



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

Updating the
SECURE BORDER ACTION PLAN



SUBMISSION TO THE SENATE COMMITTEE
ON NATIONAL SECURITY AND DEFENCE

June 2009

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1. Introduction

The Customs and Immigration Union (CIU) is the renamed Customs Excise Union Douanes Accise (CEUDA) which has a long history of border and point-of-entry (POE) related public policy analysis and advocacy. The CIU has presented a series of reports, surveys and public policy recommendations to the Canada Border Services Agency (CBSA) and its predecessors as well as to Ministers and Parliamentary Committees including the Senate Committee on National Security and Defence.

Foremost among these are the 2005 Northgate ‘View From the Front Lines’ Report which was an independent review of officer safety and the Secure Border Action Plan which was made public in November 2006. The former was produced following CIU’s discovery that a Government commissioned review of officer safety (Moduspec Report) had been “altered”, to use SCONSAD’s conclusion. The latter was produced following SCONSAD’s examination of CBSA management on a series of border security subjects where it was clear that inaccurate information had been supplied by CBSA management.

Especially since 9-11, the CIU has promoted enhanced POE security which is intelligence and technology-based and which, to the greatest extent possible, is deployed to enhance and expedite the flow of legitimate commerce and people. With others in front-line law enforcement, CIU has continually warned about the interest of organized crime at POE and that criminal vulnerabilities inevitably translate into security vulnerabilities.

The CIU has had a long and productive history of appearing before SCONSAD. These appearances have featured presentations of specific factual circumstances as well as offering suggestions for areas of inquiry by the Committee with CBSA management and others. This approach has been highly productive and it is a format which is followed in this presentation.

It is clear that Canada has made significant progress on a variety of fronts with respect to what would generically be referred to as border security. Through its cumulative expertise and informed questioning of senior officials, SCONSAD has repeatedly exposed both inaction and inaccurate information having been supplied by officials. In addition, SCONSAD has a history of issuing detailed subject specific reports with recommendations which it updates to demonstrate progress or lack thereof on these identified issues.

This presentation builds on that practice by updating the Secure Border Action Plan from 2006 and by reviewing other important areas of interest that have emerged and which require investigation and action. CIU will also conduct another member survey similar to the 2006 survey and will report back on those results later this year.

2. Review of the Secure Border Action Plan

As the members of this Committee are aware, the CIU decided to commission its own survey of officer safety, border security and the requirement for arming following discovery that CBSA management had directed an alteration of a supposedly independent report on the specific issue of arming. The Northgate Report that followed appropriately touched on a variety of border security related subjects which SCONSAD thereafter questioned CBSA officials about. The incomplete and inaccurate nature of the information supplied by CBSA and the unwillingness of CBSA to act on a host of important issues prompted the CIU to survey its members and thereafter produce the Secure Border Action Plan.

As the introduction to that Plan noted,

“As our recently commissioned Report, ‘A View from the Front Lines’ demonstrated, what is all too frequently happening, or not happening, at Points-of-Entry along Canada’s borders is significantly less than what Canadians deserve. The good news is that practical, affordable remedies exist to correct these deficiencies and we are pleased to present this Secure Border Action Plan that includes issue-specific sections. This effort captures the desire of both CEUDA and its members to contribute in a meaningful way to finally making improvements at the border that were identified long ago as necessary...

The Senate Committee has literally led the way in asking tough questions of Government officials and bluntly pointing out when their answers made no sense or when they refused to answer at all...

Apart from these subject areas, CEUDA’s Survey of its member working at all of Canada’s 119 land border crossings with the U.S. provides a detailed ‘snapshot’ of security-related weaknesses at these crossings. The 42-question Survey was sent to members at all 119 land border crossings and sought precise detail on specific subjects. In true form and truly reflective of their strong commitment for better security and improved Officer safety, members at all 119 sites responded to the Survey, which is a 100% response rate - a remarkable piece of empirical information has thus been gathered...

For years CBSA management has avoided gathering information that would acknowledge problems at the border which avoided a need to develop solutions. It is our hope that this Plan can literally serve as the basis for Government to allocate funding and seek proposals that will accomplish these specific border security and Officer safety improvements.”

As the present Submission will detail, progress on the seven issues identified in the original Plan has been mixed. Additionally, the manner in which action is being taken on some matters bears scrutiny to ensure the intended results are achieved and carried out in the most cost effective manner. The CIU has had some ongoing consultation with CBSA

management on these issues and, we are pleased to report, directly with the Minister as well. As has been the case from the outset, we remain willing to assist in achieving the goals of the Plan to ensure enhanced border and domestic security for Canadians.

POE Connectivity

Both the CBSA and RCMP repeatedly note that Canada's border security strategy is 'intelligence led.' Put simply, this means that officers performing front-line inspection must, implicitly have timely access to relevant information databases for them to make informed decisions and take actions. During the Northgate study, front line officers repeatedly detailed incomplete database access (and insufficiency of database information) that shockingly included an absence of appropriate main-frame connectivity. This was confirmed in the officer survey officers from every crossing participated in and which completely contradicted the evidence provided to SCONSAD by the former CBSA President.

The SBAP described the situation this way:

“Connection deficiencies range from complete absence to unreliable signal to inadequate terminals. Despite the obvious importance of this information tool, insufficient progress has been made.

This failure to manage the situation to resolution and successfully overcome the problem was once again exposed earlier this year, on June 19, 2006, when CBSA President Jolicoeur was grilled on the subject by Senator Banks of the Standing Senate Committee on National Security and Defence.

Mr. Jolicoeur: *During 2005, we connected an additional 31 offices, which leaves us with work to do on 21 offices. The three remaining seasonal offices that are not connected are small but I agree that it could be a problem.*

Senator Banks: *Has anyone explained this to you? If you and I wanted a high-speed connection from the middle of the Gobi Desert, we could get it in very short order. Why is this delay happening?*

Mr. Jolicoeur: *Procurement in the public service is something that can be problematic on occasion because of the challenges and rules.*

CEUDA does not believe that Officer safety and public security should be left at risk after all these years because of bureaucratic procurement 'challenges'.

1.3 Situation Today

The CEUDA Survey asked the following question:

25. *Does your LAND BORDER CROSSING have a dedicated high speed connection to the Customs mainframe that permits you to use PALS and search the ICES/CPIC/FOSS databases for lookouts/information?*
No-82, Yes-36, No Answer-1

Contrary to the assurances of M. Jolicoeur the response from front line Officers paints a distinctly different picture.

Eighty two (82) sites answered NO to the question, thirty six (36) answered YES and one site did not respond to the specific question which is not likely a sign that the required service is present. Thus, a full two thirds or 66% of land border crossings that Canada has with the U.S. are reported as having a complete absence or generally inadequate connectivity to any form of lookout/wanted database.”

As noted earlier, the SBAP was provided to the Minister’s Office in November 2006 and it is fair to say that it and the work of SCONSAD on connectivity has prompted a reaction. During a recent field operations survey, the National President has confirmed dramatic improvement such that there are no longer any land POE reporting lack of connectivity. Based on initial responses, CIU can report some infrequent instances of delayed log on and signal strength in some parts of the country, including Northern Ontario and Saskatchewan, which must be corrected. CIU continues to focus on these less than satisfactory circumstances with CBSA to ensure that whatever technological upgrades are required are provided so that every POE in Canada has the necessary connectivity to deliver the promised intelligence led border security for Canadians.

CIU is unaware of the specifics of funding used to improve the situation. This remains potentially relevant since as the next section of this Report will detail, having the ability to access databases is not the same thing as having access to sufficient database information. It is our intention to ensure that CBSA now builds on this enhanced access capacity to upgrade the nature and quality of information available to front-line Customs and Immigration Officers. As it stands, Officers report needless lack of full required database access at primary coupled with unjustifiable restrictions on Officer access to required information that are policy based and not at all technology driven. These require correction, particularly in the context of the US-side of the border having full database interface occurring capacity every time they run a name; interestingly, state-side verifications include full access to Canadian data such as CPIC.

POE Lookout System

The CIU has identified deficiencies in the CBSA ‘lookout’ system for approximately a decade. These deficiencies, by nature, jeopardize officer safety in that potentially dangerous individuals are not properly identified. Concurrent with this, by restricting the information as the CBSA does, persons who should be identified as inadmissible to Canada, including on grounds that represent a danger to the Canadian public, are not adequately identified and are instead permitted entry. The consequences of this CBSA policy thus impact both on officers interacting with persons seeking entry to Canada and the Canadian public who are all too frequently victimized criminally by persons who should never have been allowed into Canada. Beyond even this, Canadian taxpayers bear the cost of criminal investigation, prosecution, incarceration and removal of persons who a proper and modern lookout system should have prevented from being in Canada in the first place.

From the CIU perspective, CBSA’s artificial and illogical policy of severely restricting the criteria for entry of persons on the lookout system has been rooted in a deliberate determination to minimize employees’ awareness of the risk they face in the workplace. This was confirmed during the Northgate review when it was discovered that suspected terrorists with definitive Canadian connections, who were on the FBI’s public website, were not on the CBSA lookout system. The CIU also obtained a copy of a 2005 CBSA e-mail to Regional Intelligence Officers confirming that the lookout system was restricted to only 162 persons; the e-mail went on to suggest that even that number should be reduced.

The SBAP recommended the immediate deployment of a lookout system that used both name based information and modern face recognition biometrics. The sole objective is to maximize the unique lawful authority at a POE to specifically detect persons who are either inadmissible to Canada, especially those on security and criminality grounds who may have been removed from Canada previously, as well as wanted Canadians. Both SCONSAD and CIU have raised this public safety deficiency and the failures of the current system are such that they have attracted negative comment from domestic law enforcement (who have to deal with its failures) as well as the Auditor General.

In November 2006, CIU engaged in discussions with CBSA on revisions to the policy which have, unfortunately, been unproductive to say the least. The CBSA also unilaterally altered the lookout and warning policy in the manner in which FOSS alert information was made known to officers at primary inspection. This ill advised approach initiated immediately after arming commenced, jeopardized officer safety at primary and secondary examination and contradicted the existing policy regarding dealing with armed and dangerous individuals.

At the root of the disagreement is CBSA’s continuing insistence on substituting their judgment for other authorities (RCMP, Interpol, FBI, DHS, etc.) in determining of danger, refusing to accept objective criteria (e.g.: criminal deportees) and insisting on a

subjective inclusion of an imminent arrival criteria. Until quite recently, despite the elimination of most of the officer risk issue through the arming initiative, CBSA has continued to resist this clearly sensible public safety improvement. Whether this is due to institutional ego or because of lack of enforcement expertise in senior management, or both, the result has been the same: a needless and unjustifiable public safety deficiency.

In the Secure Border Action Plan of 2006, CIU outlined examples of who should be included on a proper lookout system. These include:

1. *Persons with Canadian connections wanted as terrorists and listed by the FBI on the Internet (with photos)*
2. *International terrorist watch lists (most with photos).*
3. *Criminally high-risk fugitives wanted by Ontario's Repeat Offenders Program Enforcement (ROPE) unit, and featured on the Internet (with photos).*
4. *Less than a half of one per cent of all known criminals listed in CPIC who are identified as being armed and dangerous with a caution for anticipated violence.*
5. *American criminal fugitives wanted for serious crimes of violence (except in highly restricted circumstances).*
6. *Persons ordered deported on grounds of criminality, security, or war crimes (with photos) [possibly on FOSS but not a guarantee and not a guarantee that BSOs at PIL lanes would know where to check in FOSS].*
7. *Interpol's most serious criminal database (with photos), all of whom are criminally inadmissible to Canada.*

Despite what we estimate are approximately 100,000 clearly dangerous and obviously inadmissible persons to Canada, CEUDA revealed that in September 2005 CBSA had a total of only 162 persons considered armed and dangerous in ICES. This was revealed in an e-mail from a Customs Intelligence Manager instructing Customs Intelligence Officers to reduce the numbers by adopting even more restrictive criteria. It is not surprising that front line Officers have lost faith in CBSA management's ability to make either their safety or Canadian security the priority it should be.

