



Bill C-20: An Act establishing the Public Complaints and Review Commission

**Submission to the Standing Committee
on Public Safety and National Security**

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Executive Summary

Bill C-20 responds to the CCR's 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.

A. Introduction

The Canadian Council for Refugees (CCR) is a leading voice for the rights, protection, sponsorship, settlement, and well-being of refugees and migrants, in Canada and globally. The CCR is driven by its approximately 200 member organizations working with and for these communities from coast to coast to coast.

Committed to social justice and transformation by challenging racism, colonialism and intersecting oppressions, we undertake policy monitoring, advocacy, network building, and public education to empower members and communities to bring about systemic change.

The CCR has a long history of advocating to the government for an external complaints mechanism for the Canada Border Services Agency (CBSA). We bring an important perspective on the need for accountability for the CBSA and on the qualities necessary to ensure the mechanism is effective for non-citizens who have particular vulnerabilities.

The CCR's perspective is informed by our members, many of which are active in the field supporting people in immigration detention, accompanying people at interviews with the CBSA and engaging with people who report on their experiences at Ports of Entry or in inland interactions with the CBSA. These members routinely hear reports about the behaviour of CBSA officers and see the negative consequences on individuals when their behaviour is unprofessional. They see how vulnerable people are to abuse when they do not have access to legal representation. Many of the employees of member organizations have themselves had the experience of migration to Canada, and thus bring forward their own lived experience in addition to what they hear from the clients they serve.

The CCR's focus, and that of most of our members, is on people whose migration is forced and who therefore exhibit multiple vulnerabilities. We strive to bring forward the perspective of people engaging with the CBSA in contexts where they do not have counsel present, and who are for the most part not well-placed to advocate for themselves.

The CCR also brings to the table our knowledge of the issues based on our experiences over many years of discussing complaints management with the CBSA, as part of our longstanding relationship.

B. Longstanding CCR call for an oversight mechanism for the CBSA

The CCR has been drawing attention to the need for oversight of the CBSA for decades – even before the creation of the CBSA, CCR was calling for external oversight of Canadian immigration enforcement activities.¹

In 2014, CCR joined with other organizations to make a public call for an oversight mechanism for CBSA, offering the following examples of situations that demanded independent investigation:

- CBSA officers share information about refugee claimants with individuals in the country of origin, potentially endangering the safety of the claimants or their families.
- Evidence suggests that the CBSA may have given the Sri Lankan security authorities an affidavit from a Sri Lankan man alleging to have been tortured by those same authorities, possibly putting him and his family in danger.
- Lucia Vega Jiménez died in late December 2013 while in CBSA detention: information was not made public about this death until more than a month after it occurred.²

The CCR then developed a detailed recommendation for an external accountability mechanism for the CBSA. The model was sent to the Minister of Public Safety and Emergency Preparedness and released in 2016. The CCR proposal called for the mechanism to be:

- Independent (i.e. not subject to departmental or political influence)
- External (i.e. organizationally and physically outside the CBSA)
- Effective (i.e. with sufficient legal powers and resources to investigate complaints and monitor CBSA activities)

The proposal also addressed the scope of activities to be covered by the mechanism, the standard against which the mechanism must evaluate the CBSA and the powers of the mechanism.³

¹ See for example, a 1995 resolution called for “accountability mechanisms, including civilian oversight or an ombudsman, for the Enforcement Branch of the Immigration Department.” Resolution 15, November 1995, Removals, <https://ccrweb.ca/en/res/removals>

² Media release, Seven Years of Inaction: Rights organizations call for oversight mechanism in response to CBSA abuses, 5 March 2014, <https://ccrweb.ca/en/oversight-mechanism-cbsa>

³ Proposed model for a CBSA Accountability Mechanism, <https://ccrweb.ca/en/proposed-model-cbsa-accountability-mechanism>

The CCR's comments on Bill C-20 are guided by the principles established in the proposed model.

Bill C-20 responds to our longstanding call for CBSA oversight – we welcome this bill as a long overdue measure. Our preference would be for a mechanism specifically for the CBSA, rather than a joint mechanism, the Public Complaints and Review Commission, for both the CBSA and the RCMP. There are shortcomings in the bill, as outlined below, but we urge that they be addressed through amendments and the bill passed.

The CBSA has existed for almost twenty years, without any external oversight. Over these years, there has been an accumulation of issues that need to be addressed. In fact, some issues go back before even the creation of the CBSA. It is therefore important to expect that there will be a significant workload for the Commission regarding the CBSA. It should be given adequate resources for this work.

