



## Comments on CLOs' job description

14 July 2022

The following are the comments of the Canadian Council for Refugees on the job description of the Community Liaison Officer (CLO), a role within the Canada Border Services Agency (CBSA) created in the context of the CBSA's [National Immigration Detention Framework](#), of which a key pillar is the identification of alternatives.

### 1. CLOs should be re-oriented to focus on facilitating release

The National Immigration Detention Framework (NDIF) is designed to produce “a better, fairer immigration detention system that supports the humane and dignified treatment of individuals while protecting public safety”. We understand that the CLOs were intended, in particular, to support access to an expanded Alternatives to Detention (ATD) program.

Legally, there is an onus on the part of the CBSA to actively seek out Alternatives to Detention. Following the *Brown v Canada (Citizenship and Immigration)* 2020 FCA 130 decision, this onus was incorporated into the [Chairperson's Guidelines](#) on Detention (see Section 3 of the guidelines including: 3.1.5; 3.1.15; 3.1.17; 3.1.19). This onus was recently reiterated by the Federal Court in [Lee v Canada \(MPSEP\)](#) 2022 FC 383 where Justice Norris found at para 68:

...there is a heightened obligation on the part of the ID to consider alternatives to detention for vulnerable persons such as persons with mental illness (a point I will return to below). **Related to this is a heightened onus on the Minister to justify the detention of such persons, as reflected in paragraph 3.1.15 of the Guideline. Consequently, as the Guideline also notes, a member should “actively question” the steps that the Minister has taken to make an alternative to detention available when the person concerned is a vulnerable person.** I am not persuaded that the ID erred in failing to do this in the last detention review. That being said, there has now been a material change in circumstances with the March 14, 2022, Order of Justice Ahmed granting an interlocutory stay of Ms. Lee's removal. Given this, **I fully expect the question of whether the CBSA is being diligent in identifying and supporting alternatives to detention to be front and centre at the next detention review.** [emphasis added]

However, the CLO job description does not make clear that the role is to actively seek out and create an Alternative to Detention, and thus to facilitate release. The job description can be read

just as easily to imply that CLOs should be advising officers against Alternatives to Detention for a specific individual, as for it.

In practice, this results in some of the work of CLOs failing to support the goals of the NIDF and adding no value, as they are duplicating the work of hearings officers in marshalling arguments against the release of the person concerned.

In the GTA in particular, we observe the reports of CLOs being filed at the detention reviews, often containing the CLO's negative assessment of the appropriateness of the available ATDs. Since the Minister's representative is already present in the hearing to give CBSA's opinion on the suitability of ATDs, what is the value of having a second officer weigh in? How is the CLO advancing the goals of the NIDF when their involvement is simply to add another CBSA voice against release?

We have also heard of CLOs referring a person to a service provider delivering Community Case Management and Supervision after having shared a negative opinion of the suitability of the person for the ATD. We are concerned that the sharing of the CLO's negative opinion does not add any value to the process, and may simply influence the service provider against the person.

We submit that the CLOs should be clearly re-oriented to focus their time and energy on developing a plan in the community to facilitate release. They should be incentivized to increase rates of timely release from detention. Where there are no current prospects of CBSA supporting release for a specific individual, either based on the CLO's own assessment or because the officer is opposed to release at this time, the CLO should re-direct their energies to other cases where they might be able to facilitate release.

## **2. CLOs need to be guided by principles of justice and humane and dignified treatment of individuals**

In consultations with CBSA in advance of the adoption of the NIDF, the CCR and CBSA agreed that a culture change was necessary within the CBSA to ensure that the goals of the NIDF are achieved.

Unfortunately, it does not appear that meaningful culture change has occurred. CLOs work within the predominant CBSA culture of enforcement. As such, it is unsurprising that they share the same views of enforcement officers, with the focus on detention as a means to ensure that immigration proceedings can go forward. They fail to see persons in detention as human beings who deserve to be treated fairly and with dignity. This is illustrated by the CLOs' reticence to actively work on creating a plan in the community to ensure a person is able to comply with immigration conditions.

The fact that CLOs seem rarely to actually meet with persons in detention before forming their opinion of the risk that they represent adds to the likelihood that their views will be at odds with the goals of the NIDF. In fact, it has been the observation of CCR members working in the GTA, that CLOs do not meet with persons in detention prior to making their assessments of appropriate Alternatives to Detention.

We struggle to imagine how CLOs, as CBSA employees, can escape the pressures of the institutional culture in order to fulfill the role we understand is expected of them.

### **3. CLOs should facilitate access to ATDs other than CCMS**

We understand that an important part of CLOs' responsibilities is supporting the relationship with service providers contracted by the CBSA to deliver Community Case Management and Supervision (CCMS) programming. This is a valuable role, particularly for service providers who are new to working with people released from detention.

However, we believe that CLOs should be explicitly directed to facilitate access to Alternatives to Detention other than CCMS programming. This was one of the issues raised in the *Lee* proceedings cited above.

Currently, according to information from CBSA, the CLOs will not make referrals to anyone other than the contracted organizations.

As CBSA is aware, the contracted organizations do not have sufficient space for people in need of ATDs, and there are many individuals whose profile does not fit the CCMS programming available, due to gender, SOGIE factors, risk profile, health status or other factors. While we welcome the CBSA's plan to expand and diversify spaces available through CCMS programming, it is unlikely that there will ever be solutions available to all who need them through CCMS programming.