The issue of the need to deploy an improved lookout system at the border is not simply a CIU initiative. Instead during the 2006 election, Canada's current Government campaigned on an unprecedented security policy that, for the first time, included a specific commitment to "*Deploy face recognition and other biometric technology at border crossings and Ports of Entry.*" That commitment was reinforced by similar remarks made by the Prime Minister in September 2006.

The CIU has repeatedly expressed its dissatisfaction to CBSA management regarding its continuing inaction on this important public safety issue. Following several especially egregious cases that demonstrated the CBSA lookout deficiency, the CIU also communicated directly with the Minister's office. We are pleased to report that in the case of Edmund Ezemo, a non citizen charged with crimes in Canada after having been deported for criminality from Canada *eight* previous times, despite initial CBSA claims

of impotence, following inquiries of systemic flaws, a response appears to have been undertaken which ultimately may lead to tangible improvements.

Specifically, in 2008, the Public Safety Technical Program (PSTP) launched a series of requests for proposals to deal with deployment of face recognition biometric identification systems at POE as recommended in the 2006 SBAP. In December 2008, CBSA, under new senior management since June of that year, filed a proposal to lead such a study in partnership with the RCMP. The fact that CBSA has finally agreed to at least engage in such a study with the RCMP is a positive development which should be at least a start to modernizing the lookout system. It is recommended that the Committee pursue this issue with CBSA including the contemplated content of the database, its locations for deployment and whether this is intended as part of its ongoing video analytics activities.

The original 2006 SBAP recommendations spoke to specific steps which should be taken that have not been. In fairness, the current PSTP study may deal with some of these matters but it is recommended that the Committee raise the logistical specifics of deployment with CBSA to see whether any consideration has been given to this issue.

The CIU recommendations regarding improving the lookout system go beyond deploying face recognition biometric technology. It is our clear and continuing position that the interface among relevant databases must be improved and that analytical information linkage and foreign language name recognition software be utilized. It is our understanding that since 2008 CBSA has access to this technology through inter Departmental arrangements. This too is an area which we would suggest the Committee should pursue with CBSA.

Enhancing the CBSA POE lookout system by ensuring it utilizes appropriate criteria for inclusion, incorporates modern technologies and accesses all relevant databases is an officer and public safety improvement that should be implemented as a priority. It is hoped that this submission and these hearings will contribute to that long overdue result.

As stated previously, the current reality becomes particularly unsettling in the context of the US-side of the border having full database interface capacity which is triggered every time they run a name; interestingly, state-side verifications include full access to Canadian data such as CPIC.

Port Runners

The fact of persons failing to stop at land border points-of-entry (port runners) became included in the SBAP as a result of the Northgate Report detailing the frequency of this activity and the fact that CBSA refused to permit pursuit. This revelation was significantly exacerbated when CBSA management falsely under reported its volume and misdescribed the extent of agreements with contiguous police agencies in its evidence to SCONSAD. The fact that no pursuit was permitted and that this extended to armed and dangerous persons who were directed to be admitted into Canada with only a call to a usually distant and unresponsive police agency illustrated the situation.

The SBAP identified these problems and recommended creation of a properly resourced, joint force mobile border patrol which will be discussed and updated in greater detail below. The Plan also recommended specific physical modifications to POE to deter rather than encourage port runners. These included:

1. *Increased signage/sirens before and after point-of-entry.*
2. *Traffic control devices to eliminate straight lane configuration.*
3. *Installation of highway dividing barriers to prevent entry into Canada via U.S.-bound lanes.*
4. *Installation of effective barriers to prevent entry after hours.*
5. *Installation of vehicle disabling equipment.*
6. *Installation of cameras.*
7. *Traffic modification by separating lanes of travel.*

We are aware of some port modifications that are underway that fall within these recommendations especially with regard to camera installation and barriers. We would urge the Committee to seek specific details from CBSA as to progress in this area including specific plans, allocations and timelines. Officers across Canada reported cameras pointed in the wrong directions and with patently insufficient resolution for appropriate evidentiary purposes. There has been installation of gates at some remote locations although in a seemingly limited application while the US continues to maintain gates as a deterrent to port runners. Some points-of-entry report the installation of sirens to deal with port runners which are welcome. As a result of internal discussions, CIU also has concerns that the focus of the video installation should be on site security and traveler scrutiny rather than employee surveillance which we recommend to explore with CBSA.

The subject of pursuing port runners and border patrol was further aggravated in 2007 when the former CBSA President told the Commons Security Committee that no lawful pursuit and apprehension authority existed for CBSA officers under the Customs Act. CIU also appeared at Committee and subsequently provided the Committee, and CBSA and the Minister with material that corrected the record. This off port enforcement authority issue appears to linger with CBSA in response to which CIU prepared a briefing note this year which is reproduced below. Although the wording of the current Act is not

optimal, justifying inaction on pursuing port runners or participating in a border patrol is clearly without merit.

NOTE REGARDING CBSA LAWFUL AUTHORITY FOR ENFORCEMENT ACTION AWAY FROM A POINT-OF-ENTRY

According to evidence given by CBSA President Stephen Rigby before the House of Commons Public Safety Committee on February 11, 2009, CBSA, RCMP and Canadian Coast Guard are reviewing options to recommend to Government in order to fulfill its commitment to create a joint force, mobile border patrol. In the past, previous CBSA leadership has expressed inaccurate assessments of the lawful authority of CBSA to do enforcement work away from a designated POE.

This occurred specifically on February 1, 2007, when in response to a question, M. Jolicoeur told the same Committee,

“In Canada at the moment the responsibility outside the specific location of Port of Entry is with the RCMP. We don't have the mandate or the authority to move away from our location for that purpose.”

CIU (then as CEUDA) corrected that information in its evidence before the Committee and in writing to the Chair when it noted,

*“Section 11 of the Customs Act creates the legal obligation for all persons seeking entry to Canada to stop and present themselves for inspection. Where a person fails to do that, section 99.1 of the Act permits Officers to “... stop that person within a reasonable time **after** the person has entered Canada.” Section 160 of the Act makes failing to stop as required pursuant to s. 11 an indictable offence. “*

Ironically, the RCMP articulated the issue of CBSA's lawful authority away from a designated POE when its representative gave evidence before the Senate Committee on National Security and Defence. On October 2, 2006 Superintendent Joe Oliver confirmed CBSA's lawful authority to deal with persons failing to report but described its inaction as,

“It is a Customs violation. There is a failure to report inward, so CBSA would have jurisdiction. However, it becomes an issue such that the CBSA currently does not have pursuit-type patrol vehicles.

People who do run through the Ports of Entry and fail to report could still be issued penalties. CBSA investigates those types of infractions. It is an issue of capacity and the ability to interdict someone.”

Pursuant to delegations, designations and appointments currently in effect, CBSA Border Services Officers have authority to enforce the provisions of both the Customs Act and the Immigration and Refugee Protection Act (IRPA). Both statutes create a positive obligation on persons seeking entry to report at a specified location for

inspection and both constitute failing to do so as an indictable offence. Both Acts also authorize enforcement action under the Act against persons who have committed such offences which the CBSA Act authorizes the Agency and its employees to enforce.

Section 99.1 of the Customs Act specifically references enforcement action against persons who have failed to report and indeed this is further supported in s. 163.5 regarding special 'officer' powers. Section 99.1 speaks to enforcement action 'in a reasonable time after the person has (illegally) entered Canada' where an officer believes non compliance has occurred. Clearly, the 'reasonableness' of the time period is linked to the knowledge of the officer of the fact of entry which, obviously, supports the authority of determining whether entry, including illegal entry, has occurred or not. Thus, a patrolling or response capacity to permit lawful enforcement is authorized under the Act.

It should also be noted that s. 104 of the Customs Act permits third party assistance in enforcement of the Act.

Inasmuch as CBSA officers have participated in marine patrols with other enforcement agencies in the past pursuant to s. 99 of the Act, an assertion that somehow lawful authority to conduct patrols or be part of an intelligence-based response interdiction group is clearly without foundation.

Similarly, s. 4 of the IRPA directs authority for enforcement (and arrest) of the Act to The Minister of Public Safety and CBSA. This is reinforced via the s.18 obligation to report before entry and s.138 authorization to enforce the Act. It should also be noted that as a result of a change made with via s. 44 of the IRPA, reporting of inadmissibility (non compliance with the Act by illegal entry) is confined to an officer so designated for that purpose which no longer automatically includes all peace officers. The presence of officers appropriately designated under the IRPA is clearly necessary for an effective interdiction and enforcement capacity.

Finally, s. 7 c) of the RCMP Act contemplates temporary appointments which are a further, although unnecessary, vehicle for CBSA officers to participate in a joint force, mobile border patrol and interdiction unit.

This Note is provided with a summary of relevant legislative provisions to assist CBSA in discharging the policy directive provided to it by the Prime Minister.

Border patrol

As noted earlier, the need for a joint force, mobile border patrol and interdiction capacity was highlighted in the Northgate Report as well as by SCONSAD exposure of port runners, unguarded roads and CBSA disinclination to take either reactive or proactive measures. The need for such an initiative has been further demonstrated by developments since the 2006 Secure Border Action Plan including:

- the articulation by the United States of its intention to proceed with its Secure Border Initiative Network (North) with special emphasis on surveillance and mobile interdiction
- increase in northbound cross border movement of persons from US into Canada resulting from US crackdown on persons living illegally in US
- increase in northbound smuggling of guns, drugs and illegal cigarettes into Canada
- joint Canada-US marine patrols (Operation Shiprider)
- Ontario Provincial Police emphasis on anti-smuggling interdiction activities
- 2007 confirmation by RCMP Commissioner Elliott before Commons Public Security Committee that marine surveillance on St Lawrence River and Great Lakes was “inadequate”

Although not occurring as quickly as CIU would have hoped, there has also unquestionably been progress within Government in moving towards such a mobile joint force deployment. Examples of this include:

- 2008 Justice Department review regarding legal authorizations for joint force, cross border enforcement action
- September 2008 election platform commitment of the current Government to launch a pilot RCMP-CBSA Land and Marine Border Patrol Pilot Project to patrol unguarded U.S. land and marine crossings to Canada in Quebec
- November 2008 funding of pilot studies by RCMP for marine border radar surveillance by Defence Research Development Canada (DRDC) and the Public Safety Technical Program (PSTP)

- February/March 2009 confirmation by both the President of CBSA and the Deputy Commissioner of the RCMP that studies to implement the Government's commitment regarding a border patrol were underway and that Canada Coast Guard was included.
- May 2009 announcement that Canada-US 'Shiprider' program would be extended
- May 26, 2009 release of 5 year Canada-US Shiprider Agreement that inexplicably features US inclusion of law enforcement officers (CBP, ICE) while Canada excludes CBSA by restricting participation to RCMP and other 'police' officers thus severely restricting operational capacity of the program

