

2004 PSAC National Access Conference: Our Rights – Moving on Up!

Conference Background Paper

The Public Service Alliance of Canada (PSAC) will hold its fifth National Access Conference on September 30 – October 3, 2004 in Montreal, Quebec.

The PSAC has a long history of defending human rights and has been at the forefront in the fight for employment equity in our workplaces and in our communities. The PSAC supports the rights of persons with disabilities to live and work in society with dignity, autonomy and equality. The PSAC recognizes that persons with disabilities continue to be one of the most disadvantaged groups in society – both socially and economically.

Whether through legislative changes, political actions or collective bargaining, the PSAC will continue to fight to ensure that our workplaces and our communities are barrier free and free from discrimination.

The purpose of this background paper is to provide PSAC members with an opportunity to examine and discuss important issues involving disability rights prior to the 2004 PSAC National Access Conference. The background paper will examine the following:

- 1) Legal and social gains;
- 2) Emerging Issues; and
- 3) Links to the broader PSAC Vision.

1) Legal and social gains

There have been many human rights gains made in Canada since 1948 when *the Universal Declaration of Human Rights*, the first comprehensive document that outlined fundamental civil, political and social rights of all

people was adopted by many countries. Some key legal gains in Canada include the following:

- In 1947, Saskatchewan was the first province to enact a *Bill of Rights* which provided protection from discrimination on the grounds of race, religion, colour and national origin. However, it did not include protection from discrimination on the basis of disability.
- In 1960, the *Canadian Bill of Rights* was passed by the Parliament. For the first time, Parliament enacted legislation for the recognition and protection of human rights and fundamental freedoms. However, this legislation was applicable only to the Federal government and also did not provide protection from discrimination on the basis of disability.
- In the 1962, the first comprehensive human rights legislation was enacted in Canada, specifically Ontario. This legislation included the establishment of the country's first human rights commission.
- In 1970, the federal government enacted the *Public Service Employment Act*, employment legislation prohibiting discrimination in the public service.
- In 1976, New Brunswick becomes the first province to offer protection from discrimination for persons with disabilities.
- In 1977, Parliament adopted the *Canadian Human Rights Act* prohibiting discrimination in employment and services.
- In 1982, the *Canadian Charter of Rights and Freedoms* codified the right to equality for historically disadvantaged groups in Canada, including persons with disabilities. The *Charter* applies to all levels of government and is the supreme law of Canada. However, it does not apply to private corporations or service providers.
- In 1983, the federal government introduced the Federal Affirmative Action Program which focused on increasing the representation of women, Aboriginal people and people with disabilities in the federal public sector. In 1986, Parliament enacted the federal *Employment Equity Act*, which focused on increasing the representation of these three groups and visible minorities in the workplace. However, this Act did not apply to the federal public service until 1995.
- The most recent changes to human rights legislation has been in the North Territories. In 2002, the Northwest Territories enacted the *Human Rights Act* which expanded the list of prohibited grounds of discrimination, established an independent Human Rights Commission and put in place investigative and adjudicative processes for dealing

with complaints. In 2003, Nunavut Territories enacted its first comprehensive *Human Rights Act*. These new Acts in the Northwest and Nunavut territories replaced the ineffective *Fair Practices Act*.

The Canadian courts have helped to push the human rights and employment equity agenda forward since the 1940s. In the 1980s, the courts started to play a more active role in defining the rights of historically disadvantaged groups and interpret legislation in light of equality provisions in the *Canadian Charter of Rights and Freedoms*. In 1987, the Supreme Court of Canada developed jurisprudence on the duty to accommodate. However, it was not until 1999 that the Court clarified the positive obligation of employers and service providers to remove barriers for people with disabilities.

The PSAC has been very actively involved in the development and evolution of human rights legislation and jurisprudence. For example, the PSAC provided submissions and recommendations to governmental standing committees and organizations with respect to human rights and employment equity legislation.

In the grievance and human rights forums, the PSAC has also consistently defended the rights of people with disabilities to fully participate in Canadian society and in the workplace, as well as, to have access to benefits and services. When PSAC members were prevented from accessing the grievance procedure to deal with human rights issues due to legislative restrictions in 1999, the PSAC negotiated with the Canadian Human Rights Commission a process to allow human rights complaints that would be better dealt with through the grievance procedure to be referred to the grievance forum.