C. Context of systemic racism

Like all government agencies, the CBSA operates in the context of deep-seated systemic racism. The federal government has recognized the problem and the imperative of confronting it, as indicated by the Prime Minister's ministerial mandate letters⁴ and the Privy Council Office's Call to Action on Anti-Racism, Equity, and Inclusion in the Federal Public Service⁵.

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.

The following are some examples of common experiences of systemic racism in CBSA operations:

- Racialized people arriving in Canada, at an airport or land border, are more often subjected to secondary examination.
- Racialized people are more likely to be detained (on all grounds, including identity, flight risk, danger to the public) and subjected to harsher conditions when released from detention.

⁴ "We must continue to address the profound systemic inequities and disparities that remain present in the core fabric of our society, including our core institutions." December 16, 2021, for example [Minister of Public Safety Mandate Letter](#)

⁵ <https://www.canada.ca/en/privy-council/corporate/clerk/call-to-action-anti-racism-equity-inclusion-federal-public-service.html>

- Racialized people within Canada are more likely to be stopped by CBSA officials and asked for proof of status.
- Racialized persons are more likely to be found inadmissible on security and criminality grounds.

It is crucial that the oversight mechanism for the CBSA be sensitive to the many manifestations of racism and that it be able to respond effectively and contribute to dismantling it in the immigration enforcement area.

D. 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.

Based on the experience of our members, the CCR is aware that many people who report mistreatment by the CBSA are unlikely to make a formal complaint for a wide range of reasons:

- Lack of secure status in Canada – making a complaint is an intimidating process for those who don't know if they will be able to remain in Canada, and who may be facing detention and removal.
- Fear of consequences – those seeking to remain in Canada often fear that making a complaint will jeopardize their chances.
- Other urgent priorities – those facing immigration enforcement measures are generally focused on resolving immigration issues, such as getting released from detention or avoiding deportation, and don't have time or energy for a complaint.
- Lack of access and support – non-citizens may not speak English or French or have a network of support to help prepare a complaint. Those in detention don't have access to a computer, a printer or the internet.
- The person may no longer be in Canada – their removal may even be a result of the actions that merit the complaint.

Under the current system, very few complaints are received by the CBSA about experiences during removals or in detention, even though we know from members that there are persistent allegations of mistreatment in these areas.

Requiring individuals to complain about mistreatment will undermine the purpose of introducing CBSA oversight because individuals will remain hesitant to engage in the process.

Role of NGOs

NGOs such as the CCR or individual member organizations are well-placed to bring forward third party complaints. For the reasons listed above amongst others, many individuals may need the support of an NGO to make a complaint about treatment by the CBSA. This is particularly true for people in detention, given the severe communication constraints imposed on them. Some may prefer that the NGO, with whom they have developed a relationship of trust, take the lead in submitting the complaint.

In addition to supporting an individual in bringing a complaint, NGOs can usefully identify and act on problematic patterns. An organization might hear from several people about similar experiences with the CBSA. A complaint about a pattern of behaviour may be more viable than an individual complaint where those affected are reluctant to complain. In addition, reports from several different people provide stronger evidence that there is a problem. For example, it may be difficult to know how seriously to take allegations made by a single individual of an officer shouting, making threats, or using force, but where several people independently make similar reports, it becomes clearer that there may well be a problem. NGOs can help identify such patterns because they have a relationship of trust with many people.⁶

NGOs with staff fluent in various languages can also identify issues not only with CBSA officers but with interpreters.

In the case of a complaint made by a person who is unable to pursue it (for example, because they have been deported), NGOs may also be able to play a role in helping the Commission finalize the investigation of the complaint.

Requirement of consent for third party complaints

We are pleased to see that Bill C-20 allows for third party complaints. However, the bill requires that the complainant have the written consent of person.⁷

Requiring consent is a major barrier. As noted above, many people reporting mistreatment are very reluctant to file a complain. This is particularly true for people who are in detention, facing removal or without secure immigration status. Even if an NGO or other potential third party can

⁶ One example of such a pattern is the use by the CBSA of spit protection face masks on people subject to immigration enforcement. A few years ago a CCR member organization heard reports of this from several people, including one who was told that if he didn't cooperate with his removal he would be put in a bag: he imagined a body bag. The CCR brought this matter up with CBSA senior leadership who were not aware of this practice.

⁷ Complaints can be dismissed if made by an individual who "has not been given written permission to make the complaint from the individual at whom the conduct was directed" (52(1)).

find the time and opportunity to speak to them about making a complaint on their behalf, they may not wish to give consent because of fears that the complaint will negatively affect their attempts to be released from detention, to avoid removal or to secure status in Canada.

