

BACKGROUND

What might an independent oversight body look like for Canada Border Services Agency?

When CBSA officers carry out their responsibilities under Canada's customs and immigration laws, they have wide-ranging police powers. CBSA officers have powers of arrest, detention, search and seizure. At the border, CBSA officers have an even wider range of powers than police. For example, they can stop travellers for questioning, take breath and blood samples, and search, detain and arrest non-citizens without a warrant. Despite these sweeping police powers, there is no independent oversight body for the CBSA.

There are numerous models in Canada for independent oversight, review and complaints bodies for police forces. At a minimum, BCCLA, CCR and CARL believe that any oversight agency or combination of oversight agencies for CBSA must:

- Be able to receive and deal with public complaints about CBSA conduct, including third-party complaints from public interest organizations
- Be able to initiate its own reviews and investigations about CBSA conduct even where there is no complaint. CBSA deals with many vulnerable people who may be making refugee claims in Canada, or whose status in Canada is otherwise uncertain. These people, in many cases, are either unaware of how to file complaints or tend to be reluctant to file complaints because they are making a claim to the Canadian government and fear that complaining may result in less favourable treatment. Other potential complainants have been deported from Canada and may be unable to access a complaints mechanism in Canada. In addition, because many of the national security activities of CBSA take place in secret, an oversight process that is driven solely by complaints is inadequate as few people may ever learn about some of these activities.
- Include independent civilian investigation of critical incidents involving CBSA officers and individuals in CBSA custody.

In 2006, the Maher Arar Inquiry recommended that the CBSA's national security activities – which were a subject of that inquiry – be subject to independent review by an agency that would also be responsible for review of the RCMP. Justice O'Connor called this the "Independent Complaints and National Security Review Agency for the RCMP", which was to be born of a re-structured and newly empowered Commission for Public Complaints Against the RCMP (CPC). This agency would have had the power both to investigate complaints received from the public and public interest bodies, and also would have had the power to conduct self-initiated reviews. The federal government has made some changes to the mandate of the CPC, but has not acted on the recommendation to extend independent review to CBSA. BCCLA, CCR and CARL take the position that any new oversight body for CBSA must have the power not only to review its national security activities, but all exercises of its police and investigative powers including its role in the cases of individual refugee claimants. This would bring it in line with most other police services in Canada.

Currently, anyone with a complaint against CBSA must file a complaint with the agency itself. The BCCLA has not found, in dealings with complainants, that complaints often result in effective accountability. The CBSA's Recourse Directorate, while it handles complaints about

CBSA decisions and assigns different officers to deal with complaints than the officers involved, is not an independent complaints agency. It reports to the CBSA's president. It has no authority to launch independent reviews of CBSA actions in the absence of a complaint, which is a critical function in light of the many circumstances in which it is unlikely that vulnerable people will make complaints.

Concerns about CBSA collaboration with Sri Lankan authorities responsible for human rights abuses

In October 2013, following the death of Sathyapavan "Sathi" Aseervatham in Sri Lanka, information became public that raised deeply troubling questions about the relationship of the Canadian government to the Sri Lankan authorities. Mr. Aseervatham, who was one of the passengers on the *Sun Sea*, had alleged in an affidavit that he was tortured on his return to Sri Lanka, by authorities who knew that he had been on the *Sun Sea*. Did the Canadian government share the names of the passengers with the Sri Lankan authorities? He was subsequently called in by the Sri Lankan authorities (the Terrorist Investigations Division) who allegedly interviewed him about the affidavit in the presence of officers of the Canada Border Services Agency. Did the Canadian government share a confidential affidavit alleging torture to the very authorities alleged to have committed the torture?

Since the Canada Border Services Agency has no external complaints mechanism, formally there is no one to investigate such allegations other than the CBSA itself. The CCR wrote to the President of CBSA in October 2013 calling for an investigation into these questions. To date the CCR has received no response.

Lucia Vega Jiménez

Lucia Vega Jiménez died while in CBSA custody in December 2013. She attempted to hang herself at the immigration holding centre at the Vancouver Airport, and died later in hospital. CBSA did not disclose her death to the public, although the coroner and police were notified. Ms. Vega Jiménez's death and the failure to publicly disclose it afterwards raise many questions about the actions of CBSA, including: whether her death might have been prevented, how CBSA or its contracted private security agency responded to the emergency, how CBSA dealt with the family after her death, and why CBSA did not reveal the information to the public.

When deaths occur in the custody of other police agencies, the public is usually informed quickly and in provinces like BC and Ontario, an independent civilian investigation agency immediately investigates the case.

Breach of privacy of refugee claimants: Afghan examples

Some CBSA officers call numbers that they find on refugee claimants' cell phones, without regard to the safety of the claimant or family in the country of origin. In one case involving an Afghan refugee claimant, the CBSA officer asked for copies of the claimant's passport, to verify her identity. The claimant, however, did not have her passport so she asked for access to a computer so that she could retrieve a scanned image of the passport from her email. CBSA said they could not give her access to a computer, and directed her to give her email address and

password. The claimant, who has stated she felt intimidated by the Officer's aggressive manner, complied. The claimant later learned that CBSA had opened every email in her account and contacted her former employer in Afghanistan. The breach of privacy only came to light when the employer emailed the claimant to say that a representative of the Canadian government had asked for information about her. The claimant remains terrified that CBSA's leak of information placed her family members in Afghanistan at risk.

In another case, CBSA detained an Afghan refugee claimant for reasons of identity. The officer asked her to provide the name and contact information of someone who could forward documents to CBSA that would establish her identity. As the claimants' parents are illiterate, she gave the name of a friend. When CBSA contacted the friend, they asked extensive questions about the claimant and why she was claiming refugee protection in Canada. CBSA's disregard for the safety of the claimant and her family came to light only after the claimant was released from detention and able to communicate with the friend.

The need for refugee protection is determined by the Immigration and Refugee Board, not CBSA. The Immigration and Refugee Board subsequently recognized both Afghan claimants as Convention refugees.

The Canadian Council for Refugees in 2011 made a complaint to the Privacy Commissioner of Canada on behalf of a refugee claimant who had similar concerns. The Privacy Commissioner's investigation confirmed that, on the instigation of CBSA, Canadian government representatives had disclosed the claimant's personal information to government authorities of the home country. Nevertheless, the Privacy Commissioner found the complaint "not well-founded" because such communication does not violate the Privacy Act (which does not provide any particular protection to refugees). This highlights again the lack of recourse for individuals with complaints against CBSA for actions that have the potential to harm the safety and security of refugees and their family members.