



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

Customs and Immigration Union (CIU)

Submission on Bill C-20, *An Act establishing the Public Complaints and Review Commission and amending certain Acts and statutory instruments*

Standing Committee on Public Safety and National Security (SECU)

June 7, 2023

Re: Request for further recommendations, Bill C-20

At the June 2, 2023, SECU meeting, Committee member Glen Motz requested from CIU National President Mark Weber further recommendations that could help the Committee strengthen Bill C-20, with a view to clarify how the proposed Public Complaints and Review Commission (PCRC) can better serve border officers and play a role in addressing issues of a systemic nature within the Agency, including toxic work environment and need for cultural change within CBSA management.

Please find our general recommendations on this matter, below. We are also including recommendations regarding other legislative changes that we believe need to be included in Bill C-20 to make federal legislation more coherent across the board.

1. General recommendations

It is currently difficult for employees to see complaints about management overreach and abuse of authority go addressed — either in a timely manner or at all — through existing channels. As these issues are often well-entrenched and easily brushed aside by upper management, we recommend that Bill C-20 make it clear that recourses proposed as part of the new Commission be made available to CBSA non-management employees, empowering the Commission to investigate situations it may not otherwise be made aware of.

If the aim of the PCRC is to bring about effective change around issues of overreach, discrimination, and abuse of authority, allowing CBSA employees to make the Commission aware of what they're witnessing can only be of benefit.

Bill C-20 should also include clear language around union representation, allowing employees to benefit from union representation for any complaints administered by CBSA and/or the Commission.

1.1. Time limits

As per Section 33(3) of the Bill, complaints could be made up to a full year after the alleged incident occurred, and possibly extended as per 33(5). This can put officers subject to a complaint at a disadvantage when they are notified and must respond to an incident that allegedly happened twelve months ago.

There is also a glaring lack of time limit requirements for the Commission to complete an investigation, which is only amplified by the absence of time limit requirements for the Commission to submit a final report following reception of the CBSA President's response to an interim report (Section 64). In short, we fear an investigation could take years to complete, which is neither fair to the employee under investigation nor to the complainant.

We recommend that Bill C-20 include clear language around time limits for every step of the process.

1.2. Disciplinary measures

Under Section 52(3) of Bill C-20, "the Commission must refuse to deal with a complaint if it relates to a disciplinary measure taken, or not taken, by the President [of the Agency]". This Section prevents our members from addressing issues related to abuse of authority when disciplined by management, or when management decides not to discipline a manager engaging in problematic behaviour such as harassment.

We recommend that this Section be removed, so that our members may have access to an independent body to review potentially unfair or abusive disciplinary decisions within CBSA.

1.3. Conflict between proposed legislation and established collective agreements

We have concerns that Sections 67 and 68 would allow the Commission and the Agency to bypass the existing grievance process. As per these Sections, following an investigation, the Committee Chairperson produces a report which they send to the CBSA President. In that report, they make a recommendation about starting a disciplinary process, if CBSA has not already begun one. They can also include a recommendation that discipline be imposed.

Our concerns lie with the ability of our members to grieve and benefit from their full collective agreement rights should discipline be imposed by the employer as part of the Commission's recommendation. In our experience, through the existing grievance process, disciplinary measures by CBSA management towards our members are often found to be excessive. It is however unclear to us that the Commission's recommendation to impose discipline, which would effectively be mandated by law under the proposed legislation, could be appealed through the Federal Public Sector Labour Relations and Employment Board.

To mitigate this, we recommend that Bill C-20 include clear language about the right of an employee and/or the union to grieve the disciplinary process or the disciplinary measure imposed as a result of a recommendation by the Commission.

1.4. Lack of language around union representation and collective agreement rights

Bill C-20 does not address an employee's right to representation during the process, internally if the complaint is handled by CBSA or externally if handled by the Commission. CIU has

struggled for decades to include such language in our collective agreements. The FB (Border Services) collective agreement (section 17.02) now includes language giving the right to representation during administrative investigations to our FB members. However, without clear language around collective agreement rights, Bill C-20 may make representation in such investigations more difficult. Moreover, our members in other units do not necessarily benefit from this right.

We therefore recommend that the right to union representation as part of all processes mandated by the Commission or the Agency be included in the proposed Bill.

We also recommend that the union be included as an interested party for participation in Commission hearings under section 59(7).

Finally, to ensure that the proposed legislation — in part or as a whole — is not in violation of collective agreements, we recommend that Bill C-20 include general language indicating that, beyond 71(c), collective agreement rights are maintained for all processes covered by the Commission.

2. Other legislative changes needed

As mentioned on June 2, without additional legislative changes, for many of our members, Bill C-20 is likely to be seen as yet another example of CBSA and the federal government treating its border officers as proper law enforcement and public safety personnel only when it suits them. The role of border officer has changed tremendously over the last twenty-five years, and our law enforcement members are an integral part of this country's public safety framework.

The proposed creation of this new civilian oversight body implies that the federal government agrees. More than once, Minister Mendicino himself has been unequivocal about CBSA's role as a public safety organization — notably when he introduced Bill C-20 for second reading in November 2022:

By creating a new public complaints and review commission, the bill would provide new tools to ensure transparency and accountability of the institutions Canadians rely on to keep them safe, to keep them safe in their communities through the work of the Royal Canadian Mounted Police and to keep them safe by protecting our international borders through the work of the Canada Border Services Agency. Canadians depend on these public safety organizations, but, at the same time, want assurances that these organizations will use the powers that have been entrusted to them responsibly.

– Hon. Marco Mendicino, Minister of Public Safety, November 3, 2022

Yet, our members — the very same officers who keep our communities safe by protecting Canada's international borders — are not recognized as public safety personnel under major public service legislation, such as the *Public Service Superannuation Act* and the *Income Tax Act* and their associated regulations. For Bill C-20 to be coherent, it must be accompanied by language confirming the status of border officers as public safety personnel across federal legislation.

It is especially important for our members to see these complimentary legislative changes as it would provide them with a retirement regime consistent with other federal law enforcement officers in the federal public service, such as Correctional Services and RCMP officers.

We therefore recommend the following three legislative changes — implementing these changes as part of Bill C-20 would go a long way in demonstrating to border officers the federal government understands the nature of their job and respects their law enforcement role:

- Amending the *Public Service Superannuation Act* to add a section to the Act defining Border Officers and other employees part of the FB group (Border Services) as an occupational group (identical to what exists for Correctional Service of Canada in the [Public Service Superannuation Act, Part I, 24.1-24.6](#)).
- Amending the *Income Tax Act* regulations to include employees part of the FB group (Border Services) in the definition of Public Safety Occupations ([Income Tax Regulations \(C.R.C., c. 945\), Part LXXXV, 8500\(1\)](#)).
- Amending the *Public Service Superannuation Act* regulations to include language for the FB group (Border Services) identical to what exists for Correctional Service of Canada ([Public Service Superannuation Regulations \(C.R.C., c. 1358\), 53-59](#)).