



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

December 5, 2011

via e-mail

Luc Portelance
President
Canada Border Services Agency
191 Laurier Ave. W., 6th Floor
Ottawa, ON K1A 0L8

E-mail: luc.portelance@cbsa-asfc.gc.ca

RE: Inland Enforcement Officer Arrest and Use of Force Authority

Dear Mr. Portelance,

As a result of recent actions taken by the Inland Enforcement Division of the Canada Border Services Agency (CBSA), we are compelled to contact you to seek your corrective intervention on an urgent basis.

Members of the Immigration Inland Enforcement Officer community recently made inquiries with the Acting Manager of Investigations and Removals regarding their arrest authority and protections while performing duties under the *Immigration and Refugee Protection Act* (IRPA). The inquiries were prompted by concerns about their arrest authorities when they are subjected to interference, obstruction, and/or assault by a potential client they may be questioning or by a third party. The inquiries were also an understandable attempt on the Officers' part to clarify issues about their safety inasmuch as the duties they perform that, I trust you will agree, are among the Agency's most potentially hazardous.

The heart of the situation at hand seems to stem back to 2007 when the Enforcement Division inaccurately characterized related circumstances to CBSA Legal Services and asking them if Immigration Inland Enforcement Officers had *Criminal Code* arrest authorities. Legal Services then produced a legal opinion based on the information provided. That opinion, authored by Lydia Bourqui and dated July 10, 2007, specified that Immigration Inland Enforcement Officers do *not* have the authority to arrest persons for offences under the *Criminal Code* (including assaulting or obstructing a peace officer) while they are enforcing IRPA. The opinion's suggestion is that this is so because the Officers are not considered "peace officers" when they *enforce* IRPA, even though they are under section 2 of the *Criminal Code* definition.

What the 2007 opinion does *not* address is the basic yet far more critical issue of what arrest and officer protection authority *does* exist for these officers when they perform their duties under IRPA. Notwithstanding this glaring deficiency, we have been advised by our members from across the country that, based on the flawed opinion, Inland Enforcement has taken the position that Immigration Inland Enforcement Officers lack any arrest authority when assaulted or obstructed by a potential client they may be questioning or by a third party while performing

their duties. The approach taken is that, rather than defend themselves by using force in the manner for which they are trained and, when necessary, using the tools they have been issued, Officers are to attempt to withdraw from the situation and call police if successful. To call this absurd would be quite an understatement.

This new “policy” has been circulated to all Immigration Inland Enforcement personnel, and the affected officer training syllabus has been amended to include this new instruction. Sadly, these changes were introduced without consulting or notifying the Customs and Immigration Union.

We are certain you can appreciate the significant workplace danger such a “policy” creates, and that this is not something Immigration Inland Enforcement Officers want to endure. Rather than proceed under the *Canada Labour Code* and remind our members of their right to refuse dangerous work, I am taking this opportunity to contact you directly in the hope the new co-operative approach we recently discussed as being desirable can correct this egregious error made by those responsible.

The purpose of the original inquiry by the Officers was to seek clarification on their lawful arrest authority and protections in defined circumstances of being obstructed or assaulted while performing their duties under IRPA. Instead of analyzing the situation and reviewing the law in its entirety, Legal Services simply dusted off a 2007 legal opinion that failed to address the facts in question and only narrowly dealt with the question of whether or not officers operating under IRPA could arrest for certain *Criminal Code* offences.

Although Inland Enforcement Officers may lack the authority to arrest for the *criminal* offence of assaulting a peace officer, our understanding is that they do have clear statutory authority to arrest when enforcing section 129 (1)(d) of IRPA (obstruction of an officer). Obstruction is an indictable offence under section 129(2) of IRPA, and it triggers the power of arrest without warrant under section 495 of the *Criminal Code* for peace officers, which includes Inland Enforcement Officers pursuant to section 138 of IRPA and the section 2 definition in the *Criminal Code*. In short, Inland Enforcement Officers do have the power of arrest without warrant in the circumstances described and all of the use of force protections that go with it.

CIU sought legal advice on this issue and what we learned confirms another legal opinion from 2005 that was prepared by the Public Service Alliance of Canada during the introduction of Bill C-26, which created the Canada Border Services Agency. Neither of our two opinions suggest ambiguity or even nuances regarding the authorities in question. How CBSA Legal Services could have missed this is something that should be explored.

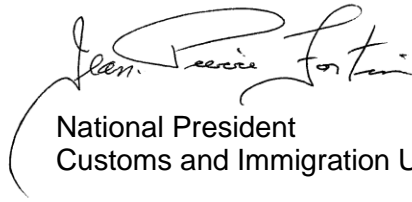
We would therefore ask that you seek immediate confirmation from CBSA Legal Services that what we have described above with respect to officers’ power of arrest for an offence under section 129 of IRPA is accurate.

Should it be confirmed that such arrest and officer protection authority exists in law, this would obviously supersede any new CBSA “policy” on the subject. We would consequently ask for immediate withdrawal of the “no authority” directive and its replacement with an explanation of exactly what authorizations and protections exist. The modification to officer training would also require reversal.

We must add that it is alarming to see such a deficient result coming from Inland Enforcement management and CBSA Legal Services. Our affected members have a difficult enough job to do without such lack of professional expertise from those charged with managerial duties.

As you can imagine, in light of what is in play, this entire issue is one of national importance to our membership and, if unresolved, to the Government and people of Canada. It is my most earnest hope that we can count on you to take the necessary corrective measures on an urgent basis. CIU would also be more than pleased to assist you in those efforts.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Jean-Jacques Fortin". The signature is written in a cursive style with a large, sweeping initial "J".

National President
Customs and Immigration Union

c.c. National Board of Directors
Branch Contacts