Meanwhile, other solutions may be available in the community. The CLO could play a helpful role in identifying and accessing these solutions. In some cases, CLO collaboration may be necessary to make it viable – in one case, counsel had found a residential mental health program that would accept a very vulnerable female detainee who had a serious mental health condition. However, the CBSA did not consider this program to be a viable alternative to detention because the institution would only communicate updates to the referring agency., The CBSA refused to be the referring agency on the basis that CLOs can only refer to contracted organizations.

#### 4. Outreach to NGOs

Inherent to the role's very name, CLOs are expected to liaise with the community. The job description includes the following:

- Act as primary point of contact for non-governmental organizations (NGOs) and immigrant advocacy groups on issues related to the ATD Program and program parameters

From our observation, this is not being done. We have raised this several times with CBSA over the past year.

We had hoped that CLOs would liaise actively with the NGO community and in this way develop knowledge and relationships with organizations that could assist in identifying, accessing or even providing ATDs, particularly for low risk and vulnerable persons who are generally not catered to by the CCMS programming.

In our recommendations to CBSA on Gender-Based Violence (January 2021), the CCR called on CBSA to recognize the expertise of NGOs/ community service providers and collaborate with them to support to survivors of gender-based violence. We noted that "NGOs, particularly those who serve vulnerable migrants, have an integral role to play in providing practical and moral support to people who have been victims of gender-based violence, in assisting them to navigate immigration and other processes and in advocating for them."

In this context, we recommended as follows:

CBSA should develop the role of the Community Liaison Officer (CLO). There is a mixed experience so far but the role has the potential to be an effective mechanism. The CLOs should meet with and communicate with NGOs, learn about resources available and share that knowledge with CBSA officers. The CLOs should also facilitate NGOs in communicating with CBSA about clients.

We urge that the CLO job description be modified to give higher priority to responsibilities relating to outreach to NGOs, as part of responsibilities to seek options for release beyond those in the CCMS program.

#### 5. Minors

We suggest that the CLOs should have particular responsibilities to support efforts to resolve situations where minors are, or may be, affected by detention. This would be a way to reinforce compliance with the [Ministerial Direction to the Canada Border Services Agency: Minors in](#)

Canada's Immigration Detention System and the Canada Border Services Agency's "National Directive for the Detention or Housing of Minors."

CLOs could play a proactive role in developing and maintaining lists of community options for release, for situations where children are or may be detained or housed, or separated from a parent who is detained. We note that many cases of children affected by detention involve refugee claimants detained on the basis of identity, for whom the CCMS programming is not adapted. Most are low risk, according to CBSA criteria, and alternatives to detention should be sought, according to the Ministerial Direction and the CBSA National Directive.

As an example, about a year ago there was a media report about a family (including a housed Canadian citizen minor) detained in Surrey. Local CCR members were very disappointed that NGOs in the Vancouver area were not contacted to help find solutions for this family, despite the long history of NGOs' engagement with CBSA and their support for vulnerable people in detention. CLOs could play a key role in avoiding such situations arising again, by preparing lists of possible resources for CBSA officers to have at their fingertips, and by getting involved in individual cases to help seek solution, so that alternatives are found before anyone from the family gets into detention.

## 6. CLOs need to engage as early as possible

We understand that CLOs do not see the files of detained persons until after the 7 day detention review. We believe that it is important for the search for Alternatives to Detention to start as soon as possible. Files should be flagged for expeditious assessment of ATDs in cases where the person detained is at risk of being more than usually impacted in adverse ways by detention, notably people who live with vulnerabilities such as mental health or medical needs, and LGBTQ people.

CLOs must conduct their assessment of ATDs and begin developing ATDs in a timely way. Currently, it has been the practice of some CLOs to not assess ATDs or make referrals to CCMS agencies until a removal order is issued in cases where a person is detained for appearance at an admissibility hearing. CLOs do not assess ATDs unless detention is continued after the 7-day review. This causes an inherent disadvantage to detainees who live with vulnerabilities, as well as those who may not have friends or family who can come forward as a bondsperson.

**7. CLOs should develop a plan based on an interview with the detained person and assessment of their needs**

The CLOs should be expected to develop a structured alternative to detention that can offset the CBSA’s concerns, based on an interview with the client and an assessment of their needs. Currently, they do not interview the person before they make their assessment. Instead, they review the hearings officer’s file, which is geared towards supporting the CBSA’s position that detention is necessary. Since they have only assessed those arguments and evidence, CLOs tend to develop recommendations that support the CBSA’s initial decision to detain. By speaking with the detainee, the CLO will be able to gather more information as to what kinds of supports a person requires in the community to ensure their compliance upon release.

**8. CLOs should play a collaborative role in the search for alternatives**

We recommend that the CLOs be directed to collaborate with persons detained, their representatives, NGOs, etc in finding alternatives to detention (CCMS and other).

CLOs could facilitate the search for ATDs by:

- Researching options for a detained individual, particularly where the CCMS partner spaces are not available or not suitable. This could be done in collaboration with counsel, if any.
- Facilitating communications for the detained individual on steps that need to be taken in order to prepare an ATD (there are many barriers to communication for people in detention – where even access to a pen can be complicated, let alone electronic communication!)
- Facilitating access to a detainee’s property so that they can obtain the contact information of potential bondspeople.
- Facilitating communication as necessary with other government entities or institutions (for example, in one case Correctional Service Canada needed to finalize their Community Assessment – the CLO would be well-placed to do follow up with another federal department to communicate the importance of timely completion of this process).
- Finding solutions to overcome barriers to an otherwise effective ATD (for example, in one case a viable ATD had been found, but CBSA objected that it was not clear how the person would be get to the Removals Office – a CLO could have the responsibility to ensure that a challenge like this does not remain an obstacle). We note that CLOs should have access to some funds in order to ensure that ATDs are accessible.