopted a Duty to Accommodate (DTA) Strategy and Plan for the implementation of Control and Defensive Tactics (CDT)¹ and Arming. An important component of the Strategy is the establishment of occupational requirements for duties where CDT and in some cases, arming proficiency is a requirement. In order to ensure that the occupational requirements that are adopted by the CBSA for these duties are sound and in compliance with law and legal precedent, the CBSA is undertaking a comprehensive internal review of the duties identified in the DTA Strategy utilizing the test outlined by the Supreme Court of Canada in the decision of *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R.3, commonly referred to as the "Meiorin" decision.

2. Specifically, the goal of the review is to ensure that the conceptions of equality are explicitly considered in the design and implementation of workplace objectives. The review, among other things, will determine the least intrusive means of providing CBSA officers with the appropriate array of tools and training to enable them to deal with the unpredictability of human behaviour.

3. The CBSA will undertake the review in full and regular consultation with the Public Service Alliance of Canada (PSAC)/the Customs and Excise Union Douanes et Accise (CEUDA). During the review, site visits will be conducted as required in representative workplaces², including but not limited to a visit to the Detroit Canada Tunnel port of entry located in Windsor, Ontario, Pearson International Airport and the Gateway Postal Plant in the Greater Toronto Area.

4. The review will be conducted on a mode by mode basis, including land, air, marine, postal, commercial, inland and take into account the variety, divergence, size, staffing levels, nature of the operations and client interactions.

5. Upon completion of the review, the CBSA will engage an independent external third party to analyze the work done by Agency officials and to provide feedback and recommendations for adjustments to the conclusions, as appropriate. The external third

¹ CDT in this context includes Pressure Point Control Tactics (PPCT), Personal Protection Training (PPT), Use of Force and the current day Control and Defensive Tactics training program.

² Representative workplaces include airports, land, marine, postal, and commercial. They also include ports of entry where a small, medium and large number of BSOs work on shift at any one time, as well as consideration of intelligence and inland enforcement officials.

party will be free to conduct its work using any reasonable means including employee interviews and site visits.

6. A final decision on the reasonable necessity for CDT and arming within the meaning of the 3rd branch of the *Meiorin* test will be made by the CBSA following a careful review of the recommendations of the external third party and in consultation with PSAC/CEUDA.

Guiding Principles for the Internal Review

7. All parties will work in good faith and within the legal framework and obligations as set out in the *Canadian Human Rights Act*.

8. All reasonable alternatives up to the point of undue hardship will be considered.

9. The outcome of the review must respect public safety and the health and safety of all employees and the travelling public.

The Terms of Reference for the Internal Review

10. The review undertaken by the CBSA will consider the duties of CBSA officers with a view to assessing which will require CDT and, in areas that will be armed, arming proficiency. The report will include consideration of reasonable viable alternatives to CDT/arming proficiency.

11. The said review will be framed in such a way as to meet the test as established in the *Meiorin* decision and, in particular, will include but is not limited to the following:

(a) An assessment of whether the CDT/arming proficiency is rationally connected to the duties performed by the employee;

(b) If CDT and arming are determined to be reasonably necessary to accomplish the specific task or function to be performed then the CBSA will undertake a further evaluation of possible alternatives or means of achieving workplace objectives that may not require CDT/arming proficiency in consideration of the health, safety (of employees, travellers, and the Canadian public) and the costs of accommodating officers who are unable to complete the CDT/arming training.

12. Specifically, the review will:

(a) consider which CBSA officer duties require officers to be proficient in CDT and in the use of a duty firearm;

(b) in cases where CDT and arming proficiency is required, the review shall explicitly

consider the following:

- (i) job re-bundling
 - (ii) team work
 - (iii) modification of existing duties
 - (iv) non-site specific CBSA duties eg: CPIC call centre, Telephone Reporting Centre response, CANPASS registration, targeting, etc.
 - (v) Physical workplace restructuring; and
 - (vi) CBSA's "Doubling Up Initiative".
- (c) will include an analysis of all costs associated with the alternatives considered. These costs will be calculated by the CBSA, reviewed by PSAC/CEUDA, and verified by the external independent third party.

The Selection of an Independent External Third Party Reviewer

- 13. The selection of the external third party reviewer will be done in accordance with Government contracting policies and regulations and will be mutually agreed upon by the CBSA and the PSAC/CEUDA.
- 14. The formal Terms of Reference and Statement of Work (SOW) for the external third party will be mutually agreed upon by the CBSA and PSAC/CEUDA.
- 15. The PSAC will have an opportunity to make representations to the external third party reviewer within 21 days of being provided with a copy of the reviewer's draft report and prior to completion of the final report.

The Time frame for the Review

- 16. The time frame for the review (including the report of the external third party) will be agreed upon by the CBSA and the PSAC/CEUDA with an understanding that it will be completed no later than March 31, 2009. (Note: the objective is to complete the review prior to March 2009; however contracting logistics associated with the selection and engagement of an external third party may take several months to complete).
- 17. The following timeframes will be adhered to:
 - a) the establishment of the terms of reference, statement of work, and evaluation criteria for the external expert review to be agreed upon by December 1, 2008.
 - b) The internal review to be completed by February 28, 2009.
 - c) The evaluation of bids from external experts to be completed within 15 working days of receipt of bid submissions by the CBSA.
 - d) The external expert(s) to submit their final report within 3 months of issuance of the contract.

- e) The CBSA will evaluate the report and make its determination with respect to its conclusions within 30 days of receipt of the report.

Undertaking from the Parties Concerned

18. The CBSA will commit to suspending the implementation of the DTA Strategy until the external third party has presented its findings.

19. The CBSA agrees to suspend the completion of the implementation period set out in the DTA strategy (currently scheduled to be completed by February 1, 2009) until six months after the CBSA's determination with respect to the external third party reviewer's report has been completed.

Dispute Resolution

20. Every effort will be made by the parties to reach agreement. However, in the event of disagreement in respect of items a) through c) below, the parties agree to submit any disagreement to mediation with a mutually agreed upon mediator within 15 days of said disagreement.

- a) the time frame for the review;
- b) the Terms of Reference or SOW for the external third party; and
- c) the selection of the external third party.

21 a) The policy grievance currently at adjudication before the PSLRB (Board file 569-02-39) challenging the DTA strategy of July 2007 shall be held in abeyance following release of the adjudicator's decision in the matter argued on September 2nd 2008, until the occurrence of one of the events set out in 17c) below.

b) The CBSA having regard to the findings of the 3rd party reviewer shall make a final determination of the reasonable necessity for CDT and arming linked to the specific task or function to be performed and having regard to the site, staffing levels, size, nature of the operations and client interactions.

c) Where the PSAC disagrees with the decision(s) made in b), in whole or in part, such disputes shall be mutually agreed to constitute the remaining matters in dispute in Board File No. 569-02-39, provided that the policy grievance has not been dismissed by the adjudicator seized with the matter argued on September 2, 2008, or mediation has failed with respect to the items listed in 20 above and no agreement has been reached.

d) The PSAC shall retain the right to submit a complaint pursuant to section 10 of the CHRA with the CHRC in the event it disagrees with the CBSA's final determination referred to in paragraph b) above.

For the Union:

Alison Dewar
Signature

October 8, 2008
Date

counsel ALISON DEWAR
(Print Name)
For the Public Service
Alliance of Canada

For the Employer:

for Barbara Hébert
Barbara Hébert
Vice President Operations Branch
Canada Border Services Agency

October 8, 2008
Date