The PSAC also provided input when the Treasury Board Disability Insurance Plan was developed through the National Joint Council Committee in 1970. For the first time, workers were provided with some benefits for non-work related disabilities although in limited circumstances. However, it soon became apparent changes were required to the plan due to its restrictive qualification criteria and rigid adjudication process controlled by the insurer. The PSAC has been consistently seeking to improve the plan and remove barriers faced by members in accessing the plan.

While some gains were being made at the legislative levels, the PSAC has made human rights a priority for the Union. The PSAC has also adopted several human rights related policies, resolutions and educational courses that impacted all structures of the union. Some examples include the following:

- In the 1970s, the PSAC along with the broader labour movement, specifically the CLC and CUPE, focused their work on employment equality through affirmative action programs.
- In 1976, the PSAC Status of Women Committee was established. It later became the PSAC Equal Opportunities Committee for Women and in 1992, the PSAC Equal Opportunities Committee (EOC). As a standing committee of the National Board of Directors (NBoD), the EOC provides advice and recommendation to the NBoD on equity issues. Chaired by two Alliance Executive Committee (AEC) officers, it currently has 8 representatives from the four equity groups (Aboriginal members, racially visible members, members with disabilities and gay, lesbian, bisexual and transgender members) and 17 Component representatives. At the PSAC 2000 Triennial Convention, a resolution was adopted that gave the 8 representatives of the four equity groups delegate status to the PSAC Triennial Convention and voice for their respective constituency on the Convention floor.
- In the 1980s, the PSAC negotiated no discrimination clauses for Treasury Board units and other bargaining units. At the bargaining table, the PSAC has consistently tabled improvements to the anti-discrimination and anti-harassment clauses with all our bargaining unit tables. With the gains made in collective bargaining, the PSAC used the grievance process to ensure that these gains were protected. These amendments reflect the changes to human rights legislation, evolving jurisprudence and the need to protect our members' rights in the workplace.
- In 1988, the Human Rights Policy was adopted by the PSAC Triennial Convention. This policy re-affirmed PSAC's support for human rights as proclaimed in the *Universal Declaration of Human Rights*, the *Canadian Charter of Rights and Freedoms* and the *Canadian Human Rights Act*. It also outlined measures to facilitate achieving equality and eliminating discrimination for disadvantaged groups including people with disabilities.

- In 1993, the first Members with Disabilities Action Committee (MDAC) was formed in Montreal. Since then, other committees have been established. These committees provide regional forums for members with disabilities to discuss issues specific to their workplaces and communities.
- In 1993, the PSAC held its first National Access Conference for members with disabilities. The PSAC was the first union in Canada to have a conference specifically for members with disabilities.
- The PSAC 1994 Triennial Convention adopted resolutions related to disability issues. One resolution mandated the development of the PSAC National Action Plan on Disability Issues which was later adopted by the NBoD in 1997 as the Disability Issues Policy. This Policy affirmed the PSAC's support for the right of persons with disabilities to live and work in society with dignity, autonomy and equality. This policy included a comprehensive strategy aimed at eliminating disability related discrimination and disadvantages in both the broader society and workplace.
- The PSAC 1994 Triennial Convention also adopted a resolution providing a Policy on Employment Equity for Persons with Disabilities and a Policy on the Provision of Alternate Formats for Members with Disabilities. These policies highlighted the right of persons with disabilities to fully participate in the workplace and the Union.
- The PSAC 1994 Triennial Convention also adopted a resolution to establish a Local Accessibility Fund - a fund that provided financial assistance to Locals whose members required accommodation of their disability in order to participate in Local events.
- In 1999, the PSAC developed a "Duty to Accommodate: A PSAC Guide for Local Representatives" which is still used by many members. This guide is a popular tool for members to better understand what is the duty to accommodate and what are the responsibilities of employers in the workplace.
- The PSAC 2000 Triennial Convention passed a resolution that allows resolutions adopted at the PSAC National Access Conference to be reviewed at the Triennial Convention. For the first time, the resolutions adopted at the PSAC 2002 Access Conference went to the PSAC 2002 Convention. As a result, some resolutions adopted included lobbying for a Disability Rights Act, developing a disability analysis of health care and improving disability insurance benefits.