As both SCONSAD and the CIU have expressed previously, Canada clearly needs some kind of mobile, border focused, intelligence led, interdiction capacity. This domestic need has been significantly compounded by the emergence of the US SBI Net North strategy with its surveillance and mobile interdiction focus. Although the Canadian government appears to be moving in the right direction, we wish to emphasize that there are critically important features which must be included in any border patrol deployment if it is to be successful and we encourage the Committee to pursue these issues as well. These issues include:

- the border patrol needs to be intelligence driven in co-ordination with both IBETs and CBSA intelligence units with full immediately deployable units capable of responding to sensor notification as well as strategic intelligence
- the border patrol needs both a marine and land capacity with proper vehicles and vessels and reliable inter operable radio communications
- the unit needs to be supported by a cross border, multiple primary and secondary sensor integration system including ground sensors, automated analytical marine and low flying air radar and cameras and a common operating picture, command and control communications center
- maximization of available resources including CBSA, RCMP, CCG, the OPP and SQ as well as other law enforcement agencies where appropriate

CIU is concerned that CBSA's historical resistance to undertaking enforcement actions is set to combine with the RCMP's demonstrated human resource shortage for national enforcement activities (as detailed by SCONSAD) to create a politically acceptable model that will be operationally inadequate. Our information, for example, indicates that the RCMP has actually closed eight detachments in Quebec near the U.S. border and that the national policing section has, just during the past two (2) years, *returned* tens of millions of dollars originally allocated to it because of lack of capacity. Neither speaks to

an RCMP capacity to exclusively undertake this border-focused work. Further, CBSA has recently been quoted as saying that it intends to deal with expenditure control by reducing primary inspection and inland marine border patrolling previously undertaken. Such priorities in these times are illogical to say the least.

Having finally taken steps to ensure that Border Services Officers are better trained and equipped and increased in number, the Government will hopefully now follow through on those investments by ensuring CBSA plays a prominent role in this vitally important border security enhancement initiative. With the release of the May 26, 2009 Shiprider Agreement deliberately excluding CBSA, this will need to be accomplished through an amendment to the agreement if joint marine cross border action is intended on a scale agreed to by the US.

As noted in the original SBAP, the domestic benefits to Canada go beyond common security with the US and extend to the interdiction of illegal entry of guns, drugs and people into Canada. The importance of this cannot be overstated. Equally, the interdiction of illegal cigarette smuggling and the revenue generated from appropriate tax revenue recovery will almost certainly cover the costs of such an enforcement effort.

The SBAP also noted significant allocations in previous budgets specifically for border infrastructure which would appear to have been ever further enhanced with multiple stimulus initiatives. We are unaware of any analysis specifically in this area but making the best use of existing personnel and their equipment is clearly an attractive strategy. Further, this modest investment for a mobile joint force capacity contrasts extremely favourably with previous estimates supplied by CBSA for fixed interdiction which we understand to have been in the \$3-4B range. As has been the case with many scenarios, the concept put forward by the CIU will do an exponentially better job at a fraction of the price.

Pre Border Clearance

The introduction to this area in the 2006 SBAP stated:

Business groups on both sides of the border have long sought expedited border clearance through a variety of measures, and have more recently focused on commercial pre-border clearance. This is especially relevant where the border infrastructure includes bridges or tunnels that result in vehicles accessing the infrastructure before being checked. Inasmuch as international bridges and tunnels are critical infrastructure, any measure that results in screening prior to accessing the infrastructure is desirable from a security perspective.

The concept of commercial pre-border clearance (also known as reverse inspection) has long been advocated by Canadian business and industry groups such as the Canadian Manufacturers' Association, the Canadian Chamber of Commerce, the Canadian American Border Trade Alliance, and the Coalition for Secure and Trade Efficient Borders. Commercial pre-border clearance is one of many modifications suggested that combine enhanced security with expedited trade.

*In 2005, SCONSAD added its voice to this call in their report *Borderline Insecure*.*

Permitting armed U.S. CBP Officers into Canada though was always a political impediment to this desirable outcome despite the facts that, legally, s. 97 of the Firearms Act permits the Governor in Council to exempt any non resident or class of non residents from the regulatory aspects of the Act or of the Criminal Code.

CEUDA is aware the U.S. Officers, while willing to participate, were not prepared to do so without their sidearms, and that conversely, Canadian Border Services Officers were not willing to work in the U.S. without a sidearm. The previous Government opposed these requests. The decision by Canada's new Government to arm border Officers removes this obstacle and greatly enhances the potential to accelerate commercial pre-border clearance.

Despite what appeared to be a basis for progress, some two and a half years later the issue, to the best of our knowledge, remains stalled. We are advised that the primary reason for this is US insistence on an ability for their officials to arrest persons in defined circumstances and to have the discretion to fingerprint persons who, for whatever reason, decide *not* to seek entry into the United States. These persons, known as 'turnarounds' are very few in number but are acknowledged by both Canadian and U.S. officials to exist as a potential security concern in that their actions may, in fact, be part of border surveillance by persons or groups posing criminal or security risks.

We have been advised that the rationale for the US seeking to fingerprint is to match to a specific database of latent fingerprints the relevance of which is acknowledged by Canadian authorities. This renders the US request to fingerprint neither arbitrary nor

capricious but rather for a specific legitimate purpose. Further, given the nature of the samples held, there is no other alternative means of obtaining the information. CIU has made some preliminary legal inquiries which suggest that all of the above are specifically relevant considerations to whether an action such as contemplated would run afoul of s. 8 of the Charter and or be saved by s. 1 of the Charter. (R. v. Oakes 24 C.C.C. (3d) 321 (SCC))

The authority for fingerprinting in Canada is not confined to the Identification of Criminals Act. Fingerprints are routinely taken hundreds of times a day on a consensual basis where a person knowingly places themselves in a situation where their fingerprints will be required. People are for example routinely fingerprinted as part of a background check for employment. They are made aware of the requirement and can absent themselves from the situation or choose instead to pursue a course of action that meant they would be fingerprinted. Such consensual fingerprinting has never been held to be unconstitutional in Canada and the Supreme Court has only recognized that it is police conduct that intrudes on an individual when fingerprinting occurs *without* consent (or statutory authority) is unconstitutional. (R. v. Stelman [1997] 1 S.C.R. 607)

Courts in Canada have consistently held that certain factual circumstances can create reduced expectations of privacy. (R. v. M(MR)[1998]3 S.C.R. 393). The Supreme Court of Canada has specifically recognized the unique nature of points of entry to Canada as justifying a wide array of personal intrusions including search, frisking, clothing removal etc based on the importance of the controlling activities at the border. The Court *specifically* noted that there is a lower expectation of privacy at any border crossing. (Simmons v. R. (1988) 45 C.C.C. (3d) 296 (SCC))

Section 13(2) of the Canada Border Services Agency Act, section 105 of the Customs Act and section 7 of The Immigration and Refugee Protection Act all contemplate some kind of international agreement authority for the Minister so as to carry out the Agency mandate or enforce the Acts in question. Further, cross border enforcement authority, in defined circumstances, has already occurred in the aforementioned Shiprider program.

CIU is aware of the following recommendation having been made to the Canadian American Border Trade Alliance by a participant at one of its meetings in 2007 when the 'difficulties' were first revealed. While we do not put any specific suggestion forward as being a complete legal analysis, it does appear to be the case that legal and policy solutions do exist if these are truly the only barriers to pre border clearance. The Committee may wish to explore this matter in greater depth with both CBSA and the Justice Department.

The U.S. authorities apparently also wish to continue their discretionary action of checking laptops or electronic device of persons seeking entry to check for data relevant to admissibility. This is an action already undertaken in the U.S. and search of persons or goods in their possession prior to departure is authorized in Part VI of the Customs Act in broad circumstances.

Recommendations:

1. Canada should offer to permit fingerprinting of persons that attend at a US point-of-entry located in Canada but choose not to enter the United States subject to the following conditions:
 - A) Highly visible signage is erected at an appropriate distance before the point-of-entry that reads ***“Persons proceeding past this point who chose not to enter the United States are subject to fingerprinting and examination of electronic devices in their possession. Persons not wishing to be fingerprinted or examined in those circumstances should not proceed further.”***
 - B) Section 98 of the Customs Act should be amended to add sub section (5) as follows
 - (5) Where a Port of Entry to the United States is located within Canada and a person has chosen not to seek entry after entering the area designated for that purpose, an officer may, in addition to searching that person as authorized by this section, also fingerprint that person if requested to do so by an official of the United States designated for that purpose.***
 - (6) Fingerprints and information obtained pursuant to this section may be shared with the designated official of the United States for the purpose of comparison and identification of the person in question.***
 - C) An agreement between Canada and the United States shall be entered into with respect to this matter that stipulates:
 - (i) how and when such fingerprints are to be taken, stored, used and destroyed,
 - (ii) ensures mutual and complete exchange of information on persons fingerprinted including if they are identified as being of criminal or security concern,
 - (iii) includes the mutual use of cameras at ports of entry supported by face recognition biometrics for turnarounds and a lookout system the data for which will be mutually shared
 - (iv) provides details with respect to designation of officials and signage and departure area,
 - (v) the mutual obligation of the signatories to abide by these procedures.

The Arming Initiative

The Secure Border Action Plan of 2006 was produced after the Government announced the initiative but before actual training of officers had commenced. The CIU was understandably highly skeptical of the good faith commitment of both the CBSA and the RCMP to the process inasmuch as they had been the two bodies most opposed to its occurring. In fact, immediately following the election of the current Government, the CIU was called upon by the Public Safety Minister's Office to review a cost analysis submitted by CBSA which had estimated the arming initiative to be in excess of \$1B. Based on methodology listed below, CIU recommended a dramatically lower cost with shorter timelines. Although a reduced cost estimate resulted, CIU's recommendations for how the arming initiative should be accomplished have largely been ignored and, under RCMP and CBSA 'leadership', costs and success rates have raised legitimate questions.

These submissions will detail a spectrum of issues CIU has raised with respect to the initiative including CBSA's continuing approach of advising of decisions *after* the fact rather than consulting *before* it. The CIU has closely monitored the training sessions including interviewing officers who have completed the training (successfully and unsuccessfully). In fairness, after some denial, doubletalk and delay, positive changes to the methodology of training have occurred especially since the arrival of new senior management in June 2008.

The original commitment was to complete the arming of 4,800 officers in ten years which included both existing and new employees. To date approximately 1,200 officers have been trained, armed and deployed over two years. The delays we predicted because of the exclusivity of sites and training have occurred. These factors have also contributed to what we believe to be significantly higher costs than what should be the case. As the Committee will appreciate, there is more than a marginally held view that the difficulties and excessive costs encountered to date are a direct result of assigning responsibility for the arming initiative to organizations institutionally opposed to its success.

The CIU has pointed out these matters to both CBSA management and the Minister's office and we continue to offer our assistance. We have even gone to the extent of hiring our own firearms training expert so as to ensure our analysis and recommendations were professionally informed and beyond reproach.

The arming initiative is now entrenched *and* improving. CIU remains wholly committed to its success concurrent with the workplace accommodation of officers who cannot qualify due to medical limitations, who choose not to participate, or who, having been given a fair opportunity, have failed to qualify. Completing this initiative will continue to pose challenges but we are unwavering of our support of this activity given its objective of enhancing officer and public safety.

