



Bill C-20: Submission to the Standing Committee on Public Safety and National Security – Executive Summary

• **30 May 2023**

Bill C-20, An Act establishing the Public Complaints and Review Commission, responds to the Canadian Council for Refugees' longstanding call for oversight of the Canada Border Services Agency (CBSA) – we welcome this bill as a long overdue measure. There are shortcomings in the bill, as outlined below, but we urge that they be addressed through amendments and the bill passed.

Like all government agencies, the CBSA operates in the context of deep-seated systemic racism. Racism is a particularly urgent concern in immigration enforcement, because of the immense power imbalance that exists between immigration enforcement officials and people without secure status in Canada. Most of those with the least security are racialized.

Key CCR concerns with Bill C-20

1. Third party complaints

A system dependent on complaints from affected individuals cannot be effective in a context such as immigration enforcement where those most at risk of suffering abuse are least able to bring forward a complaint.

NGOs are well-placed to bring forward third party complaints. In addition to supporting an individual in bringing a complaint, NGOs can usefully identify and act on problematic patterns.

Recommendations

- Amend Bill C-20 to allow for complaints from NGOs, without a requirement for written consent from an affected individual. The Commission should be empowered to hear complaints from NGOs on systemic issues and patterns of behaviour without naming individuals.
- Amend Bill C-20 to empower the creation of a process by which organizations wishing to make a complaint can request standing to bring the complaint in the public interest.

2. Systemic complaints

Bill C-20 is narrowly focused on addressing bad behaviour by an individual officer. The CCR considers it essential that the Commission have a broader scope. Many of the problems observed

by our members arise from an internal culture that promotes mistreatment, or from CBSA policies. Accountability should be asked not only of front-line officers – it is also needed from senior officials, and from the CBSA as an institution.

NGOs are well-placed to identify potential systemic problems. Under C-20 as drafted, there is no clear way for organizations such as the CCR to ask for a “specified activity review” – either the Minister may request one or the Commission may conduct it on its own initiative.

Recommendations

- Amend Bill C-20 to require that the Commission create a formal process to allow relevant organizations to request a specified activity review.
- Delete subsection 28(3) (a) which requires that the Commission must be satisfied that “sufficient resources exist for conducting the review and the handling of complaints under Part 2 will not be compromised.”
- Once the Commission is created, ensure that it has sufficient budget to enable it to conduct several specified activity reviews each year.

3. Recourses and redress

The external CBSA complaint mechanism needs to be able to address potential impacts of immigration enforcement both during study of the complaint, and after a complaint has been upheld.

Recommendations

- Delete s. 84 (which says that the complaint cannot delay or prevent immigration enforcement activities, such as removal).
- Amend Bill C-20 to provide for the suspension of removal, perhaps after a review of the complaint shows that it is not frivolous. Alternatively, provide for a triage process screening out frivolous complaints so that the Commission’s formal acceptance of the complaint could be used in seeking a judicial stay of removal, where the alleged misconduct calls into question the appropriateness of removal.
- Add to Bill C-20 provisions empowering the Commission to make recommendations of immigration measures (for example, to halt removal or to have the person re-admitted to Canada) (in addition to s. 67-68 relating to recommendations for disciplinary measures).
- Add to Bill C-20 provisions empowering the Commission to make recommendations for other measures of redress including financial compensation (with no cap for damages).

- Add to Bill C-20 provisions empowering the Commission to lead a mediation process to allow the complainant to express what measures of redress would be most meaningful to them.

Other concerns

- Amend Bill C-20 to include standards against which CBSA actions should be assessed. These standards should include explicit reference to human rights standards (the Canadian Charter of Rights and Freedoms and international human rights law) and to ensuring actions are free of racism.
- Recommend to the CBSA that it ensure that its Code of Conduct is updated and publicly available.
- Amend Subsection 33(3) to provide a timeline of 2 years from the alleged incident for the initial filing of the complaint (rather than 1 year).
- Amend Bill C-20 to include a strict timeline for the CBSA to acknowledge, investigate and report on complaints. In the event that the timeline is not respected, the matter should be referred automatically to the Commission.
- Amend the bill to provide the possibility for the Chair of the Commission to review a complaint, following the CBSA investigation, even if the complainant does not request a review.
- Amend subsection 52(5) to say that the Commission “may” (not “must”) refuse to deal with a complaint if there is an alternative forum.
- Amend the bill to include a requirement for the Commission to identify the alternative forum and provide information about initiating a complaint there, when a complaint is refused under subsection 52(5).
- Recommend to the CBSA that it systemically record all interviews.
- Ensure that those in detention have effective access to make complaints.
- Ensure that the Commission has jurisdiction to investigate not only the activities of CBSA staff but also external parties acting on behalf of CBSA, such as private guards at an Immigration Holding Centre.
- Ensure complaints by people in provincial facilities are adequately addressed, including by providing for the possibility of parallel complaint processes, where both the provincial facility and the CBSA may have responsibilities relating to the alleged mistreatment.
- Require investigation in every case of critical incidents and fatalities involving people in immigration detention.