

Civil Society statement on Bill C-20

June 13, 2023

While Bill C-20 is a crucial measure to ensure greater accountability of the Canada Border Services Agency (CBSA) and the Royal Canadian Mounted Police (RCMP), the undersigned organizations are deeply troubled by the federal government's lack of consultation or engagement with key civil society stakeholders in the development of this important piece of legislation both before this bill was tabled, and as it has moved through the legislature.

Bill C-20: An Act establishing the Public Complaints and Review Commission and amending certain Acts and statutory instruments is an overdue bill that attempts to respond to the longstanding call to create a dedicated independent review and complaints process for the activities of the CBSA and make changes to the RCMP review process – amalgamating both under a Public Complaints and Review Commission (PCRC).

The signatories of this statement are established and well-regarded groups. They are led by and represent individuals and communities most impacted by the CBSA and the RCMP, including Indigenous, Black and other racialized people. We have decades of expertise in the areas of immigration and refugee law, criminal law, human rights, international law, civil liberties, and national security, to name a few.

The collective expertise of our groups can help the federal government fulfill the mandate of this Bill, expressed by the Minister of Public Safety in November 2022, to strengthen independent accountability and combat systemic racism and discrimination. Despite its stated objective of fostering accountability, the government is instead dodging it by failing to properly consult the communities we represent and include them in the democratic process of lawmaking.

There are many shortcomings to the proposed Bill C-20. Aspects that should be addressed include:

- the need to ensure the independence of the PCRC's operations;
- the PCRC's independent access to information;
- ensuring there is a mechanism for complaints on systemic issues;
- third-party complaints; and
- broadening the PCRC's redress and recourse powers.

Attached to this statement is a summary of key recommendations from our briefs submitted to the Standing Committee on Public Safety and National Security, indicating how Bill C-20 can be revised in order to meet its intended purpose and mandate.

Whether our briefs and the issues we raise are considered is outside of our hands. Though we are hopeful, it is clear from the sheer lack of engagement on this issue that the government risks creating the PCRC as a shell of accountability that replicates or even exacerbates existing problems with the CBSA and RCMP.

We urge the Standing Committee to consider the recommendations described in the various submissions our groups have made and to integrate the amendments we propose. We welcome the opportunity to speak to members of the Standing Committee and answer any questions.

Signed by:

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Key issues – Bill C-20

1. The Commission should be independent and adequately resourced

PRINCIPLE: The effectiveness of the Commission is undermined by the proposal for it to report to and be funded by the Minister responsible for both the RCMP and CBSA.

SUGGESTION: the Commission should be set up as an office of the Legislature, and its budget allocation should not be tied to any Ministry that directly or indirectly oversees the RCMP and/or CBSA.

2. Complainants should not be limited to impacted persons

PRINCIPLE: Ensure third parties can make complaints and representations in hearings, in light of the many barriers to making complaints faced by marginalized vulnerable people, especially people without status, including those who are being deported.

SUGGESTION: section 33(1) and 33(2) should be amended to specifically acknowledge the right of third parties to file a complaint: “Any individual *or third party* may ...

SUGGESTION: remove section 38(1)(b) and 52(1)(b).

3. Complaints should not be limited to individual circumstances

PRINCIPLE: Provide for systemic and policy complaints, without affected named individuals, to address patterns of behavior or problematic policies and operations.

SUGGESTION: add section 33.1(1) and 33.1(2) to mirror the language of section 33(1) and 33(2) but specifically authorizing any individual or third party to file a systemic complaint.

SUGGESTION: remove reference to “trivial” in sections 38(1)(a) and 52(1)(a).

4. Lack of clarity on who is to assess the relevance and necessity of the information to be disclosed for an investigation, and lack of review mechanisms for disputes arising thereof.

PRINCIPLE: Ensure relevant information is recorded and stored, and can be independently accessed by the Commission, so that complaints can be meaningfully investigated.

SUGGESTION: provide a mechanism to adjudicate disputes of information that is “relevant and necessary.”

5. The Commission should investigate complaints instead of the RCMP and CBSA

PRINCIPLE: Given the systemic racism that has been acknowledged to plague both the RCMP and CBSA, leaving them to investigate themselves leads to an apprehension of bias by design and may exasperate existing problems.

SUGGESTION: the Commission should have sole/exclusive jurisdiction to investigate complaints.

6. In the alternative, the need to ensure effective investigation of complaints in a timely manner

PRINCIPLE: Oversight by the Commission must not be rendered meaningless by lengthy delays in the initial investigation of complaints by the CBSA and RCMP.

SUGGESTION: to have strict timelines for the CBSA/RCMP to acknowledge, investigate, and report on complaints.

7. The need for coordination, recourses during an investigation, and redress upon success

PRINCIPLE: Ensure coordination between the Commission and other complaints and review bodies, particularly in the handling of concerns related to national security, so that complaints are effectively resolved and are not rejected because of the mere existence of another oversight mechanism/procedure, especially where the other body declines to investigate.

PRINCIPLE: The Commission should be armed with necessary powers to address interim needs during an investigation and redress upon a successful complaint.

SUGGESTION: The Commission should be granted the following powers:

- To make binding recommendations on interim orders such as a stay of deportation;
- To make binding recommendations to initiate or impose disciplinary measures or to lay charges for noncompliance with its enabling statute.

8. Curtailing access to the Federal Court

PRINCIPLE: The work of any administrative body should be subject to Judicial Review to ensure compliance with its enabling statute.

SUGGESTION: section 65 be amended to permit judicial review of final reports of the Commission.