



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

January 28, 2011

The Honourable Vic Toews
Minister of Public Safety
269 Laurier Avenue West, 19th Floor
Ottawa, Ontario
K1A 0P8

Re: CBSA Termination of Assistance to Police Agencies

Dear Minister:

As you are aware, on the afternoon of December 24th, CBSA management unilaterally internally announced that it was terminating the long standing practice of providing specialized assistance to other law-enforcement agencies upon their request. This law-enforcement partnership had been occurring for decades and was mutual in that other agencies too assist CBSA from time to time.

We have since confirmed that local police agencies were taken by surprise by this move which suggests that, as was the case with the planned land-border point-of-entry closures and service reductions, CBSA appears to have acted without any form of consultation with its partners. Accordingly, their choice of timing for the internal communiqué was hardly accidental.

Subsequent communications from CBSA have confirmed that what has been cancelled is a law-enforcement assistance practice which occurred roughly once a week throughout Canada as CBSA Officers' special expertise in drug, money, and firearms detection was recognized as critical for the success of certain specialized operations. The only explanations we have been provided are that CBSA Officers lacked the requisite authority to assist other agencies and that, further, this abandonment was required as a cost savings measure.

You should be aware that this supposed lack of authority has never been raised by CBSA until side-arms came into play and that it has never prevented such activities in the past including at the 2010 Olympics and the 2008 Francophonie Summit, the latter of which saw CBSA Officers assisting the RCMP and being armed while doing so.

CBSA has stated that for their Officers 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 section 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,

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(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; or...
(emphasis added by us)

Clearly, the you as Minister have the authority to direct the specified assistance to law-enforcement as *'program legislation'* which, by CBSA's own rationale, will permit BSOs to assist and carry their side-arms with the full peace officer protection required.

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

5(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.

Once again, the Act would permit such assistance to the RCMP and through them to other agencies if required. The internal CBSA Act procedure described above is also not the only means by which CBSA Officers can obtain the requisite peace officer status and the statutory protections that come with it. Section 7 of the RCMP Act permits the appointment of non RCMP Officers as *'peace officers'* and section 9 of the Act specifies the full peace officer authority and protection in such circumstances.

Thus, the Commissioner of the RCMP can simply designate the requisite CBSA Officers as peace officers pursuant to section 7(1)(c) of the RCMP Act. This vehicle was used for both the 2008 Summit and the 2010 Olympics. This special appointment authority also exists in Provincial legislation such as section 53 of the Ontario Police Services Act with the result that like authorization exists to assist local police agencies as well. You should know that we advised CBSA management of these provisions approximately one (1) year ago.

CBSA's further claim that this moving away from assisting law-enforcement agencies is necessary to reduce expenditures; this too is suspect to say the least. CBSA also suggests that insisting Officers be armed when participating in such operations is strictly aimed at obtaining better pay and benefits, from a labour law point-of-view, such comments don't even make sense given such participation has absolutely no additional impact on job-classification point-rating.

When the CIU testified before the House of Commons Standing Committee on Public Safety and National Security regarding CBSA's proposed point-of-entry and point-of-service closures, we provided detailed examples of non-operational spending that would permit significant savings without reducing operational effectiveness. To cite just one area, on which the Ottawa Citizen subsequently provided greater detail, CBSA spent over \$30M in FY 09-10 in vaguely described contracts for services that include 'management consulting', 'information technology consulting' and 'unspecified'.

If there actually are outstanding issues regarding specific authority or cost recovery, then appropriate action would have been for the agencies involved to have identified the

'problems' and crafted the solutions. Instead, CBSA management has chosen to simply abandon joint-agency assistance without concern for the resulting public safety consequences. As Canada's Minister of Public Safety, we trust you are as disturbed by this approach to law-enforcement leadership as we are.

You should be aware that this unilateral decision did not occur in a vacuum. After considerable debate, with like fallacious arguments, CBSA management has now finally agreed that their Officers can perform mandate duties away from designated points-of-entry, and be armed while doing so. Despite the obvious authorization mechanisms noted above, we have been unable to convince CBSA that it is unreasonable to require that our members attend on assistance requests wearing a protective vest, while not benefiting from the protection of their side-arm which, thanks to your Government, our members are now trained and equipped with.

Because of our inability to convince CBSA of the illogic nature of their position and the needless danger it creates, we had notified them that we would be pursuing a legal resolution of this in the Federal Court. Within a matter of weeks of that notice, on Christmas Eve, CBSA internally announced its termination of this assistance for the supposed reasons described above. The timing was not coincidental.

The decision as to whether CBSA will participate in assisting other law-enforcement Agencies in their important work is clearly a policy matter for your Government to make and not one appropriately dictated by unilateral direction from CBSA management. In light of this fact, we wanted to be sure you were fully apprised of the factual circumstances and the options available because, quite frankly, this strangely announced retreat from cooperative enforcement is utterly inconsistent with the pragmatic and effective approach your Government has taken on other matters of public safety.

Since your Government took office, our direct relationship has proven to be an effective mechanism that enabled providing the experiences and insights from front-line Officers on specific issues directly to the Minister's Office. This has been explained to us previously as having been perceived as being of real value to the Minister and the Government and, as such, if we can be of any assistance in resolving this ill-conceived action we would be pleased to do so.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ron Moran', with a stylized flourish at the end.

Ron Moran
National President

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