- During collective bargaining in 2000, the PSAC negotiated a Joint Learning Program that provided union-employer training to members on various topics including anti-discrimination and anti-harassment. These courses were well received by members and provided training to many members and management representatives.
- In 2002 and 2003, the PSAC also rolled out its comprehensive employment equity and duty to accommodate courses, respectively.
- In 2003, the PSAC Convention adopted a resolution that supported the full funding of delegates to the Conference. In addition, the Convention adopted a budget that doubled the funding for the conference.

2) Emerging Issues

There are emerging issues within the disabilities communities – some issues are not new but require re-examination and others have emerged as the human rights agenda moves forward and there is a better understanding of disabilities.

Integrated Analysis of Disabilities

The Labour Movement has recognized that disability rights are not rights that can be separated from other rights in the workplace and in society. Disabilities affect people differently depending on gender, race, class, sexual orientation, etc. and a disability rights analysis must include these different lenses.

In 2001, Statistics Canada conducted a national survey, the Participation and Activity Limitation Survey (PALS), to collect information on people with disabilities, whose every day activities were limited because of a condition or health problem. The survey found that 12.4% of Canadians have a disability.

The survey also found that the disability rate is greater for women than men, 13.3% and 11.5% respectively. In addition, women with disabilities have lower employment income levels. Women have an average income of \$20,821 whereas men have an average income of \$32,385.

Aboriginal people with disabilities also face multiple barriers. According to the Canadian Community Health Survey (CCHS) 2001, the overall disability rate for Aboriginal adults was 31%. In 1996, the employment rate for this group was 28%, compared to 41% for non-Aboriginal men with disabilities and 32% for non-Aboriginal women with disabilities.

Clearly, disability rights cannot be seen in isolation of other intrinsic characteristics of people such as gender and race. The impact of double or multiple discrimination should be better addressed when examining disability rights.

Disability rights are also workers' rights and health and safety rights

More and more, health and safety, labour and human rights laws are inter-related to each other. Accommodation of persons with disabilities in the workplace may overlap with return to work protocols, workers' compensation, leave without pay provisions, disability insurance, and pensions. The process may begin with a health and safety issue and then become a human rights issue and eventually involve the income support process. There is a need to better integrate health and safety rights, workers' rights and human rights so that health and safety activists and labour activists understand the impact of their work on disability rights.

Impact of Bill C-25: The Public Service Modernization Act (PSMA)

In 2003, the federal government passed the PSMA, legislation that will greatly affect all public service workers in the areas of labour relations and terms and conditions of employment. This legislation is beginning to be implemented in stages. It is still unclear what the full impact of the new legislation will be on workers. However, the initial analysis is that it will not be for the betterment of equity groups. The PSMA does not make any reference to employment equity. In addition, staffing is being delegated to the lowest levels of management. Thus, individual managers will be given more discretion over staffing practices. This is contrary to Treasury Board's own finding in their 2002-2003 Annual Report which stated that managers were barriers to the successful implementation of targeted employment equity initiatives. Also worrisome is the fact that employment equity and

human rights legislation and the duty to accommodate policies are not mentioned in the federal government's *Values and Ethics Code for the Federal Public Service*. This Code is applicable to all public service employees and is being used to as the tool to influence workplace culture. Clearly, the PSAC must closely monitor the implementation of the PSMA and continuously examine the impact of this legislation on equity groups.

Although the impact of the PSMA is troublesome, one important gain has been made. Prior to the mid-1990s, the PSAC dealt with human rights issues through the grievance procedure - as a result human rights protection were strengthened and reinforced. However in the mid 1990's, workers under the Public Service Staff Relations Act (PSSRA) have not been able to directly access the grievance procedure for human rights related issues. These workers have access only to the Canadian Human Rights Commission for human rights related issues regardless of whether they are unionized or not. Only if the Canadian Human Rights Commission made a decision to send the human rights complaint to the grievance procedure then these workers could access the full grievance process including arbitration. The PSMA has eliminated this barrier. As a result, human rights grievances will be allowed to go directly through the grievance procedure. In addition, the remedies that labour adjudicators will be able to order for such complaints has also been expanded to be consistent with the remedies under the CHRC.