In the case of a person who has been deported from Canada, they may not be interested in pursuing the matter because they need to focus on their immediate needs after deportation, or they may be unreachable because of a lack of contact information, or because they have been detained or are in hiding. Even if the potential third party complainant can reach them by telephone and they give oral consent, they may not practically be able to provide written consent.

The requirement of consent is premised on the complaint relating to the experience of a specific individual. As argued above, we believe the Commission should be empowered to hear complaints about patterns of behaviour. In some cases, the Commission might benefit from an NGO bringing forward a complaint addressing the experiences of one or more named individuals and complemented by less detailed information about other similar experiences reported to the NGO, suggesting a pattern of behaviour.

The CCR supports the intention of the bill in requiring written consent of a named or potentially identifiable individual: the privacy rights of the individual need to be respected and a third party should not be able to take action in a complaint without regard to the affected individual's evaluation of their own best interests.

However, given the barriers facing those most vulnerable to abuse, some other way is needed to bring forward complaints without a named individual. We suggest that this can be done very effectively by expanding the scope of complaints that can be investigated by the Commission, to include complaints made by NGOs about systemic issues or patterns of behaviour, where the organizations can show they are acting in the public interest.

Recommendations

1. 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.
2. Amend Bill C-20 to empower the creation of a process by which organizations wishing to make a complaint as outlined in recommendation 1 can request standing to bring the complaint in the public interest (likely through regulations – section 87).

2. Systemic complaints

Bill C-20 is narrowly focused on addressing bad behaviour by an individual officer. The scope of complaints about the CBSA is defined as follows:

Any individual may make a complaint concerning the conduct, in the exercise of any power of the Agency or the performance of any of its duties or functions under the Canada Border Services Agency Act, of any person who, at the time that the conduct is alleged to have occurred, was a CBSA employee. S. 33(2)

The CCR considers it essential that the Commission have a broader scope. Abuses by individual officers certainly require oversight, but many of the problems observed by our members arise from an internal culture that promotes mistreatment, or from CBSA policies.

Accountability should not be asked only of front-line officers – it is needed from senior officials, and from the CBSA as an institution.

The following are some examples of activities that the CCR believes should be addressed by the Commission:

- Patterns of CBSA officials denying that newly arrived people made a refugee claim before a removal order was issued.⁸
- Policies or practices of shackling people when detained.
- Profiling of people for secondary inspection (on arrival at the border or at an airport), or for detention.
- The publication by the CBSA in 2011 of a “most wanted” list of 30 individuals described as “suspected war criminals” (with accompanying mugshots).⁹

We also underline the need for accountability related to systemic racism. All Canadian institutions are affected by racism: it is a particularly urgent concern in the area of immigration enforcement, because of the immense power imbalance that exists between immigration

⁸ The law prevents a person making a refugee claim after a removal order has been issued. The CCR has therefore been very concerned about past reports from several people arriving at the same airport and during the same time period who alleged that they had stated to the officer that they wanted to make a refugee claim before the removal order was made.

⁹ The CCR raised its concerns, along with other organizations, in a [public statement](#). The CCR also made a complaint to the Privacy Commissioner, who determined that the CCR’s complaint was well-founded in regard to the use of the label ‘war crimes’, determining it “potentially misleading and not adequately justified by the CBSA.” The CCR would have liked to have an opportunity to submit a complaint more broadly, rather than only with respect to privacy. (The initiative remains in place, downgraded to “Wanted by the CBSA”: <https://www.cbsa-asfc.gc.ca/wc-cg/menu-eng.html>)

enforcement officials and people without secure status in Canada. Most of those with the least security are racialized. We noted above (page 8) some examples of situations where racism is commonly observed in CBSA activities.

Under Bill C-20 as it currently stands, systemic complaints can only be addressed through:

- a) an individual complaint, if the Commission chooses on its own initiative to look at whether there is a systemic problem, or
- b) a “specified activity review”, as provided for under section 28 ((2): “For the purpose of ensuring that the activities of the Agency are carried out in accordance with the Canada Border Services Agency Act, any ministerial directions made under that Act and any policy, procedure or guideline relating to the operation of the Agency, the Commission may, on the request of the Minister or on its own initiative, conduct a review of specified activities of the Agency and provide a report to the Minister and the President on the review”.)

NGOs such as the CCR are well-placed to identify potential systemic problems including areas where the CBSA’s activities may not be carried out “in accordance with the Canada Border Services Agency Act, any ministerial directions made under that Act and any policy, procedure or guideline relating to the operation of the Agency” (as specified in article 28(2)). The CCR acts as a focal point where members across Canada regularly share information, allowing our organization to identify emerging patterns of 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.

