



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

Ottawa, November 16th, 2010

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

Re: CBSA Participation - Southern Quebec Border Patrol Project

Dear Minister,

While we have tried to address the issue at hand internally with CBSA, we are at this point compelled to contact you following what appears to be a decision by CBSA senior management to overrule a September 4th, 2010 public announcement by the RCMP (Montreal Gazette) that Border Services Officers (BSO's) would participate in the interdiction phase of the aforementioned project. As you are aware, the Customs and Immigration Union (CIU) has long promoted this joint-force, intelligence-led interdiction capacity between land-border points-of-entry including advocating for and supporting its inclusion in your Government's 2008 election platform.

When the project was first announced, CBSA senior management continued its resistance in the involvement of such enforcement actions by announcing that BSO's would not be allowed to participate with the RCMP and QPP in the interdiction phase of the project. We have had repeated exchanges with then CBSA President Rigby, both before and after this announcement, wherein we outlined the lawful authority of BSO's to conduct their mandate duties away from points-of-entry. You may be interested to know that in his response to me dated February 2, 2010 relating to an incident in Coutts Alberta, Mr. Rigby acknowledged that there was *no* legal impediment to BSO's performing their mandate duties between points-of-entry. Instead, he correctly noted that the current practice was rooted in a 1932 *Order in Council* assigning such responsibility to the RCMP which has been reinforced by subsequent MOU's between the Agencies.

To his further credit, in the same correspondence, Mr. Rigby also acknowledged that border security circumstances had obviously changed since 1932 and that this necessitated "...*challenges to our current practices to ensure they are as effective as possible.*" Regrettably, this challenge appears to have gone unmet insofar as the interdiction work relating to the Border Patrol project is concerned.

Mr. Rigby was not the only senior CBSA official to acknowledge that BSO's have the lawful authority to perform their mandate duties away from points-of-entry while armed.

In a July 28, 2010 letter to the national media in response to a story that CBSA denied BSO's the ability to carry their firearms away from a point-of-entry, then CBSA Executive Vice President Luc Portelance wrote:

"As is clearly stated in the agency's policy, when the CBSA takes an active role in Joint Force Operations with other agencies, CBSA armed officers are authorized to carry their firearms."

In summary, CBSA management has acknowledged that there is no legal impediment to Border Services Officers performing their duties away from points-of-entry which includes the interdiction

work contemplated in the Border Patrol project. We would be pleased to provide you with the specific analysis of the relevant statutes which confirms this reality as we have already assembled and presented this material to CBSA and to the House of Commons Public Safety and National Security Committee.

Ironically, years prior to the Border Patrol project, this fact of CBSA's lawful authority to deal with persons failing to report as required was acknowledged by no less an authority than the RCMP itself when Superintendent Joe Oliver advised the House of Commons Public Safety and National Security Committee that:

"It is a Customs violation. There is a failure to report inward, so CBSA would have jurisdiction. However, it becomes an issue such that the CBSA currently does not have pursuit-type patrol vehicles. (October 2, 2006)

Chief Superintendent Oliver is now the Director General of Border Integrity for the RCMP.

The RCMP's announcement on September 4th was clear. *"Nine RCMP vehicles are to begin patrolling in the region this month, with each car containing an RCMP officer teamed up with an officer from the Sûreté du Québec, or an officer from the CBSA, explained RCMP Corporal Luc Thibault yesterday."*

Frankly, we find it extremely hard to believe that the RCMP who are the lead partner in this project could have been factually in error about this point, or that their full-time spokesperson could have somehow erroneously misconstrued the situation.

Despite having full-time staff assigned to monitor the media on border related stories, CBSA never corrected this comment or offered any internal communication.

This changed abruptly when on Friday, September 10th, the CIU posted the welcome news on our website and sent congratulatory e-mails to your office, the PMO, and to CBSA. You should know that your office did *not* indicate that the RCMP announcement was inaccurate. The following day we were contacted by the CBSA Vice-President Ms. Camille Therriault-Power who advised that the RCMP was *'mistaken'* and that a correction would be forthcoming.

Later that day, the Gazette ran an unattributed correction which stated:

'A story in last Saturday's Gazette said the RCMP would be teaming up with the Sûreté du Québec or the Canadian Border Services Agency to patrol the stretch of border between Franklin in Haute St. Laurent county and Mansonville in the Eastern Townships, as part of a new "First Responders Unit." In fact, only the RCMP and the SQ will be patrolling the area.'

The decision by CBSA refusing to allow CBSA participation in this interdiction project also has financial consequences for both the RCMP and the Government of Canada. By withholding BSO participation, CBSA's refusal to participate will increase costs for the RCMP in human-resource deployment as well as creating higher compensation obligations to cover the QPP's participation.

We are thus left in a situation where an unequivocal policy statement from the RCMP which confirms the Government's 2008 platform commitment on border security has inexplicably and anonymously been overruled without comment from your Government. All remember that one of the main rationales used by your Government when announcing your decision to arm BSO's was that these Officers would now be even more apt at supporting the rest of the law enforcement community which is overstretched and whom will welcome this enhanced participation. As you can appreciate, having

publicly congratulated the Government for including BSO's in the Border Patrol interdiction project, we are now faced with having to explain this apparent reversal by Government to our members. This compounds the difficulty created by CBSA's equally astonishing choice not to participate in the Canada-US Shiprider program which we urge you to raise with CBSA management as well.

It is our sincere hope that after reviewing what has transpired and recognizing the accepted lawful authority of BSO's, you will take the necessary steps to uphold your Government's leadership on operationally enhanced, cost-effective border security by directing CBSA to participate in the interdiction phase of the Border Patrol project.

We would be pleased to discuss this with you further should that be of assistance and we look forward to hearing from you at your earliest convenience on this important matter of border security and managerial proficiency.

Sincerely Yours,

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

Ron Moran
National President

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

Note: In your July remarks as published in the Media Release on the Border Patrol project, you referred to CBSA's non-participation in the enforcement component as being "...*the most effective and responsible at this time.*" With all due respect, the partial participation CBSA has proposed does not fulfill the Government's 2008 platform commitment and neither does it cost effectively ensure the productive deployment of highly trained and skilled Officers to the appropriate benefit of the Canadian public.

POSTED JULY 28, 2010