In order to best articulate the issues we believe of ongoing relevance, it may be helpful to start with the introduction to the 2006 SBAP section on arming which noted,

After years of refusing to consider arming Border Services Officers (as well as Inland Enforcement Officers, and Intelligence Officers), in spring 2006, the new Government of Canada directed CBSA that this was to occur. CEUDA was pleased to assist the Minister in cost estimates and identification of Officers who were already firearms trained following CBSA's presentation of grossly exaggerated cost estimates.

Since the announcement of arming by the Government in May 2006, CEUDA has tried to work with CBSA on a joint implementation effort although this process is not in any way a joint decision-making process. CEUDA has recommended the following measures:

- 1. Use of multiple facilities to train the trainers and individual Officers.*
- 2. Sending trainers to work sites where possible.*
- 3. Beginning the process with the 300+ members who have already self-identified themselves to CEUDA as already having been trained by either police or military in the use of a firearm.*

Active discussions were underway with the Nicolet Training facility in Quebec, the latter of which expressed interest to develop and deliver training to Border Services Officers.

Oddly, CEUDA was advised that CBSA unilaterally decided, at virtually the last minute, to rely exclusively on the RCMP to provide training to CBSA Officers (20 to 30 in total) who would then be able to train other Officers. CBSA indicated the RCMP training of trainers will commence in summer 2007 with the expectation that 40 armed and trained Border Services Officers (20 French and 20 English) will be deployed to the field in August 2007.

A CBSA / RCMP agreement was formalized recently and a recent CBSA communiqué on the subject noted:

With the assistance of the RCMP, CBSA trainers will begin delivering training in July 2007, after our course has been designed and tested. Armed Officers will begin to be deployed to the field in August 2007. Our objective is to train a minimum of 150 Officers by the end of March 2008.

The training course is three weeks. This would appear to contemplate eleven training cycles between July 2007 and March 2008. If even the minimum number of 20 trained instructors is assumed, this means 220 training opportunities yet CBSA expects only 150 Officers to be trained? Something doesn't add up and CEUDA notes as well that the CBSA communiqué does not commit to deploying 150 Officers, merely to training them.

Controversy over this initiative has resulted in the Commons Public Safety Committee calling witnesses before it to examine why such a delay is required, and what costs will, in totality, be incurred.

The RCMP does not hold lock and key to every firearms training facility in Canada. There are other suitable training facilities operated federally, provincially, and privately where CBSA Trainers could train BSOs. If CBSA intends to mandate training of BSOs at [exclusively] RCMP facilities or at the Customs facility in Rigaud, Quebec, once it is upgraded, bottleneaking of training is sure to result.

CEUDA also wishes to point out that the current arrangement CBSA has with the RCMP means that two Senior Government Officials, who previously had an opposing view to CBSA Officers being armed, are now involved in carrying out the exact opposite mandate. This may put them in a conflict of interest position and, perhaps, this is why the new Government of Canada's directions in this regard appears to be inexplicably delayed.

Based on our analysis and the experiences of our members, CIU has identified the following issues as requiring scrutiny:

- the three weeks for CBSA firearms training is what the RCMP receive spread over 16 weeks; at CBSA this training is and conducted in irregularly scheduled times and immediately following heavy stress physical activity (Control and Defensive Tactics or CDT) which was made mandatory despite the requirement of CDT recertification within preceding six months of firearm training
- the irregular access to RCMP shooting range has led to disruptive sleep and meals for trainees due to irregular scheduling of training
- reported deficiencies in equipment and facilities including requiring last second inclement weather outdoor testing without previous outdoor practice
- needless restriction of facilities and training access which dramatically increases costs
- no evaluation of the work environment
- training not suited to CBSA work environment including required distance (25 meters) proficiency as per expert (Study commissioned by CIU)
- poorly organized use of training time

The CIU will continue to interview its members regarding their training experience and we will be pleased to provide updates to the Committee on a continuing basis. We will also continue to press CBSA for more workplace relevant testing as well as consistent and appropriate training and testing methodologies. The CIU continues to believe that expanded use of non RCMP training and testing facilities is desirable to reduce cost and expedite the initiative while ensuring appropriate officer training.

The CIU is also of the view that of the aforementioned shortfalls, requiring that CBSA Officers qualify at 25 meters is by far the most concerning. According to our expert, to have incorporated this requirement without first conducting a work-environment study is not only far from prudent, it within of itself may well have created a dangerous notion whereby armed Officers are led to believe that can accurately shoot at such a distance and within the confines of their work environment in a real-life situation. Our expert's report has been shared with the CBSA and can be made available to the members of this committee upon request.

Ending Workalone Situations

This issue is one which both CIU and SCONSAD have raised repeatedly over the years and which was featured in the 2006 SBAP. This followed the welcome commitment by the Government of Canada in 2006 to accept the CIU and SCONSAD recommendations and direct the end of workalone situations. During highly effective questioning before SCONSAD in June 2006, (see below) the then CBSA President confirmed that Budget 2006 had provided the funding necessary to hire the additional 400 officers required and that the hiring process would be completed in three years.

Echoing concerns relayed later in this Submission, three years after that statement was made CIU is aware of only approximately 100 new officers being hired to end work-alones and a seeming slow down in recruitment by CBSA. CIU was concerned in 2006 about CBSA discharging its instructions in this regard as noted in the SBAP section in this area.

Despite the announcement and allocation of funding by the new Government of Canada to end work-alone shifts in Customs, the dangerous and unnecessary practice continues without any doubling up of Officers anywhere on the radar in the immediate and foreseeable future. CBSA has failed to take available workplace measures to comply with the direction given and there is concern that the CBSA 'plan' will deliberately delay arming of Officers as well.

For more than 26 years CEUDA has raised the dangerously unacceptable practice of CBSA (and its predecessors) of saving money by forcing Officers at some 139 locations to work alone either in remote locations and/or late at night. The inappropriateness of this practice in a law enforcement milieu is more than unacceptable and led SCONSAD to comment on it in its recent Borderline Insecure report released in June 2005. The Northgate Report, commissioned by CEUDA, also recommended that this be brought to an end immediately.

Ending work-alone shifts in Customs was included in the Conservative Party of Canada platform and the new Government of Canada announced this as direct policy with allocated funds in May 2006.

Despite these measures and this level of commitment, rather than eliminate work-alone shifts by making staffing arrangement that work around a shortage of some 450 Officers, CBSA has chosen to simply continue its previous practice without doubling up any shift. CEUDA has been advised that CBSA intends to resolve the issue by dramatically expanded hirings no sooner than in fiscal year 2007/08 and into 2008/09. In other words, Officers at 139 locations will continue to work alone for three years after the Government has ordered bureaucrats to change the practice and directed a change in policy.

7.3 Situation Today

Evidence from proceedings of the standing Senate Committee on National Security and Defence, June 19, 2006

Senator Campbell: *This is not good enough ... Let us go to a single Officer at a crossing. How many of them do we have?*

Mr. Jolicoeur: *In the last budget, we received resources to double up in all of these areas. We will need 400 new employees to ensure that in each single-Officer location, there will be two Officers on each shift.*

Senator Campbell: *How many places are there?*

Mr. Jolicoeur: *I believe there are 138.*

Senator Campbell: *In 2005 there were 139, so we have taken this seriously. Why do we not forget about the new uniforms and put two people at the border so that they are safer? This is simply not acceptable. What are your priorities in order here — new uniforms? Last year you said you would do something about this. You pledged \$101 million to begin arming the border Officers and eliminating work-alone posts. How many of those work-alone posts have you eliminated? One, according to these figures. What is the timeline for eliminating them? When are we going to not have single Officers sitting in the middle of Saskatchewan, Alberta or Manitoba?*

Mr. Jolicoeur: *Do you want me to speak to the question of single Officers?*

Senator Campbell: *I do.*

Mr. Jolicoeur: *In Budget 2006, we have, for the first time, money to deal with work-alone posts. Now, we have to hire people and train them for which we have a plan. I admit that it will take about three years before we have no work-alone posts in Canada. That is the time it will take to complete the recruitment and training, given the space we have at our training centre. However, this problem is being resolved.*

***Senator Campbell:** If this is so important, why are you not sending trained and knowledgeable people from the big border crossings to be the second Officer and then putting a rookie into the big offices where they could be trained? There had better not be someone killed at one of these work-alone border crossings during the next few years. There is a way around this. I understand about bringing in more Officers and the training. However, simply take 139 trained Officers from the big offices across Canada and put them into these smaller, work-alone posts. My biggest fear is that someone working alone will be hurt at one of these crossings... This is not acceptable*

The CEUDA Survey canvassed issues relevant to this matter.

20A. *Are any shifts on this site worked alone by a single person?*

Yes-89, No-30

30A. *Are any Officers from your LAND BORDER CROSSING willing to work overtime at or in the vicinity of a site where other Officers currently work alone on a shift with a view to eliminate such practices on an interim basis?*

Yes-80, No-24, Not enough staff -7, No answer -8

Officers are clearly willing to be deployed from one site to another and to work overtime to end this dangerous practice. Instead, CBSA has proposed to continue the work alone situations, ending them only as new Officers are recruited and hired. No doubt this is put forward on the basis of 'saving money' but we are confident a casual examination of the \$1B+ CBSA budget will reveal administrative and policy-related expenditures that could easily be re-allocated without effect to remedy this situation immediately.

Further, ending work alone situations and the increased hiring that comes with it are initiatives that are occurring within CBSA simultaneously. One should be used to compliment the other yet CEUDA is concerned that CBSA is deliberately taking a counter-productive approach. CBSA is reportedly intent on graduating new Officers hired in 2007/08 and 2008/09 but NOT giving them firearms training until later. Deliberately ignoring this opportunity to advance both initiatives simultaneously is puzzling at best and indicative of a management that is mismanaging or intent to delay and avoid the arming directive from the new Government of Canada.

We are aware that some modifications to some work-alone Points-of-Entry are required, but it is hard to imagine why this should have interfered with the direction given to and undertaking from CBSA to hire the requisite officers and end this most dangerous practice. Our information is that 56 sites now have been upgraded, 17 are in the process of being upgraded and the target set for the end of FY 09-10 is 92. CIU will resurvey its members on this issue and we urge the Committee to raise it with both the Minister and CBSA senior management.

3. New Issues

As part of its mandate and responsibilities to its members, the CIU maintains a public policy developments awareness on relevant issues. Generally speaking, these are not centered on purely subjective policy questions per se but are often focused on matters affecting the safety of CIU members and of Canadians in general, and on the manner in which CBSA, or the government, deals with national security-related issues at Canada's points-of-entry.

This frequently has internal domestic security ramifications such as the consequences when, for unjustified reasons, CBSA fails to keep criminally inadmissible persons from entering Canada or fails to appropriately remove such persons from Canada once a final removal order has been made. Following a detailed and highly critical review of CBSA by the Auditor General in 2008, the CIU provided an analysis of the issues raised therein, extracts of which appear in this Part.

Mindful of CBSA's concurrent cross border trade mandate priority, the CIU has closely monitored and analysed programs and activities which are conducted or proposed for these purposes. This led to a focused analysis which is featured in the review of the Corporate Can Pass Air section of this brief as well as in a larger sense the analysis of seaport security. In both instances, the Committee is urged to undertake closer analysis of the current situation and then contrast that with what is reasonably expected of each activity where security and trade facilitations are balanced.