Duty to Accommodate

It has been five years since the influential Supreme Court of Canada cases on the issue of duty to accommodate: *British Columbia (Public Service Employee Relations Commission) vs. British Columbia Government and Service Employees' Union* (a.k.a. Meiorin) and *British Columbia (Superintendent of Motor Vehicles) vs. British Columbia (Council of Human Rights)* (a.k.a. as Grismer). These cases redefined the duty to accommodate by obligating employers and service providers to ensure that the workplaces and services are barrier free in practice, policies and design from the outset rather than solely relying on individual remedies and accommodation measures.

The duty to accommodate persons with disabilities continues to be one of the most pressing issues for disability rights activists. The number of

human rights complaints related to disability and accommodation has been on the rise in the past couple of years -- partly because people are becoming more aware of their rights and partly because proper accommodation measures are not implemented. Approximately 80% of human rights complaints that the Canadian Human Rights Commission received in 2002 were related to disability issues.

Due to the changes in laws, the federal government revised its Duty to Accommodate Persons with Disabilities in the Federal Public Service in 2002. Furthermore, in the February 2004 *Speech from the Throne* made reference to creating opportunities for Canadian with disabilities, specifically, filling in gaps in education and skills development and in workplace supports and workplace accommodation. The federal government also made a commitment to hiring, accommodating and retaining Canadians with disabilities in the Government of Canada and improving the fairness of the tax system for people with disabilities and their supporting families. However, the *March 2004 Federal Budget* does not reflect a real commitment to the full inclusion of persons with disabilities. There is modest increased funding for workplace integration but little funding specifically for accommodation in the workplace. The government must be committed to increasing both financial and human resources so that accommodation measures can be implemented in a timely and appropriate manner.

Erosion of human rights protection

It is apparent that human rights and employment equity legislation and policies play an important role in strengthening disability rights.

In 2003, the federal government made changes at the Canadian Human Rights Commission (CHRC) in two important areas. First, the number of employment equity auditors was reduced. Consequently, this will further delay the CHRC's ability to audit departments and agencies. The CHRC had found that their audit function assisted in increasing understanding and commitment to meeting employment equity initiatives; however, with the cuts, departments and agencies will be less likely to conform to employment equity initiatives since there will be less accountability.

Second, as already stated, many of the human rights complaints made to the CHRC are disability related in the workplace. Sometimes, persons with disabilities dealing with accommodation issues experience stress and may be forced to leave the workplace when no satisfactory accommodation has been provided. In addition, people who are experiencing discrimination may not understand their rights under the human rights legislation. Regardless of these factors, the CHRC has indicated that it will focus its resources on alternate dispute resolution processes to deal with complaints rather than at other stages of the complaint process, including representing the CHRC at the tribunal stage. The potential impact of these changes is that complainants with legitimate human rights complaints may withdraw or settle complaints unsatisfactorily because they do not want to deal with the stress and complexity of the human rights process. As well, the power imbalances during mediation between the complainant and the respondent who, in most cases are employers, will also discourage complainants from pushing their complaints forward to the tribunal stage.

Some disability rights activists in Canada have called for a National Disability Act which would provide comprehensive civil rights protection to persons with disabilities in areas of employment, public accommodation, State and Local government services, transportation and telecommunications. Presently, Canada does not have such legislation except for the protections provided under the federal, provincial and territorial human right legislation. There is such protection in the United States under the *Americans with Disabilities Act* (ADA). It has been argued that having such an Act in Canada may further strengthen the protections for persons with disabilities. In light of this argument, the NBoD passed a resolution that affirmed the need to lobby for a Disability Rights Act. However, such legislation may be limited in scope to federal jurisdiction only due to the federal structure of Canada.

Social Services and Income Support Programs

Some people with disabilities require social services and income support programs in order to fully participate in our society. It should be noted that not all do.

According to PALS 2001, 64.8% of those men and women over the age of 15 who needed help with everyday activities indicated they were receiving all the assistance they needed. However, 29.4% indicated that they needed more assistance than they were receiving and 5.8% indicated they were not receiving the assistance with everyday activities that they required. Clearly, improving support services for persons with disabilities must be better addressed.

