



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

**JANUARY 27, 2010**

Mme Camille Therriault-Power  
Vice-President – Human Resources Branch  
Canada Border Service Agency  
99 Metcalfe Street, 3rd Floor, Room 302  
Ottawa, Ontario K1A 0L8

By email : camille.therriault-power@cbsa-asfc.gc.ca

**RE: CBSA Officers Assigned to Assist RCMP – Vancouver 2010 Olympic Games**

Dear Mme Therriault-Power:

Thank you for your recent note indicating that Border Services Officers asked to assist the RCMP during the aforementioned event in the operation and use of the CBSA's Mobile VACIS units will be required to wear 'protective' equipment such as bullet proof vests but *not* allowed to carry their 'defensive' side-arm. Your note indicated that the reason provided for this was that in assisting the RCMP in this special task, BSO's will not be acting within the confines of the "...enforcement of CBSA program legislation" and thus not covered as Peace Officers which provides the s. 25 Criminal Code protections.

As you can imagine, the notion that Officers are being called on to perform identical duties unarmed where they are entitled to be armed at a different location is to say the least inherently illogical, at minimum from the perspective of Officer safety and the purpose of such defensive measures in the first place. CBSA is, of course, correct that the wearing of side-arms and the endowment of Peace Officer status and protection is based in statute and that the duties contemplated fall outside that which is currently CBSA program legislation. That does *not*, however, mean that BSO's must simply be exposed to increased risk as CBSA management is suggesting.

Through your letter, CBSA has indicated that for BSO's to be afforded Peace Officer status and authorized to carry their side-arms with legal protections, they must be enforcing *program legislation*. What appears to have escaped the attention of CBSA management, however, is that '*program legislation*' is defined in s. 2 of the CBSA Act as including:

*"program legislation" means any other Act of Parliament or any instrument made under it, or any part of such an Act or instrument,*

*(c) under which the Minister or another minister authorizes the Agency, the President or an employee of the Agency to administer a program or carry out an activity;*

...2/

Clearly, the Minister has the authority to direct the assistance to the RCMP as 'program legislation' which, by CBSA's own rationale, will permit BSO's to carry their side-arms with full Peace Officer protection.

This assistance role is further reinforced in s. 5(2) of the CBSA Act whereby:

*(2) The Agency may provide support, through the provision of services, to departments and agencies for which the Minister is responsible, in accordance with agreements or arrangements entered into with those departments and agencies.*

In short, by virtue of its own authorizing legislation, CBSA is capable of ensuring that its officers are not denied the full protections they usually enjoy and which other law-enforcement workers will enjoy while performing security work at the Olympics. What is simply required is that the senior leadership of the Agency act, in accordance with the relevant statutory authority, to ensure that BSO's are properly protected in the performance of their public safety duties. This process is also clearly available and appropriate to circumstances where BSO's are called upon to assist other police or law-enforcement agencies such as you outlined in your e-mail to me. In light of the apparent failure of CBSA senior management to appreciate these basic legal authorization mechanisms, we will be communicating directly with the President and the Minister to ensure such oversights, which expose Officers to needless risk, are corrected on a national basis.

The internal CBSA Act procedure described above is also not the only means by which BSO's can obtain the requisite Peace Officer status and the statutory protections that come with it. As noted below, section 7 of the RCMP Act permits the appointment of non regular RCMP officers as 'peace officers'.

Appointment and designation

7. (1) The Commissioner may

*(a) appoint members of the Force other than officers;*

*(b) by way of promotion appoint a member other than an officer to a higher rank or level for which there is a vacancy in the establishment of the Force;*

*(c) where the Commissioner is requested by any department of the Government of Canada or considers it necessary or in the public interest, appoint for a period not exceeding twelve months at any one time special constables supernumerary to the strength of the Force for the purpose of maintaining law and order; and*

Peace officer

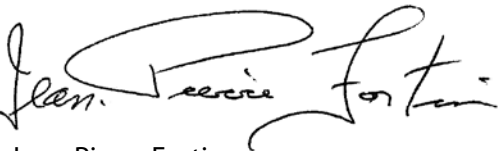
9. Every officer and every person designated as a peace officer under subsection 7(1) is a peace officer in every part of Canada and has all the powers, authority, protection and privileges that a peace officer has by law until the officer or person is dismissed or discharged from the Force as provided in this Act, the regulations or the Commissioner's standing orders or until the appointment of the officer or person expires or is revoked.

Thus, the Commissioner of the RCMP can also designate the requisite CBSA Officers as Peace Officers pursuant to s. 7(1)(c) for the performance of the VACIS duties for the duration of the Olympic Games.

As you may know, BSO's were designated as Peace Officers so as to permit them to, while armed, assist with security measures during the Francophone Summit which was held in the Province of Québec in October of 2008. With this precedent in existence, it is that much more incomprehensible why the same process would not be used for an event with worldwide attention such as the Olympic Games.

In summary, contrary to what your e-mail advised was CBSA's analysis, BSO's are *not* statutorily required to be put at increased risk by not having the Peace Officer designation and protection which includes the protection of the side-arm to which they are otherwise entitled. Given the Olympics are quickly approaching, I would ask that you confirm with me, as soon as possible, that CBSA has taken the requisite authorization steps directly or through the RCMP so that these important public and Officer safety issues can be addressed properly.

Sincerely,

A handwritten signature in black ink that reads "Jean-Pierre Fortin". The signature is fluid and cursive, with a large loop at the beginning and a long tail that extends to the left.

Jean-Pierre Fortin  
First National Vice-President, CIU

c.c. Members of the CIU National Board of Directors