Overarching all of these initiatives and at the core of the matters from the Secure Border Action Plan is ensuring that there are appropriate numbers of officers, properly, trained, equipped and deployed. The CIU is extremely concerned that this fundamental principle of successful program management has been ignored by CBSA which will inevitably jeopardize the capacity of the Agency to discharge its enforcement mandate on behalf of Canadians. Examples of this will be provided and, once again, the CIU urges SCONSAD to specifically question CBSA management on this issue.

Staffing Concerns

There is no question that the current border security priority enhancements of government has created a highly challenging environment for the CBSA in terms of its ability to properly manage the multiple personnel related projects it has been assigned. These projects include, but are not limited to:

- completing the arming initiative on schedule and on budget (see Part 2 for concerns) while ‘backfilling’ operational positions while serving officers are being trained
- ending all work-alone situations
- phasing out student BSOs at all land and marine operations
- accommodating non firearms compliant employees
- expanding full CBRNE (Chemical, Biological, Radiological, Nuclear and high-yield Explosives) screening (VACIS) at marine and other points-of-entry
- preparing for additional operational duties pursuant to C-26 and S-2
- preparing for additional operational duties regarding border patrol and enhanced IBET participation
- expanding offshore intelligence based interdiction capacity (Mission Integrity Officers)

As the CBSA President noted on March 12, 2009 before the House of Commons Public Safety Committee,

“We recognize that in today's economic environment, access to funding cannot be taken for granted. Given budgetary pressures, we will need to be creative in working with our partners and ensuring that optimal allocation of border resource priorities is achieved. The border is traditionally our first opportunity to interdict many threats, but we increasingly focus on our enforcement resources at the continental perimeter and overseas, for example, using migration integrity officers for immigration enforcement at 45 overseas locations.” [Emphasis by CIU]

Although it may be so that new funding will be required for new initiatives like a border patrol, our concern today is whether funding already allocated to the Agency is being properly used to achieve the staffing level enhancements for which it was intended. Accordingly, we urge the Committee to explore the program areas listed above with regard to the following performance criteria:

- *what was the original hiring goal and timeline for accomplishment
- *what was the funding allocated for that purpose
- *what is the current status of hiring to meet the goals on a year to year basis
- *what is the explanation for any shortfall in hirings
- *are other program initiatives such as phasing out students interfering with operational deployments

Based on information available to CIU, we would also urge the Committee to examine staffing allocations within CBSA including where new Agency hires have been assigned on a yearly basis since 2001 when increase in personnel was expanded. It is our sense that, contrary to the intention of government, a disproportionate percentage of new personnel have been provided to non operational responsibilities including within NHQ.

We are also concerned that the simple numbers of new persons recruited by CBSA is inadequate to meet the numbers of persons leaving the agency and the expanded programs assigned. We are unclear, for example, why the Rigaud Training Facility has not been more significantly expanded to accommodate more hires and, as an example, to expand the availability of firearms training facilities which would accelerate that program as well.

In conclusion, CIU will be canvassing its members on staffing issues and concerns over the coming months and we would urge SCONSAD, who has a long and admirable history of asking the right questions, to pursue these issues in detail with CBSA management and the Minister.

During hearings at the House of Commons Public Safety Committee, CBSA President Stephen Rigby was asked questions regarding oversight of CBSA especially in light of the newly armed officers. Mr. Rigby correctly noted that the Government has yet to articulate any specific plans beyond what he describes as the current practice of members of the public writing him letters. This, of course, is not a suitable oversight mechanism for an enforcement agency in a modern democratic state.

Although outside the general scope of this Brief, the CIU does wish to emphasize that our experience in dealing with officer safety based work refusals pursuant to Part II of the Canada Labour Code suggests that special care must be taken to ensure the objective, functional independence and accountability process of the person or entity charged with the oversight from the body being 'overseen'. When both report internally to the same Government institution, there is a real risk, of conclusions being reached irrespective of what a statute may say.

The Auditor General's 2008 Report

The issues of preventing persons entry to Canada who are inadmissible on criminality, security or war crimes grounds and ensuring their expeditious prioritized removal upon detection within Canada has been a policy area of importance to the CIU for over fifteen years. With the creation and re-organization of CBSA to include immigration screening and enforcement, this already important matter has assumed an enhanced priority. This is not simply a question of mandate compliance given people improperly granted entry into Canada improperly all too frequently end up being arrested for new crimes or become the responsibility of Immigration Inland Enforcement Officers (also CIU members) for apprehension and removal.

When the CIU originally proposed a modernized lookout system using face recognition biometrics, our primary target was non citizens who were inadmissible on security and criminality grounds. As we explored the issue, we discovered another category within that group whose continuing ability to re-enter Canada should simply not exist. Specifically, these are persons who have already been removed from Canada often on criminality grounds, but who, with the aid of false documents and deficient lookout systems are able to return to re-victimize Canadians. Although CBSA appears now to be at least exploring alternatives, the failure to remedy this situation is, in our view, a negligence lawsuit waiting to happen.

Most recently, these defects have been highlighted in media reporting of crimes committed by persons previously deported from Canada and of the volume of like cases. These include, simply by example:

*The May 2008 case involving one EDMUND EZEMO who was arrested, yet again, on multiple fraud charges where Canadians have been defrauded of millions of dollars. Hard as it may be to believe, EZEMO has been deported from Canada *eight* previous times for past criminality yet, somehow, seems to be able to re-enter our country and victimize Canadians with seeming ease.

*A brutal beating (July 2008) of an elderly couple by KONSTANTIN BRUCK who is a non citizen deported from Canada for criminality who somehow re-entered Canada to commit this attack

*The October 2008 Ontario arrest of suspected crack dealer, KERRY DALLAS who was found with crack cocaine and multiple false identification documents.

*DALE WYATT (2007) arrested for cocaine trafficking and illegal weapons (machine guns) despite having been deported from Canada for criminality *four* previous times

*ESRON LAING and DAVID WILSON (2003-known as the 'Yo-Yo Bandits' because they kept coming back) who were arrested on robbery charges despite being collectively deported from Canada for past criminality 6 times

*JOE DINARDO (aka GABOR MAGOSZTOVIC) (2008) a previously deported robber and organized crime member arrested in Canada.

*ANTHONY WINFIELD, DARRYL BARNES, AKIM SAUNDERS, BRIAN DAVID TALLEY all arrested for criminality in Canada despite having been deported from Canada 21, 17, 10 and 12 times respectively.

These cases are separate from persons who are clearly inadmissible to Canada on known criminality grounds (or worse) yet who somehow gain entry. Recent examples of this include:

*An RCMP estimate arrest of 145 high risk criminally inadmissible non citizens in Canada in 2007 (Sgt Tony Gollob Immigration Joint Task Force)

*GIUSEPPE COLUCCIO (2008) an inadmissible Mafia criminal fugitive arrested in Canada.

*MARTIN CUSICK (2008) an inadmissible child sex offender arrested in Canada

*The April 2009 arrest (and release!) of ELVIR POBRIC a convicted double murderer and prison escapee from Bosnia who entered Canada using his correct name.

CBSA's failure to use the available technological tools to prevent criminally inadmissible persons and criminal deportees entering Canada to victimize Canadians by their criminal conduct is simply unacceptable. The failure of CBSA to prevent a person like Ezemo from re-entering Canada was compounded by their excuse that he had "fantastic documents" after police expressed frustration at CBSA's failure to prevent such entry.

These issues of CBSA's non performance in screening and enforcement were highlighted in the Auditor General's revealing 2008 report on this subject. The CIU analysis of the AG report with recommendations is attached below.

*ISSUES IDENTIFIED IN AUDITOR GENERAL REPORT REGARDING CANADA
BORDER SERVICES AGENCY (CBSA) DETENTION AND REMOVAL OF PERSONS
FROM CANADA (MAY 2008)*

Preamble: On May 6, 2008, the Auditor General (AG) released a series of reports, one of which (Chapter 7) dealt with a comparison in detention and removal actions from 2003 to 2006-7 undertaken with respect to inadmissible persons in Canada.

The AG's Report references but does not analyze various provisions of the Immigration and Refugee Protection Act (IRPA) which is the governing legislation.

The Report offers some comparative performance analysis and makes some suggestions with regard to improvements required. As is always the case, CBSA “agrees” with the observations and criticisms which in no way means corrective action is underway or will be taken in the absence of Ministerial direction.

This CEUDA review of the AG’s Report focuses on the entry, tracking, and removal of inadmissible persons rather than the administrative arrangements for detaining such persons except insofar as its relevance to the decision to release and, generally, lose track of the person.

The review also provides subject specific questions which need to be asked, as well as recommended actions.

Issues:

1. Illegal Entry to Canada (Para 7.1)

The AG’s Report acknowledges in its introduction the fact that persons who do not meet admissibility criteria and who may pose a threat to Canadian safety and security somehow are able to enter Canada.

*“At the same time, **thousands of individuals** gain access to Canada who do not meet these objectives, and who may pose a threat to the safety and security of those in Canada.”*

This review proceeds on the basis that there are a variety of measures that can be taken to address this reality as presented in various sections of the review itself.

- **Recommendation:** CBSA should be directed to develop and present a strategy aimed at preventing the entry of persons who are either inadmissible to Canada or those who may pose a threat to the safety and security of Canadians.

2. Ability to deny entry to inadmissible persons (7.7)

The AG’s Report suggests there are limited circumstances in which persons who are statutorily inadmissible to Canada can actually be denied entry to Canada upon their arrival at a point-of-entry (POE). The IRPA has become notorious for its needless complexity and creation of “loopholes” which defeat the supposed enforcement purposes of the Act. The AG appears to clearly confirm this.

- **Recommendation:** The IRPA should be reviewed to ensure CBSA is entitled and, in defined circumstances, obliged to deny entry into Canada to persons who are statutorily inadmissible, particularly on grounds relating to security, criminality, fraud or previous breaches of the Act.

3. Delay in Removal (7.8)

The Report notes delays in the area of Removals resulting from current entitlements to Pre-Risk Removal Assessment to obtaining the travel documents required to permit the return to the country of origin, birth or departure. There is no reason to simply accept the status quo yet the AG reports on the lack of effort by CBSA to remedy these inordinate deficiencies.

- **Recommendation:** The IRPA and current CBSA practices should be reviewed to contemplate:
 - a. A restriction on circumstances where Risk Assessments are required including recognizing bilateral international agreements.
 - b. Bilateral international agreements whereby documents considered sufficient for entry (copied) are statutorily considered sufficient for removal.
 - c. Use of biometric technology to verify/log identity upon removal.

4. Information sharing between CIC and CBSA (7.13-14)

The Report notes that despite the passage of years, CIC and CBSA have still not completed the necessary information sharing arrangements with the result that “*challenges remain*” with respect to priorities and information sharing. This is unacceptable after over four (4) years, especially in light of existing multiple database harmonization and integration technologies readily available and known to both CBSA and CIC.

- **Recommendation:** CBSA should be assigned the lead for the completion of the full database integrity verification and information sharing technology with a priority on systemic enforcement, with a deployment deadline within 12 months of the direction being given.

5. Issuance of Temporary Residence Permits (TRP) at Ports of Entry to persons who are inadmissible on criminality or security grounds. (7.15-17)

Notwithstanding inadmissibility to Canada due to security, criminality, organized criminality or human rights violations, the Act permits a discretionary waiver of the inadmissibility via a Temporary Residence Permit. The Report notes concurrent TRP issuance jurisdiction with some specialization as well as policy requirements detailing why such seemingly extra-ordinary measures are taken. The Report also reveals that this backdoor entry to Canada of inadmissible persons is anything but extraordinary with 13,412 such permits being issued in 06-07, with 9,489 (70%) being issued by CBSA. Worse, the Report notes that only 68% of the sample TRP files had the required “reason” for waiving inadmissibility recorded, which is actually an improvement from the past. The Report does not indicate how many of the persons issued a TRP are now the subject of a removal order or warrant or which are known to have committed crimes in Canada after being allowed to avoid their inadmissibility.

