

SUBMISSION TO THE SENATE COMMITTEE ON
NATIONAL SECURITY AND DEFENCE



Customs and Immigration Union
Syndicat des Douanes et de l'Immigration

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Introduction

Honourable Senators,

Thank you for offering us the opportunity to appear before you as you conduct your special study into “the policies, practices, and collaborative efforts of Canada Border Services Agency in determining admissibility to Canada and removal of inadmissible individuals.”

My name is Jean-Pierre Fortin and I am the National President of the Customs and Immigration Union, a position I have held since 2011. I have the honour to represent over ten thousand CBSA employees. Our membership is comprised of all the Border Services Officers and Immigration Screening and Inland Enforcement Officers, as well as Intelligence Officers and support staff who work both at the border and inland.

I began my career in 1982 as a Customs Inspector with Revenue Canada in St Armand Quebec and thereafter, while continuing as a front line officer, I became actively involved in representing our members locally. In 2003, I joined the National Executive of the Customs Excise Union Douanes Accise, which was the predecessor union to the CIU, and I have served in various roles since then.

I am joined today by Jonathan Choquette, CIU's Communications Officer.

We were extremely pleased when we learned that the Committee was undertaking this special study and we wish to compliment you on the subject areas you have chosen. As I am sure you know, the CIU has had a long and productive working relationship with this Committee.

I sincerely hope we can assist you with this work through our appearance and the materials we provide today and in the future, should that be helpful.

We have followed the Committee's proceedings to date and, mindful of the time restrictions, we have identified five specific issues that we believe to be of critical importance to border security and the work of the Committee. I will make brief comments on each and I would be pleased to discuss these or other issues with you in greater detail during questioning.

1. Ensuring no cuts to front line services and intelligence services

It is important that this issue be pursued because reducing the number of operational and intelligence positions reduces our border security capabilities which, in turn, negatively impacts public safety.

First, so that appropriate comparisons can be made, it was in 2012 that CBSA implemented its Deficit Reduction Action Plan and not in 2006 as the Minister tends to cite.

Second, this is not just not about lay-offs, it is about maintaining the number of positions assigned to front line duties. This holds true even if, for example, automated border clearance is pursued. Those in affected positions should be re-assigned according to operational needs and their positions not just be eliminated.

In April 2012, we were advised by CBSA that approximately 1,350 CBSA employees, including front line operational officers, were to be given notices that their position would be affected.

We are aware of front line officers who have retired since then and whose positions have not been filled. That is a staffing cut.

I cannot provide you today with the exact number of operational positions that have been cut, but we are tracking down that information for you. I can tell you that our CIU membership has decreased by approximately 700 positions since late 2011 and this is not a good sign.

I encourage you to pursue this matter because reduced operational personnel means reduced border security and that directly contradicts what you have been told by CBSA management. If asked during questions, I can illustrate this reality using a case example where the Agency did not proactively target drug smuggling exports because of staffing shortages.

2. Modernizing the “persons of interest” lookout system (at Ports of Entry and point of departure) and ensuring inter agency information sharing

Having an accurate, well-maintained and technologically supported “persons of interest” lookout database which provides information when and where it is needed is a cornerstone of border security and public safety. As more than one police official has commented, what and who gets through the border illegally inevitably ends up on the streets of Canadian communities.

For CIU, this is also an officer safety issue because not knowing who we are dealing with is a huge risk factor. The situation is made worse when the information has been collected but for reasons of risk aversion or bureaucratic silo protection, it is not made available to our officers. We first exposed this problem back in 2005 and it has been a priority for us ever since. Last week, I was advised by CBSA that the full information from the Field Operations Support System (FOSS) will not be made available to our officers at the Primary Inspection Line.

In late 2012 we were invited to join a CBSA Steering Committee to improve the lookout system. The Committee has correctly recognized that an intelligence-led strategy needs to be deployed at points of departure to Canada, ports of entry to Canada and for screening in low risk ID programs as well as for the ‘No Fly’ List and the Exit-Entry program pursuant to the Beyond the Border Action Plan. Although each deployment location raises different issues, an intelligence-led strategy is a priority. As members of this committee, we have supplied CBSA on the specifics of *how* to modernize the lookout system, and we’ve included that material in this Brief to your Committee.

We recommend that close attention be paid to this to ensure that CBSA follows through with its domestic and international partners and actually creates such a persons of interest database and makes it available to front line officers because without it, nothing will really change.

Finally, we have reviewed law enforcement and security related legislation and we are confident there is full legal authorization for the necessary domestic and international information sharing to occur.

3. Modernizing CBSA enforcement authority between and away from Ports of Entry (patrol and port runners)

On December 9, 2013, during the Public Accounts Committee’s review of the Auditor General’s Report on persons illegally gaining entry to Canada, CBSA Senior Management testified,

“You are correct that our officers do not have the authority to initiate high-speed chases of people who do not stop at the border. In such cases, we call upon our colleagues, be it the provincial police or the RCMP. They collaborate fully with us on this.”

