



Conseil canadien pour les réfugiés
Canadian Council for Refugees



Canadian Association of Refugee Lawyers
Association canadienne des avocats et avocates en droit des réfugiés



BRITISH COLUMBIA
CIVIL LIBERTIES
ASSOCIATION

ASSOCIATION DES
LIBERTÉS CIVILES
DE LA COLOMBIE-BRITANNIQUE

BY EMAIL

February 14, 2019

Hon. Ralph Goodale
Minister of Public Safety and Emergency Preparedness
House of Commons
Ottawa ON K1A 0A6

RE: Inaction on CBSA accountability

Dear Minister,

Last week, you were quoted by the CBC reiterating your commitment to introducing legislation to establish an oversight mechanism for the Canada Border Services Agency.¹ This is something that you have stated on a number of occasions since March 2016, including at the Canadian Council for Refugees' conference in Niagara Falls in December 2017. Our organizations have always welcomed that commitment and have offered our assistance and support in following through on that commitment. This has included participating in Mel Cappe's research for your office on models for CBSA accountability and commenting on its recommendations, and our own research, writing, publishing and submissions on the topic.

We have consistently recommended that there must be an independent, civilian-led oversight commission with a mandate to provide real-time oversight for CBSA. We have not been alone in this, as you know. In addition to your government stating its support for the creation of an accountability mechanism, the Senate Standing Committee on National Security and Defence also made this recommendation in its report *Vigilance, Accountability and Security*, stating that the agency should ensure appropriate compliance with legislation and policy, including protection for privacy

¹ CBC News, "National security committee to probe Border Services activities", February 5, 2019. Accessed at: <https://www.cbc.ca/news/politics/nsicop-reviews-cbsa-1.5006772>.

rights.² The coroner's jury into the tragic death of Lucía Vega Jiménez while in CBSA custody in Vancouver also made such a recommendation.

Ms. Vega Jiménez was one of at least 14 people who have died in CBSA custody since 2000. We know that you are familiar with the litany of concerns about CBSA conduct reaching back years, including very serious incidents in which people have died in CBSA custody, and have suffered egregious mistreatment during detention. The deep and urgent concerns about the conditions of immigration detention, raised by migrant justice, legal and human rights organizations including many individual detainees and their families, moved the government to implement its new National Immigration Detention Framework, the Alternatives to Detention Program, and the Ministerial Direction to CBSA on Minors in Immigration Detention. While we have critiqued aspects of these programs, we were encouraged that you, and the government, take the issue of conditions of detention seriously and have invested effort to ensure that detention occurs only as an absolutely last resort, and that the conditions in detention change. These changes, however, must be accompanied by robust, independent and external oversight of CBSA. The creation of such an agency is, in our view, critical to the improvement of CBSA conduct, and conditions of detention. Yet, this commitment appears to have been placed on the back burner.

Recent weeks have seen several new reports in the news about allegations of misconduct against members of the Canada Border Services Agency. As reported in one investigation by the CBC, these allegations include a range of behaviour directed both at other CBSA members, and at members of the public, including use of force allegations, harassment, sexual assault, neglect of duty, discreditable conduct and abuse of authority.³ Another story this week detailed a significant privacy breach.⁴ These reports of serious issues within CBSA support the recommendation we have made that a new accountability body should not only be able to investigate complaints, but also

² Senate Standing Senate Committee on National Security and Defense, Vigilance, Accountability and Security at Canada's Borders (June 2015), Accessed at [sencanada.ca/content/sen/Committee/412/secd/rep/rep16jun15a-e.pdf](https://www.sencanada.ca/content/sen/Committee/412/secd/rep/rep16jun15a-e.pdf).

³ Quote: "As recently as today, [Goodale] said that he is still committed to drafting oversight legislation." We take this as a reference to general oversight for CBSA, as opposed to the national-security-specific functions introduced through the National Security and Intelligence Committee of Parliamentarians and the measures in Bill C-59. CBC News, "Harassment, sexual assault among alleged misconduct by border agents investigated by CBSA", Feb. 4 2019. Accessed at: <https://www.cbc.ca/news/canada/cbsa-files-abuse-atip-1.4999473>.

⁴ CBC News, "Border agency breaches privacy of refugee claimant", Feb. 3 2019. Accessed at: <https://www.cbc.ca/news/politics/usb-key-cbsa-therrien-refugee-targeting-travellers-airline-confidential-privacy-1.5000079>

have the power and resources to conduct proactive assessments of CBSA policies and practices to ensure they respect the rights of people with whom CBSA interacts.⁵ While we know that CBSA has investigated numerous complaints internally, this is completely beside the point. These reports underline the acknowledged fact that CBSA's unusual status as the only major law enforcement agency in Canada without an external accountability agency must come to an end. An independent accountability mechanism is absolutely required.

We accepted the government's word when we have been assured, multiple times, that legislation would be forthcoming. We are writing to ask when we may expect the government to follow through on its three-year-old commitment to act.

Sincerely,

Claire Roque
President
Canadian Council
of Refugees

Lobat Sadrehashemi
President
Canadian Association of
of Refugee Lawyers

Josh Paterson
Executive Director
BC Civil Liberties
Association

⁵ BCCLA, *Oversight at the Border: A Model for Independent Accountability at the Canada Border Services Agency*, at p. 40, available at <https://commentary.canlii.org/w/canlii/2017CanLIIDocs199.pdf>.