- **Recommendations:**

1. CBSA and CIC should be directed to advise how many of the persons issued a TRP (from 2003 forward) were the subject of criminality, security or human rights inadmissibility and, of the total number of TRP cases, how many are now the subject of a removal order or warrant or are known to have committed crimes in Canada after being allowed to avoid their inadmissibility.
2. Based on this information, the Government should consider amending the Act to prevent the issuance of TRP's to persons who are inadmissible for criminality, security or human rights reasons and possibly substitute with an out-of-country application process requiring Ministerial approval.

6. Failure to Monitor TRP cases or ensure departure

Persons who are otherwise inadmissible to Canada including on criminal or security grounds are generally simply released at the Point-of-Entry and allowed into Canada without supervision or monitoring. This abdication of supervisory responsibility likely explains why there are a reported 41,000 cases of persons with either enforceable removal orders or arrest warrants for removal whose whereabouts are unknown to CBSA and, incredibly, which CBSA is not actively seeking. The CBSA explanation given for adopting this approach is that it's impossible to tell who has left; this is an unacceptable deficiency which cannot be tolerated as an excuse for further non-action.

These failures pose an obvious public safety risk to Canadians which is unacceptable, especially given the fact electronic monitoring/tracking and database matching technologies are immediately deployable and would, at minimum, provide greater supervision, systemic accountability and maximized productivity of human resources. It should be noted that the Report references the use of electronic monitoring in security certificate cases.

As in other statutes, where the Act provides for the release of persons from custody, a general clause exists authorizing the releasing authority to impose conditions including: *"to comply with such other reasonable conditions specified in the order considered desirable."* This generic authorization has been upheld as valid by the Supreme Court of Canada in the recent Charkaoui case [2007] and more recent amendments to the Criminal Code (C-2) in relation to post sentence supervision have included specific authorization for electronic monitoring.

As indicated above, the Report references the uncertainty of the number of removable persons whose whereabouts are unknown because CBSA fails to use any measures to match these persons with either departing passenger manifests or US point-of-entry records. Once again, technology exists that can perform this function while ensuring full

privacy protection. It should be noted that CBSA is lawfully entitled to access incoming passenger manifests and it now needs to ensure that it can do the same with outgoing information. Face recognition biometric technology is also deployable to match against photos taken of persons issued a TRP, those otherwise processed under the Act, or those dealt with by law enforcement.

- **Recommendations:**

1. CBSA should be directed to use electronic monitoring and tracking technology in appropriate cases, amending the Act if necessary.
2. CBSA should utilize available data matching, privacy capable technologies for both past and future departure analysis amending the Act if necessary.
3. CBSA should be directed to deploy face recognition biometric technology at points-of-entry, during processing under the Act and at departure to enhance entry and departure integrity.
4. CBSA should be directed to make enforcement of warrants and removal orders for criminality, security and human rights inadmissibility cases a systemic priority with required results reporting on a quarterly basis; this should include a re-allocation or increase of resources for this specific purpose.

7. Detention issues (7.21-7.32)

The Report notes an increase in the number of detentions under the Act from 2004-05 but a decrease in the number of days (average of about 18 days) detained. The Report does not provide any analysis of the data regarding detentions including how many were for which category, how many were immediately followed by a removal, or how many resulted in persons whose whereabouts subsequently became unknown. Notwithstanding a previous commitment to do so, and for no discernible reason, CBSA could not supply this information which, of course, it should be directed to record and report.

The Report notes that it appears available bed space is a higher priority than public safety in CBSA's detention decision making. Where the Agency lacks bed space, it can transfer detainees to provincial facilities; which means additional cost to the Agency and thus a potential managerial disincentive to prioritize public safety. Such an approach might also explain the failure to keep accurate data as noted above.

Of those persons released on some form of cash bond, about 25% were subject to forfeiture proceedings for violation (not the same as those that violated) and approximately 55% have unknown whereabouts, with just under 10% of that group having a history of criminality. The Report specifically notes that, "*While infrequent, there have been cases where individuals who have been released on condition committed violent crimes.*"

It should be noted that increasing denial of entry and expedited removals should of course decrease the detention population.

- **Recommendations:**

1. CBSA should be directed to produce detailed data demonstrating the numbers, reasons, and length of stay for all detentions.
2. CBSA should be directed to follow a policy of detention decision making based on the statutory criteria and not reduced cost; this should include negotiating additional agreements with provincial authorities where required or allocating resources for new Agency detention facilities.

8. Removals (7.33-35)

The Report correctly notes that “*The integrity of Canada’s immigration and refugee program depends on the effective implementation of its policy to remove individuals determined inadmissible to Canada...*”. The Report goes on to reveal that in 2003, there were 36,000 persons who were either (finally) removable or who had warrants for removal. For the 2006-07 period, this number has grown to 63,000, with CBSA not knowing the whereabouts of 41,000 of those persons. This represents an approximate 80% increase.

Bizarrely, when a warrant is issued for a person that can be removed, instead of focusing on that person (or the criminal/security sub set), CBSA *removes* the case from its working files. Again, the excuse of not tracking departures is offered as justification for this abdication of enforcement responsibility. The Report also notes that, in spite of this 80% increase, there has been no increase in resources allocated for detentions and removals.

CBSA has increased the number of removals from 8,700 cases in 2002-03 to 12,600 in 2006-07. The Report indicates that of the 12,600 removals, approximately 1,900 or 15% were for criminality. Disturbingly, while the total number of removals has gone up, the percentage of removals for criminality has gone down from 17 to 15% of the total. There is no explanation provided for this and, once again, CBSA’s problematic record keeping prevents a more fulsome analysis of why this is so and what actions can be taken to increase the focus on criminality/security and thus volume of criminality/security removals.

- **Recommendations:**

1. CBSA should be directed to provide a complete breakdown of removal data including the numbers of persons issued a TRP who subsequently committed crimes in Canada and the number of persons currently removable (missing or not) on security and criminality grounds as well as those eligible on such grounds whose cases are in process.

2. CBSA should be directed to focus on criminal/security removals including actively seeking persons for whom warrants have been issued if not found to have departed Canada (see above Rec. at #6).
3. CBSA should either re-allocate existing resources or be provided with new resources for the exclusive use for enforcement, detention and removals.

9. Warrant Issues (7.36-.38)

The passage of the Immigration and Refugee Protection Act in 2002 eliminated the obligation on every Peace Officer to report all cases of inadmissible persons found within Canada and replaced it with a discretion placed only on CIC and CBSA Officers. This Report now confirms that police only have access to this information via a flawed CPIC interface and only if a warrant exists in which case they are supposed to notify the CBSA who then determines what action, if any, will be taken. The Report also notes flawed information in the Agency warrant database which necessarily compromises its effectiveness.

- **Recommendations:**

1. CBSA should be directed to conduct a database integrity verification including participating in harmonizing information in its database, CPIC and relevant CIC databases.
2. The Act should be amended to restore Peace Officer obligation to report the presence of inadmissible persons (including power of arrest on warrant if necessary) and CBSA should be obliged to produce quarterly reports on actions taken upon notification in such cases.

10. Case Management and Database Issues (7.39-7.42)

The AG's 2003 Report identified information database deficiencies and redundancies which the then Liberal Government committed to resolve. The proposal, made in 2004, was to merge a number of related databases (including FOSS and NCMS) into a single Global Case Management System (GCMS). This was supposed to be completed in 2005, but for reasons not given, in 2007, CBSA and CIC decided to revert back to their separate FOSS and NCMS, the latter having been supposedly assigned responsibility for detentions and removal.

The Report further indicates that in anticipation of changes through GCMS (which never materialized) improvements to NCMS were not pursued. The result is a continuing deficient (and potentially deteriorating) national system which is neither fully integrated nor sufficiently broad for the Agency's mandate. Local offices have developed their own systems, but the Report confirms that the consequence of this continuing inaction is a failure to determine if criminality cases are properly being assigned the priority they merit. Faced with the AG's Audit, CBSA has announced it will review its earlier review of the review of NCMS. Clearly, more definitive action is required, especially in light of existing database integrity verification and harmonization capacity shortfalls known to CBSA.

- **Recommendations:**

1. CBSA should be directed to conduct a database integrity verification including participating in harmonizing information in its NCMS database, CPIC and relevant CIC (FOSS) databases.
2. CBSA, RCMP and CIC should be required to present a database harmonization plan with either a GCMS model or an alternative single-entry/single-check process for all matters relevant to the CBSA's Immigration & Point-of-Entry mandate.

11. Failed Refugee Removal Program (7.42)

The Report indicates, without explanation, that a special failed refugee removal program has been terminated in the Québec region. It also does not indicate the extent of the need for such a program elsewhere in the country or whether there is any tracking of the return of failed refugee claimants for fraudulent future claims. This scenario is particularly relevant in light of the regulatory "exceptions" to the Safe Third Country Agreement with the U.S. resulting in a high volume of Refugee claimants seeking this status in Canada after arriving from the United States which is clearly contrary to the original intent of the Agreement.

- **Recommendation:** CBSA should be directed to provide a full report to the Minister with respect to and including:
 - a. The success levels of removals for failed refugee claimants in Canada.
 - b. Statistics regarding fraudulent claims after denial.
 - c. Proposed remedies to restore the intent of the Safe Third Country Agreement by denying claim eligibility to persons seeking such status after having entered from the US.
 - d. The existence and deployment of technologies to assist in preventing the above noted deficiencies.

12. Removals/Escorts (7.45)

The AG's Report calls on the CBSA to implement measures ensuring cost effectiveness in escort decision making. It presents no information regarding escorts in unnecessary circumstances, and does not consider Escorting Officer health and safety issues. Further, the Report analyses cost strictly from a price-per-removal basis rather than examining whether removals have been required for persons who were inadmissible but granted entry via the discretionary provisions governing TRP or who had illegally re-entered Canada after removal(s) including escorted removal(s).

- **Recommendation:**

- 1- CBSA should provide detailed information with respect to the number of persons escorted from Canada who were:
 - a. Admitted despite criminal/security inadmissibility.
 - b. Previously removed/escorted for criminality/security reasons.
 - c. Previously escorted – all categories.

- 2- CBSA should identify technologies known to it that could prevent such re-entry and present a plan for deployment.
- 3- CBSA should work with CEUDA to develop a joint report regarding health and safety issues for the Immigration Inland Enforcement Officers involved in removals/escort including proposed remedies.

