



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

July 11, 2011

Ms. Patti Bordeleau
Director General, Labour Relations and Compensation
Canada Border Services Agency
99 Metcalfe Street, 3rd floor
Ottawa, ON K1A 0L8

Re: Legal Assistance in Incidents Involving Discharge of a Firearm/Use of Force

Dear Ms. Bordeleau,

Thank you for providing us with CBSA's draft policy with respect to right to counsel prior to and or during an investigation where an Officer's firearm has been discharged and the funding responsibility for that assistance. At the outset, it should be noted that the circumstance in which this need for counsel arises only occurs because of a decision by CBSA that officers should be investigated in a certain way.

While we do not disagree with the special investigation CBSA has mandated involving the discharge of firearms, by requiring such a process CBSA must also assume the responsibility for its consequences and costs. Necessarily, this will include the cost of independent counsel to assist CBSA employees who are subjected to this process because of an incident that occurs while executing their CBSA mandated duties. Naturally, there will need to be an agreement with respect to what legal services are covered at what rates but we are confident that these issues are easily resolvable.

As you know, these incidents are very few in number but the principle remains significant and fundamental nonetheless. Further, the nature of the incidents and the immediacy of the consequential interviews directed by CBSA are such that the existing Treasury Board process is clearly inappropriate for the special circumstances involved.

It is the view of the Customs and Immigration Union, therefore, that any policy adopted by CBSA in this regard must contain the following features:

1. Officers who are on duty and who are subjected to an investigation for a use of force incident or for the discharge of a firearm are entitled to speak to independent counsel before such any interview and to have counsel present during the interview.
2. Because the investigations will only occur as a result of a CBSA policy, CBSA is appropriately responsible for the costs associated with the involvement of independent counsel in the defined circumstances of the initial interview.

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3. CBSA and CIU should reach an agreed upon formula for legal services costs as well as internal reporting and cost recovery in the event of a finding of misconduct.

It is our hope that we can reach agreement on these matters expeditiously. Again, although the incidents involving such special circumstances are rare, we are certain you appreciate, they are extremely significant for our members and definitive of the respectful nature of the work environment in which Officers perform their important duties on behalf of Canadians.

We look forward to working with you to reach a mutually acceptable agreement on this issue.

Sincerely Yours,

A handwritten signature in black ink, appearing to read 'Ron Moran', written in a cursive style.

Ron Moran
National President
Customs and Immigration Union

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