Transportation is also an area of concern. Transportation is critical for peoples with disabilities to get to jobs, appointments or other activities and fully integrate into the community. PALS 2001 shows that 4% of people with disabilities were prevented from traveling on pubic transportation over a 12-month period and another 5.2% used public transit with difficulty.

PALS also indicated that 24% of adult persons with disabilities who needed health care over a 12-month period did not receive it. That number is up from 10% in 1994 - 1995. Compare this to among adults without a disability, 10% said they did not receive the health care they needed, up from 3% in 1994 -1995.

Many PSAC members with disabilities have raised concerns with the inadequacies of the current policies and programs such as the Treasury Board Leave Without Pay Due to Illness/Injury Policy, Federal Disability Insurance Plan, the Canada Pension Plan Disability Benefit Program and the Federal Disability Tax Credit provisions. These policies and programs have been problematic or inaccessible for many members with disabilities and have forced some members to leave the workplace with little or no financial resources to live on. Much more work needs to be done in improving and removing barriers that people with disabilities face when these policies are applied to them.

3) Links to the broader PSAC vision

The PSAC National Board of Directors (NBoD) adopted the following vision in 2002: “Through collective action, further the interests of all PSAC members and working people in general.” This vision recognizes the Union’s responsibility to fight to improve the workplace rights and working

conditions of our members, and acknowledges our role in the fight to also improve the broader society in which our members live.

In October 2003, the following five broad priorities were developed by the NBoD that reinforced the PSAC vision:

- linking globalization to our membership;
- building membership support through effective bargaining;
- defending members' rights against employer and corporate strategies;
- re-empowering the membership and building the union; and
- organizing to protect members' gains.

These priorities are to be achieved through various structures and events of the Union including National Conferences.

These broad five priorities are of great importance to workers with disabilities. Below the priorities have been examined from a disability lens under the following four topics:

- 1) Globalization: Defend members' rights against employer and corporate strategies;
- 2) Increasing Our Rights: Mobilization and Political Action;
- 3) Establishing Effective Collective Bargaining Strategies; and
- 4) Building our Regional Committees and an Inclusive Union.

1) Globalization: Defend members' rights against employer and corporate strategies

Globalization should be a concern to all members, including our members with disabilities – it affects everyone in all aspects of their lives including work and community life. The impact of globalization and privatization has brought our human rights and workers' rights under attack by right wing government and corporate agendas.

Globalization captures a number of corporate and governmental activities that are designed to provide corporations with unfettered rights overriding any human rights and civil liberties. The sole goal of corporations is to obtain unlimited profits. Currently, globalization decreases the power of governments to enact and enforce laws and policies that are consistent with the human rights agenda.

Trade agreements jeopardize workers' rights and our ability to protect human rights and social policies such as the full integration of people with disabilities into the work force and into our communities. Trade agreements also undermine national social services and promote privatization of government services and their delivery. They also allow corporations to undermine the legislative and regulatory power of the government. In the past, our government has been financially penalized by international tribunals created under the trade agreements when they have supported and upheld their own laws. Thus, the incentive to support or strengthen even existing rights is undermined.

In addition, presently, there is a Federal Minister responsible for Private-Public-Partnerships (also known as the P3's) who is examining whether public funded and delivered programs could be administered through a P3 model. This has already started to occur at the provincial levels. At risk is our public transportation, housing, health care services, support programs, human rights forums and democratic rights.

The PSAC has made the links between the impact of globalization on our workers' lives and workers around the world by adopting the Globalization Action Plan at the last Triennial Convention. As part of the Action Plan, the PSAC has established a Social Justice Fund to assist in creating an environment where trade unions can represent their members and work to ensure a better standard of living for all people.

The impact of globalization is far-reaching for persons with disabilities. There have been gains made in the recent past – these must be protected and erosion of rights must be stopped. Our social services and universal health care services in Canada are under constant threat by the corporate agenda. Such initiatives are not even options for countries that have little control over their social policies and are dependent on support by states and corporations from outside of their borders.

2) Increasing Our Rights: Mobilization and Political Action

Given that globalization and privatization has come about in part as a result of the expansion and consolidation of corporations, it will require collective

action from a global perspective, including the input from workers in poorer countries, in order to protect and increase our rights.