SUMMARY OF RECOMMENDATIONS

1. CBSA should be directed to develop and present a strategy aimed at preventing the entry of persons who are either inadmissible to Canada or those who may pose a threat to the safety and security of Canadians.
2. The IRPA should be reviewed to ensure CBSA is entitled and, in defined circumstances, obliged to deny entry into Canada to persons who are statutorily inadmissible, particularly on grounds relating to security, criminality, fraud or previous breaches of the Act.
3. The IRPA and current CBSA practices should be reviewed to contemplate:
 - a. A restriction on circumstances where Risk Assessments are required including recognizing bilateral international agreements.
 - b. Bilateral international agreements whereby documents considered sufficient for entry (copied) are statutorily considered sufficient for removal.
 - c. Use of biometric technology to verify/log identity upon removal.
4. CBSA should be assigned the lead for the completion of the full database integrity verification and information sharing technology with a priority on systemic enforcement, with a deployment deadline within 12 months of the direction being given.
5. CBSA and CIC should be directed to advise how many of the persons issued a TRP (from 2003 forward) were the subject of criminality, security or human rights inadmissibility and, of the total number of TRP cases, how many are now the subject of a removal order or warrant or are known to have committed crimes in Canada after being allowed to avoid their inadmissibility.
 - 5.1 Based on this information, the Government should consider amending the Act to prevent the issuance of TRP's to persons who are inadmissible for criminality, security or human rights reasons and possibly substitute with an out-of-country application process requiring Ministerial approval.

6. CBSA should be directed to use electronic monitoring and tracking technology in appropriate cases, amending the Act if necessary.
 - 6.1 CBSA should utilize available data matching, privacy capable technologies for both past and future departure analysis amending the Act if necessary.
 - 6.2 CBSA should be directed to deploy face recognition biometric technology at ports of entry, during processing under the Act and at departure to enhance entry and departure integrity
 - 6.3 CBSA should be directed to make enforcement of warrants and removal orders for criminality, security and human rights inadmissibility cases a systemic priority with required results reporting on a quarterly basis; this should include a re-allocation or increase of resources for this specific purpose.
7. CBSA should be directed to produce detailed data demonstrating the numbers, reasons, and length of stay for all detentions.
 - 7.1 CBSA should be directed to follow a policy of detention decision making based on the statutory criteria and not reduced cost; this should include negotiating additional agreements with provincial authorities where required or allocating resources for new Agency detention facilities.
8. CBSA should be directed to provide a complete breakdown of removal data including the numbers of persons issued a TRP who subsequently committed crimes in Canada and the number of persons currently removable (missing or not) on security and criminality grounds as well as those eligible on such grounds whose cases are in process.
 - 8.1 CBSA should be directed to focus on criminal/security removals including actively seeking persons for whom warrants have been issued if not found to have departed Canada (see above Rec. at #6).
 - 8.2 CBSA should either re-allocate existing resources or be provided with new resources for the exclusive use for enforcement, detention and removals.
9. CBSA should be directed to conduct a database integrity verification including participating in harmonizing information in its database, CPIC and relevant CIC databases.
 - 9.1 The Act should be amended to restore Peace Officer obligation to report the presence of inadmissible persons (including power of arrest on warrant if necessary) and CBSA should be obliged to produce quarterly reports on actions taken upon notification in such cases.

10. CBSA should be directed to conduct a database integrity verification including participating in harmonizing information in its NCMS database, CPIC and relevant CIC (FOSS) databases.
- 10.1 CBSA, RCMP and CIC should be required to present a database harmonization plan with either a GCMS model or an alternative single-entry/single-check process for all matters relevant to the CBSA's Immigration & Point-of-Entry mandate.
11. CBSA should be directed to provide a full report to the Minister with respect to and including:
 - a. The success levels of removals for failed refugee claimants in Canada.
 - b. Statistics regarding fraudulent claims after denial.
 - c. Proposed remedies to restore the intent of the Safe Third Country Agreement by denying claim eligibility to persons seeking such status after having entered from the US.
 - d. The existence and deployment of technologies to assist in preventing the above noted deficiencies.
12. CBSA should provide detailed information with respect to the number of persons escorted from Canada who were:
 - a. Admitted despite criminal/security inadmissibility.
 - b. Previously removed/escorted for criminality/security reasons.
 - c. Previously escorted – all categories.
- 12.1 CBSA should identify technologies known to it that could prevent such re-entry and present a plan for deployment.
- 12.2 CBSA should work with CEUDA to develop a joint report regarding health and safety issues for the Immigration Inland Enforcement Officers involved in removals/escort including proposed remedies.

The A.G. Report highlights continuing failure within Government to properly share information or connect databases so as to ensure the CBSA mandate is properly discharged. There is no single solution to this defect but our inquiries suggest that at least the following measures are required:

- tasking for full database sharing among CBSA, CIC, RCMP, CRA and other agencies or Departments with implementation within a specified time frame and identification of any specific legislative obstacles with proposed amendments to resolve them

- deployment of database analytic software (including Global Name Recognition) to enhance linkage capacity

- creation of lookout photo database and deployment of face recognition biometrics with start up database to include:
 - *criminal/security deportees from Canada
 - *U.S. criminal/security fugitives defined by offence and not subjective assessment of imminent arrival
 - *Interpol criminal/security fugitives defined by offence and not subjective assessment of imminent arrival
 - *Immigration removals from Canada including failed refugee claimants

Seaport Security Issues

Two Bills, S-2 and C-26, currently before Parliament have direct impact on CBSA enforcement activities at marine ports of entry. The former deals with advanced passenger and cargo screening as well as expansion of powers in Customs Controlled areas while the latter deals with clarifying authority for CBSA to check cargo containers on export for stolen automobiles. Extracts from CIU submissions on these Bills are included. In both instances, the CIU wishes to emphasize that *prior* to enacting enforcement related matters permitted by regulation, it should be made clear that CBSA is expected to directly consult with onsite law enforcement and intelligence agencies so as to reach a consensus if possible.

Further, these new powers, while welcome, must be supported by appropriate legislative authority that permits full information sharing with law enforcement, intelligence and private sector parties so as to give effect to the intended purposes of these enactments. The experiences of our membership in regard to the artificial constraints on information sharing created by CBSA management was specifically detailed in the 2006 Northgate Report. This resistance to enforcement action was repeated in the initiatives launched by the Insurance Bureau of Canada and the RCMP in the same year with respect to checking cargo containers to prevent the export of stolen automobiles from Canadian seaports. These new Bills are opportunities to increase point-of-entry security and enforcement but they will be functionally neutered if the supporting measures are not in place. Put differently, success should not be measured in the simple passage of the Bills in question.

*S-2- Enhanced authority in Customs Controlled Areas (CCA)

Like other representatives of law enforcement agencies, the CIU welcomes the recognition by Government that there is a need to expand the capacity of Border Services Officers, in defined circumstances, to search and question individuals who are present within a Customs Controlled Area. The existing artificial restriction of check only upon exit ignores the reality that with the dissolution of the Canada Ports Police by a previous Government, Canada no longer has a full time, onsite public policing and intel presence at Canada's seaports. Although that is beyond the scope of this Bill, it is a situation which should be addressed on a priority basis.

Equally, policing and law enforcement at Canada's airports, including Class 1 airports, is also a relatively ad hoc situation with multiple agencies present and a less than clear and comprehensive security framework compounded by the presence of commercially focused private sector management. This situation, and the criminal and security vulnerabilities it creates, has been exacerbated by the failure to implement an appropriate national employee credentialing program that includes a national database for lookout and verification purposes at airports and seaports. This appears to be close to being resolved at airports but seaports remain vulnerable. These important issues have been

identified by SCONSAD, the Auditor General and the RCMP and CIU fully supports action in these areas.

Although S-2 does not directly deal with these larger institutional and systemic issues, its expansion of Border Services Officers authorities in Custom Controlled Areas (CCA) is a positive development.

The major operational change resulting from S-2 is the inclusion via amendment to s. 11.4 of the Act of the search and questioning capacity with officers for persons who are *within* a CCA rather than simply persons leaving such an area. This includes via a new s. 11.4(1)(b.1), an obligation to unload or open conveyances or containers. These are welcome enforcement enhancements although they necessarily raise implementation issues that must be addressed if the intent of the amendment is to be realized. These include:

**Clarity of what constitutes a Customs Controlled Area-* This should be a function driven decision based on the specific circumstances of each POE and determined in consultation with onsite law enforcement and port authority.

**Adequacy of personnel, training and tools to discharge enhanced duties-* Additional enforcement responsibilities must be matched with the necessary resources to do the job required. This includes either new personnel or reallocation of personnel and appropriate training and arming as circumstances dictate. CBSA will need to revise its policies at airports to permit arming for these specific new duties. In light of the already stretched capacity of public law enforcement at airports, full use and empowerment of CBSA personnel should be ensured.

**Ensuring appropriate lawful authority-* Officers must be given appropriate lawful authority and protection including specification of the right of officers to pursue an individual that flees a Custom Controlled Area without complying with these new obligations. Although the Act permits officers to enforce the Act away from a POE in defined circumstances (s.99.1), CBSA discourages such actions and there does not appear to be any like authorization for persons who leave CCAs without compliance. An amendment to s. 99.1 to clarify this authority is therefore recommended.

**Ensuring authorization for appropriate information sharing-* The enhanced search authority contemplated by S-2 fundamentally requires inter agency information sharing which has proven to be a significant problem as a result of CBSA's interpretation of s. 107 and related provisions. CIU urges the Committee to explore this issue with both CBSA and the RCMP (and other onsite police agencies if necessary) to ensure there are no after-the-fact unforeseen "barriers" to information sharing raised by CBSA that frustrate the intent of S-2.

**Completion of a national security credentialing program for workers at ports of entry-* The absence of this essential security feature at point-of-entry infrastructures has long been identified as a security deficiency that needs to be remedied. This has been recently

highlighted at Pearson Airport and the Minister of Transport's announcement that secure credentialing will be forthcoming at both airports and seaports is a positive development. Actually deploying such a system would be even better.

The enhanced enforcement measures contemplated by S-2 are intelligence based and this deliberate choice will be supported by standardized low risk identification programs. These programs, however, will be of limited value if they do not include the following features:

- a national program that covers all point-of-entry employees at all areas with ports of entry
- a national database of employees whose security clearance was approved, rejected or revoked to prevent unauthorized employment while facilitating legitimate clearance at multiple sites
- use of modern face recognition biometric technology to create a non intrusive 'lookout' database to prevent unauthorized employment and to verify cleared personnel
- full inter-agency information sharing
- full employee consultation in establishing criteria for exclusion including appropriate disclosure and right of appeal

The manner of presentation within a customs controlled area is to be established by Regulation and exceptions to this requirement are established pursuant to a new s. 14.2(2). As the Regulations have not been presented we are unable to comment on this clearly important issue.

The power of search of persons within a CCA is detailed in s. 99.2 and 99.3. A seemingly expanded or clarified power of search of goods or a container that is abandoned or not in any person's specific possession is enacted through a modified s. 99.3 (3).

It may also be advisable to ensure employees are notified of their obligations under this legislation at hiring and through signage in and at entry to CCAs.

*C-26-Cargo container inspection upon export

The CIU is aware of efforts by the Insurance Bureau of Canada and law enforcement to convince CBSA to participate in information sharing and interdiction efforts aimed at preventing the export of stolen autos or parts stored in cargo containers from Canadian seaports. It is our understanding that CBSA has professed an inability under the current legislation to share or even receive information pertaining to suspected stolen automobiles and to even check cargo containers where stolen autos are believed to be stored. It is important to note that both of these issues must be addressed if an effective anti theft strategy is to be achieved.

Section 95 of the current Act requires persons exporting goods (subject to irrelevant exceptions) to accurately report that fact including an accurate description of the goods in question and to present them upon request for inspection. Section 99 (c) permits officers the power to search reported goods intended for export and a general power of examination (99(e)) where a reasonable ground exists to suspect (a low standard) that the Act or *any other* Act of Parliament has been contravened. Section 163.5 (4) of the Act prohibits using Customs Act enforcement authority for the “sole” purpose of looking for evidence of a criminal offence. This underscores the importance of appropriate Customs Act compliance authority in this area which CBSA appears to have disregarded in refusing to co-operate to date.

