



**NATIONAL OFFICE MEMORANDUM
NO-37/2011**

DATE	December 3, 2011	PRIORITY	4. Information
TO	National Board of Directors & Branch Contacts (please advise members)		
RE	PSAC Policy Grievance and CBSA's Duty to Accommodate Policy		

In August 2007, the Public Service Alliance of Canada (PSAC) filed a policy grievance under the *Public Service Labour Relations Act*, challenging the CBSA Accommodation Strategy (the Strategy). The PSAC grieved that the Strategy was discriminatory and requested that it be rescinded. The PSAC also sought a declaration that the employer has a duty to accommodate to the point of undue hardship that would extend beyond the authority of the CBSA and encompass the public service as a whole. The grievance was denied by the Treasury Board and referred to the Public Service Labour Relations Board (PSLRB) where it had been held in abeyance pending a CBSA decision on bona fide occupational requirements. When the CBSA announced a decision in November 2010, the grievance was taken out of abeyance and scheduled for a PSLRB hearing in fall 2011.

In June 2011, the CBSA implemented a new Policy on the Duty to Accommodate. Prior to the commencement of the hearing, the employer submitted to the PSLRB that the policy grievance was moot given that the Strategy no longer existed. A hearing on the preliminary objection of mootness took place on November 1, 2011. The Adjudicator, Mr. Paquet, declared that the grievance was moot. It is important to note that in writing his decision, Mr. Paquet noted:

"Ms. Therriault-Power also stated that the CBSA agrees, in accordance with its 2011 accommodation policy, that if a BSO cannot complete the arming training, and if the duty to accommodate arises, the CBSA will in good faith, in consultation with the employee, and after an individual assessment of his or her needs, undertake to accommodate the employee to the point of undue hardship. Ms. Therriault-Power also testified that the CBSA will contact other public service departments in order to accommodate an employee who cannot be accommodated within the CBSA."

Mr. Paquet ruled the PSLRB file closed. Copies of the decision will be available on the PSLRB website once translated.

In contrast to the Strategy, the CBSA now recognizes legal responsibility to individually assess each and every accommodation request as is reflected in its *Duty to Accommodate Policy*.

If you have any questions, please contact the undersigned.

In solidarity,

Karen Church
National Equal Opportunities Representative, CIU