The fight against globalization and privatization defends the gains made around workers' rights and human rights. Union activists will need to mobilize to advance the economic, political and social interests of people around the globe at the local, regional, national and international levels. The labour movement has a social responsibility to fight for a better society in which we live in.

In order to respond to the right wing government and corporate agendas, there must be solidarity among coalitions and social justice organizations to strengthen the impact of political action and mobilization.

It is important to raise awareness of these issues and mobilize PSAC members, including members with disability, to take action around these issues and other human right issues such as the elimination of discrimination and harassment, access to education, housing, health care, social services, transportation and employment benefits. Knowledgeable activists are better equipped to demand proper human rights protection. Raising awareness, mobilizing and taking action will enhance effective organizing of new members and strengthens lobbying strategies to support government and workplace human rights legislation, policies and strategies, including the duty to accommodate.

3) Establishing Effective Collective Bargaining Strategies

Union successes at the bargaining table, and our ability to negotiate improved wages and better working conditions for all our members is an important tool in engaging our members and building our Union. Our gains strengthen our fight to defend the interests and rights of working people in our workplaces, communities and all over the world. The collective bargaining process is an important avenue to push forward the human rights agenda. Over the years, many advances have been made through collective bargaining and the grievance procedure; however, there is still much more to gain with respect to human rights protections such as greater protection around the duty to accommodate and anti-discrimination and anti-harassment protections.

In order to ensure the interests of members with disabilities are included in the bargaining process, disability activists should get involved in the process at the front end by recommending language that enhances the inclusion of people with disabilities in the workplace and by developing tools for effective mobilization of our members with disability activists before each round of bargaining.

4) Building our Regional Committees and an Inclusive Union

Human rights issues resonate throughout the Union. Human rights issues have become integral to Union activities and are closely linked to other issues such as health and safety, workers' rights, environment rights, democratic rights and civil rights. Human rights should be on the agenda of Locals and other structures of the union. It should continue to be a Union priority.

The PSAC Regional Access Committees or Regional human rights committees are forums for members with disabilities to organize and strategize around their issues in the Union, their specific workplaces and communities. These committees need stronger links with Regional Councils so that members with disabilities can provide input to union strategies and priorities. As well, the committees need to be strengthened in order to empower and mobilize members to take action around issues of disabilities in their workplaces, communities and Union.

In some Regions, there are no such functioning committees and therefore need to be created and; therefore, these need to be created. Once the committees are created, there must be a network between the MDACs, Human Rights Committees and other committees so information and strategies can be communicated within the Regions, Components and other union structures.

Conclusion

To conclude, there have been many gains made for persons with disabilities but there still needs to be more done. The 2004 National

Access Conference: “Our Rights – Moving On Up!” is an opportunity for delegates with disabilities to come together, discuss and strategize around how to continue moving the disability rights agenda forward in our workplaces, our communities and our society.

The PSAC has made human rights a priority of the union and this needs to be integrated into the overall agenda of the union, including Programs, Collective Bargaining, Representation, Organizing, Education and Political Action.

The Conference agenda will provide opportunities do so through panel discussions, keynote speakers, workshops, regional sessions, caucuses, resolution debate and elections. This conference allows for the PSAC to build on past achievements and advance the PSAC’s broader union vision for human rights.

Some potential questions to prepare delegates for the 2004 PSAC National Access Conference include:

- What actions can we take individually, as trade unionists, as social activists, and collectively as a union within the broader labour movement, at the local, regional, national and international levels to ensure that members with disabilities are able to fully participate in the workplace? Community? Union?
- What are some success stories in ensuring workplaces and communities are more inclusive and barrier free?
- What actions can we, as trade and social activists, undertake to ensure the full inclusion of disability rights in our legal and social systems such as Income Support Programs, Return to Work Programs, Workers’ Compensation legislation, Income Tax Legislation, Health and Safety Legislation and Disability Insurance Benefits?
- How can we link disability issues to broader issues, like social justice, workers’ rights, P3’s, privatization and contracting out?
- What actions can activists from the disability community take to participate in the implementation of the Globalization Action Plan? What

actions does the Union need to take to ensure members with disabilities' inclusion in the Action Plan?

- What educational and mobilization tools do we need as trade union activists?