During initial debate on C-26, the Parliamentary Secretary to the Minister of Justice explained that one of the purposes of the Bill was to provide appropriate “authority” for CBSA to search containers on export:

“...However, at our ports now, Canada Border Services Agency officials cannot use their administrative powers under the Customs Act to stop suspected stolen vehicles from leaving our ports. In order for the CBSA to be able to bar the cross-border movement of property obtained by crime, goods must first be classified as prohibited goods for the purpose of importation or exportation.

No such classification is currently set out under federal law. If customs officials come across suspected stolen automobiles, they do not currently have the administrative authority to detain the shipment, or even to determine themselves whether the cars are stolen by accessing databases. They can, of course, refer clear cases of criminal activity to the police, but the application of administrative customs' powers would be far more effective in helping to interdict the export of stolen goods.

To address this concern, I am pleased to say that the bill proposes to supply the necessary express prohibition against the importation or exportation of property obtained by crime. This would trigger the administrative enforcement powers of the Canada Border Services Agency.

In the case of auto theft, for example, CBSA officers would be able to investigate, identify and detain imported vehicles or vehicles about to be exported, and to search databases to determine whether such vehicles were indeed stolen. These actions could ultimately produce evidence that would allow the police to conduct criminal investigations and lay criminal charges.”

Although we are not convinced that adequate authority does not already exist, this unequivocal expression from Government about the impact of C-26 will eliminate any further inaction on the part of CBSA on this important interdiction activity. Accordingly, we are pleased to support the Bill and urge the Committee to approve the new section 355.3 contained in, ironically, the Criminal Code.

Accepting the authority to search containers on export is not the same thing as doing so on an informed basis. This intelligence led enforcement approach is a cornerstone of Canadian security and organized crime enforcement and it is especially necessary in the interdiction of stolen auto exports. In this regard, and on this specific issue, CBSA has taken the position that because of s. 107 it is prohibited from receiving or sharing information relating to stolen automobiles or suspect exporters.

It should be noted that section 107(2) of the Act prohibits officers from sharing or using customs information, *except as authorized* by the remainder of the section which provides a broad series of permitted uses including:

- (3) (a) administering or enforcing this Act (or the Proceeds of Crime Act)
- (4) (c) sharing information if necessary solely for the administration or enforcement of the Act
- (5) (a) providing information to a peace officer to investigate an offence under an Act of Parliament (Criminal Code)
- (5) (o) providing to prescribed persons or classes of persons

Section 107(6) also permits the Minister to allow information to be provided to any person if the Minister concludes the public interest outweighs the privacy interest (of the stolen auto exporter) or if providing the information would benefit the person to whom it pertains which is arguably the lawful owner.

We urge the Committee to confirm with CBSA and the Minister that with C-26 in place, officers will be able to receive and share relevant information. Should it be the case that CBSA concludes that a regulation is required for information sharing with a relevant entity, then enactment of that should be a priority. Finally, assignment of new duties should be accompanied by allocation or re-allocation of sufficient resources to provide the enhanced enforcement capacity. We urge the Committee to question CBSA and the Minister about this specifically including implementation plans and timelines so that a clear record of commitment is created to permit future performance assessment.

Corporate CanPass Issues

During the Northgate study, concerns were raised by officers about the largely inadequate or inconsistent security measures being applied by CBSA in relation to the CanPass Corporate Aircraft Program. The conclusion was that the Program created significant security concerns for little or no discernable benefit. CIU communicated these concerns to then CBSA President Jolicoeur in 2007 and received a thorough response that pointed to the absence of specific evidence of abuse and a lack of authority to confirm exit. As was almost always the case, the response displayed a disinclination to contemplate the potential of risk or that anything could or should be improved from what was in existence.

The notes that follow are largely taken from our 2007 correspondence when this issue was first identified. We will update the front line perceptions of these practices during our Members Survey and the Committee may wish to explore the matter with CBSA or the Minister.

CBSA runs various low risk traveler identification programs collectively known as the CanPass or NEXUS programs. The concept is based on the premise that certain travelers who are pre-screened by CBSA (or linked law enforcement agencies) and determined to be low risk can be permitted exception from the normal reporting requirements under the Customs Act. This then results in either expedited border clearance or in the case of air and marine travelers who report their pending arrival to a special Telephone Reporting Center, entry to Canada at unstaffed designated locations. Officers can be deployed to such remote airports or marinas for inspection following arrival or the traveler is simply (in the very high-end majority of cases) ‘trusted’ based on their pre-determined low risk status.

The cornerstone to this system is obviously having a *public* agency make the determination in advance of entry that the individual in question seeking the privilege is not a security/criminality risk to Canada. Clearly, this program was never intended as a means for anyone willing to pay the fees to avoid the legitimate scrutiny mandated by the Customs Act and the public security of our country. Unfortunately, that appears to be exactly what has transpired with the Corporate CanPass program as currently administered by CBSA.

Several of our members assigned to the air and marine reporting centers (there are only four for the entire country: Victoria, Hamilton, Windsor and Landsdowne) have identified the Corporate CanPass Program operating so that a person, *or company*, that has for example received an authorization to enter via a corporate aircraft without reporting can, in effect, sponsor up to four persons per flight for entry without risk assessment pre-clearance or reporting. Literally, CBSA has downloaded the qualification of pre-entry security risk assessment to avoid inspection to a private individual or corporation. To call this inappropriate is an understatement.

We are told that this results in a Telephone Reporting Centre receiving a call from the pilot of an incoming private aircraft with one authorized person on board, mere hours before entry to Canada, whereupon names of up to four non-preauthorized persons are provided. This identification and ‘verification’ from an authorized person or corporation is all the information CBSA requires to permit entry, most frequently to airports where no Customs/Immigration Officers will ever be dispatched to check the plane and its passengers. This is a gaping security defect and an abuse of a legitimate low risk identification program.

Our preliminary inquiries reveal further disturbing aspects to the Corporate CanPass program including:

- officers report thousands of such flights occur annually which means tens of thousands of such unscreened persons (known as ‘freebies’) potentially having arrived in Canada
- no exit verification conducted by CBSA with US officials to match reported entry with exit- The United States does not permit such unchecked entry into their country which is a telling fact
- inadequate initial CBSA ‘screening’ for companies seeking corporate CanPass privileges to ensure legitimate compliance with authorizing CanPass regulation (SOR/2003/303)
- inadequate CBSA data regarding ‘freebies’ to ensure compliance with authorizing Regulation requiring one entry only
- insufficient advance notification by pilots to Telephone Reporting Centres (TRCs) (2 hours) and CBSA reliance on accuracy of information supplied by persons seeking entry and use of students at TRCs who lack proper access to law enforcement data bases
- significant risk to officers deployed to after hours airports as a result of unknown passengers on flight
- CBSA practice of permitting fractional or multiple ‘ownership’ of company resulting in multiple authorizations
- CBSA issue Corporate permits to companies who do not qualify under the Regulation in that they charge persons (or the company) for the trip (see Atlantic Charters which is literally in the business through the Corporate CanPass program of bringing people into Canada without being checked or inspected).
- CBSA issuing permits for spouses or domestic servants of applicants on the permit, contrary to the Regulation

- CBSA issuing permits to companies that do not qualify pursuant to the stated intent and purpose of the original program – s. 7(3) of the Regulation

The Committee may wish to review the provisions of the governing regulation, SOR/2003/323 and delve into this matter further.

The power to issue an authorization is a Ministerial discretion (delegated to officials) that is to be based on criteria enunciated in the Regulation. By abdicating the public responsibility of risk determination and expanding the authorization eligibility, CBSA has made compliance by the Minister (or his/her delegate) with that criteria seemingly impossible. Further, the exemption from eligibility created by section 10(2) clearly contemplates an exceptional circumstance and CBSA data base of applicants. Our information suggests that neither of these are in place.

We wish to emphasize that CIU fully supports the concept of properly administered low risk identification practices that balance security and cross border commerce. Both Canada and the US have determined to proceed in this fashion through the Security Prosperity Partnership and ongoing negotiations under the Western Hemisphere Travel Initiative.

It appears, however, that a highly restricted, reliable, low risk determination program has evolved into an unreliable system where public authorities are unable to properly protect officers or the Canadian public they serve. The only rationale for the current unrestricted Corporate CANPASS system would seem to be to permit people that are willing to pay to avoid scrutiny on entering Canada.

In these days of rampaging gun violence and brazen cross border drug smuggling such as revealed in the recent Operation Frozen Timber, permitting entry of tens of thousands of unchecked persons by aircraft to remote and unstaffed locations, through the fiction of 'corporate travel', is inconsistent with the government's emphasis on public safety and security. While it is likely that a revision to the Regulation is required, the CIU recommends a review of CBSA practices in this regard so as to ensure only appropriately cleared persons or corporations, *as originally intended*, are granted special authorizations.

Since first raising this issue, we have become aware of an ongoing and in many ways far worse abuse of the CanPass Corporate Aircraft Program during onsite visits in Newfoundland in 2008. This part of the country receives relatively little border focused notice yet its importance as the eastern gateway ...to the continent.....merits much closer examination. Examples of areas of concern include:

Newfoundland's shortfalls in resources are a matter of grave concern. Not many realize that 93% of the Atlantic's total international private aircraft volumes land in Newfoundland & Labrador, which includes both US and overseas flights. The number of "drop downs" (un-expected/un-announced landings) is growing constantly. Can-Pass is being used in an abusive manner for which it was never intended; not knowing how many passengers or who those passengers are is frequent. Companies such as Sky Service have essentially become sky taxis as they are being allowed to use Can-Pass for paying passengers which was never the intent of the program. Officers reported that receiving erroneous names and dates-of-birth from the Can-Pass reporting centre is also frequent.

The lack of recourses and geographical challenges are such that very few of these flights are ever inspected.

It is recommended that the Committee review all of the CanPass Corporate Aircraft Program with a special emphasis on activities in Atlantic Canada and Newfoundland in particular.

4. Conclusions

There can be little doubt that since the release of the Secure Border Action Plan by the CIU in November 2006, significant progress has occurred in relation to better security at Canada's border and ports of entry. The degree of accomplishment ranges from substantial in relation to ensuring POE connectivity, arming and ending work-alones to apparently positive in relation to joint force border patrol, pre border clearance and marine and air POE capacity. Conversely, CBSA continues to perpetuate an antiquated and ineffective lookout system instead of deploying available database sharing, analysis and biometric technologies. That failure needlessly puts Canadians at risk and results in huge after the fact public expenditures.

Further, it is also extremely disappointing to see that the Government has chosen to deliberately exclude CBSA from the Canada-US Shiprider agreement. Where the U.S. has included all of its law enforcement agencies including its Customs service as being 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 (and now also armed) under the Agreement. We urge the Committee to seek a rationale for this from the RCMP, CBSA and the Minister especially in light of the 2008 platform commitment of the Government and the supposed planning underway as reported in Part 2 of this submission.

The CIU welcomes the opportunity to provide this submission to SCONSAD who as a Committee have, literally, led the way to these positive reforms by asking informed and pointed questions and following up when answers are either not forthcoming or don't make sense. It is our hope that this submission and our constructive dialogue contribute to the much needed process of continuing border security enhancement.