In an effort to increase the effectiveness of operational activities, CIU has repeatedly raised with CBSA the issue of officer enforcement authority away from designated ports of entry. In 2010, we received written confirmation from former CBSA President and current National Security Advisor to the PM, Stephen Rigby, that such lawful authority *does* exist and that the source of the RCMP’s role between ports of entry is *not* a legal restriction but rather a policy choice articulated in a 1932 Order in Council.

I will be pleased to share Mr. Rigby’s written confirmation with the Committee as well as CBSA’s own policy which contradicts the no pursuit rule. This absurd restriction has public safety consequences which we can discuss during questions, if you wish. We understand that CBSA is free to make its own policies but it is not free to pretend that its inaction is due to legal restrictions which are set in stone. This needs to change and we recommend the creation of a CBSA mobile interdiction unit.

CBSA’s risk averse, ‘no can do’ approach also extends to our enforcement capabilities between ports of entry. Senators may be surprised to learn that the Canadian Government has chosen to deliberately exclude the Canada **Border** Services Agency from the Canada-US cross **border** enforcement Shiprider agreement. While the U.S. has made all of its law enforcement agencies eligible for cross border activity, Canada has hindered its operational capacity by deliberately *excluding* the single largest law enforcement agency already present at the border that is otherwise qualified (armed) under the Agreement.

We urge the Committee to seek a rationale for this from the RCMP, CBSA and the Minister, especially since we believe a change would increase operational capacity in a fiscally responsible manner.

4. Expedited removal of criminal deportees

This is a subject where our members’ activities are governed by existing legislation and practices which, to say the least, are in need of a major re-examination. We suggest the following areas merit review:

1. Proactive inter-agency operational efforts to expedite removal of criminal inadmissibles
2. Secure citizenship confirmation on entry sufficient for subsequent removal with biometrics
3. Amend *Corrections and Conditional Release Act* to prohibit early release except for removal but to permit parole for immediate deportation
4. Amend *International Transfer of Offenders Act* (s. 8) to remove requirement of offender consent for transfer
5. Amend the *Immigration and Refugee Protection Act* (IRPA) to expressly authorize use of electronic monitoring for release pending removal

6. Amend IRPA to permit criminal sentencing court to order removal in defined circumstances thereby reducing duplicate appeals
7. Revise crime statistics reporting to note crimes committed by persons who were inadmissible because of past conviction and by persons who had been previously removed
8. Amend *Canada Border Services Agency Act* to require annual reporting to Parliament on defined issues (criminal inadmissibles gaining entry and removals)

This is a complex subject and we would be pleased to offer further supportive materials and recommendations to the Committee if that is of interest.

5. Revising Temporary Residency Permit issuance in defined circumstances (appeal from outside Canada)

This is an issue that Senators raised directly with CBSA officials on February 10, 2014. The answer you received from Lesley Soper, Executive Director of Enforcement and Intelligence Program, was the following:

“I personally studied some of the cases that the OAG looked at, and I would suggest that the way the Immigration and Refugee Protection Act is structured doesn't allow that officer to make a decision to render the person inadmissible and turn them away. Even if an individual comes and says, ‘I'm a convicted murderer from country Y’, there is no discretion granted to an officer. They can detain them, but they cannot make that admissibility determination. That is the under the control of the Immigration and Refugee Board.”

In our view, it makes no sense to *require* the allowing entry of inadmissible persons into Canada to contest their inadmissibility. Why not change the law so that persons who are deemed inadmissible for reasons of security, war crimes, misrepresentation or criminality of any kind can challenge that determination from *outside* of Canada? At land ports of entry, such persons would simply be directed back to the US. At air or marine ports of entry, they would need to be held until removed.

Conclusion

In conclusion, I would like to reiterate that when our members are put at risk because the lookout system deployed by CBSA is grossly deficient, Canadians are also put at risk because people who should not be entering our country are doing exactly that. When people sneak into our country undetected because Canada does not have a properly resourced, intelligence-led, joint-force mobile border interdiction unit, that too jeopardizes public safety.

When our members are forbidden from pursuing people who run the border, Canadian public safety is inevitably compromised. When an insufficient number of officers are assigned to handle a high volume of traffic, less checks are done at the border in an effort to keep people moving. Again, this compromises public safety.

It is important that Canadians fully understand these issues and know what is at stake. Our members are on the front lines and they know what is working and what is not. They expect CIU to speak out and I am honoured to do that today on their behalf.

I would like to thank the Committee for the work it is doing, for asking informed and pointed questions and for following up when answers are either not forthcoming or do not make sense. It is our hope that this submission and our ensuing dialogue will contribute to the ongoing process and essential changes needed to improve security at our borders.

I look forward to answering your questions.

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