



Proposed CCR model for a CBSA Accountability Mechanism

A. Overview

The mechanism must be:

1. Independent (i.e. not subject to departmental or political influence).
2. External (i.e. organizationally and physically outside the Canada Border Services Agency (CBSA)).
3. Effective (i.e. with sufficient legal powers and resources to investigate complaints and monitor CBSA activities, and its findings have legal consequences).

B. Scope of activities to be covered by the mechanism

1. All actions by CBSA officers (including powers to question, examine, search and seize, issue removal orders, detain, determine eligibility of applicants, institute criminal actions, give penalties).
2. Conduct of CBSA officers.
3. In all settings, in Canada and overseas (including port of entry interviews, hearings before the IRB, detention facilities and provincial /territorial institutions, at airports overseas).
4. CBSA policies.
5. CBSA programs and initiatives (e.g. Most Wanted list).

C. Standard against which the mechanism must evaluate CBSA

1. Conformity to the Canadian Charter of Rights and Freedoms.
2. Conformity to Canadian laws (including Immigration and Refugee Protection Act, Privacy Act).
3. Conformity to international human rights instruments to which Canada is signatory.
4. Conformity to CBSA Code of Conduct.
5. Conformity to the following principles¹:
 - a) to respect the rights and dignity of all persons, without discrimination;

¹ Adapted from RCMP Act, s. 37, <http://laws.justice.gc.ca/eng/acts/R-10/page-7.html#h-41>

- b) to act at all times in a courteous, respectful and honourable manner;
- c) to show particular sensitivity to the best interests of children;
- d) to maintain the integrity of the law, law enforcement and the administration of justice;
- e) to maintain transparency and accountability;
- f) to act impartially and diligently, in accordance with the law and without abusing the authority of the CBSA;
- g) to avoid any actual, apparent or potential conflict of interests;
- h) to be incorruptible.

D. Powers of the mechanism

1. Conduct investigations of all critical incidents (death, serious injury, sexual assault) involving CBSA officers and individuals in CBSA custody.
2. Receive complaints from citizens and non-citizens about their interactions with CBSA.
3. Receive complaints from third parties about CBSA conduct or policy or systemic issues.
4. Encourage and provide assistance to individuals and organizations who wish to provide feedback/complaint.
5. Promote knowledge of the mechanism and how to make complaints (e.g. by providing informational material at CBSA offices, including ports of entry, and online, in order to encourage individuals to submit feedback/complaints).
6. Consult with and solicit feedback from NGOs.
7. Engage in research.
8. Dismiss a complaint judged to be vexatious or frivolous or in bad faith.
9. Hear complaints without them first having to go to the CBSA.
10. Investigate CBSA activities and policy or systemic issues, on its own initiative (e.g. randomly attend CBSA detention centres and interview personnel and detainees, or review CBSA policies and documentation in a specific area).
11. Provide a report to the CBSA in order to assist in implementing recommendations given to the CBSA.
12. Provide an impartial analysis of the complaint by an independent adjudicator (it is important for the new system put in place to appear impartial in the eyes of the public, therefore must be governed by the transparency required for this – i.e. public hearings, published material).

13. Compel CBSA to share information with the mechanism. It should have extensive investigative powers to obtain information.
14. Conduct hearings, where the parties can choose to be represented by counsel. As far as possible hearings should be public, while attending to privacy and safety considerations for individuals affected.
15. Publish findings of investigations and adjudication of complaints, with identifying information of individuals redacted unless the individuals affected choose to be named.
16. Order redress measures under the *Immigration and Refugee Protection Act* for individuals who have been treated unfairly by CBSA.
17. Impose penalties on offenders.
18. Conduct joint reviews and investigations with other agencies having expertise in national security matters, such as SIRC and CSE Commissioner.
19. Make recommendations to the Public Security Minister and other relevant ministers.
20. Publish reports.
21. Conduct educational seminars for CBSA officers in order to prevent violations.