Of course, the CCR could approach the Commission with suggestions of activity reviews, without a formal reference to this in the Act. However, embedding it in the Act would signal Parliament’s intention that the Commission draw on the knowledge and expertise of relevant organizations.

We understand that the Commission will not have the capacity to undertake a large number of reviews. However, there should be a provision for organizations to at least request an activity review.

It is also important that the Commission have sufficient resources to allow it to conduct a certain number of reviews each year. Subsection 28(3) states 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.” This means in effect that no activity reviews can take place unless the government allocates the necessary resources. The provision also implies that reviews are of less priority than individual complaints: we do not accept that one should have

precedence over the other. The Commission should be empowered to decide how best to fulfill its mandate.

The CCR suggests that the shortcomings related to systemic complaints could be addressed by:

- Expanding the scope of complaints beyond individual complaints, as recommended above; and
- Providing a process by which NGOs can formally request a specified activity review.

Recommendations

3. See Recommendations 1 and 2 above, calling for Bill C-20 to allow third parties to make complaints about patterns of behaviour, policies or other systemic issues at the CBSA. (These complaints could cite individual experiences to support their submission.)
4. Amend Bill C-20 to require that the Commission create a formal process to allow relevant organizations to request a specified activity review.
5. 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.”
6. 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

In the view of the CCR, 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.

The CCR’s proposed model for CBSA accountability urged that the mechanism be empowered to: “Order redress measures under the *Immigration and Refugee Protection Act* for individuals who have been treated unfairly by CBSA.”¹⁰

Under Bill C-20, the consequences flowing from a complaint are limited to recommendations of disciplinary measures against officers (s. 67-69). This reflects the bill’s focus on bad behaviour by individual officers.

¹⁰ Proposed model for a CBSA Accountability Mechanism, <https://ccrweb.ca/en/proposed-model-cbsa-accountability-mechanism>

S. 84 specifically says that the making of a complaint cannot prevent the normal operation of immigration legislation. It must not delay or prevent removal or allow a person to remain in Canada beyond the time authorized.

Interim measures

We believe that it is essential for the effective functioning of the complaints mechanism that there be a possibility of interim measures while a complaint is being investigated. In particular, a stay of removal is required, since in many cases it is difficult, if not impossible, for a person to pursue a complaint after they have been removed. Some of the worst allegations of abuse by the CBSA occur in the removal process. If no stay of removal is allowed, it follows that these abuses will almost never be subject to meaningful review, since the person affected will generally be outside Canada, either before they can even make a complaint, or while the complaint is being investigated.

We are also concerned that the CBSA might expedite removal where a person is making a complaint. It may seem to be in the CBSA's interests for the person alleging mistreatment to be far away. There is also the risk that CBSA officers might use removal as a form of retribution against the person making a complaint. Given that CBSA officers have enormous latitude in terms of which removals are prioritized, or whether to grant a deferral of removal, this is not a fanciful concern.

A stay of removal as an interim measure would also encourage people who have suffered abuse to make a complaint. When there is no possible benefit to the person of complaining, and only possible trouble, most people with insecure status will be disinclined to make a complaint. We recognize that it would be necessary to ensure that people who have not suffered mistreatment do not have an incentive to make a complaint simply in order to avoid removal. This could be addressed through a triage that would exclude frivolous complaints from benefitting from a stay of removal.

Redress measures for a well-founded complaint

We also urge that Bill C-20 be amended to offer measures of redress for a person who, following investigation of the complaint, has been found to have been harmed.

These should include recommendations of immigration measures (for example, to halt removal) and financial compensation.

We note that the availability of financial remedies would increase the interest of people who have suffered mistreatment in making a complaint. We would also expect that the financial consequences of actions would provide greater motivation to the CBSA to address the problems identified in the Commission's reports.

Recommendations

7. Delete s. 84 (which says that the complaint cannot delay or prevent immigration enforcement activities, such as removal).
8. 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.
9. 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).
10. 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).
11. 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.

E. Other concerns

1. Standard against which the mechanism must evaluate the CBSA

We note the absence of any indication in the bill about the standards against which the Commission will evaluate the CBSA.

We believe that clear standards should be set out. In our model we had a whole section on standards for evaluation:

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 principles¹¹:
- a) to respect the rights and dignity of all persons, without discrimination;
 - 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

Given the prevalence in Canada of racism generally and more specifically in immigration enforcement, we urge that the Commission be explicitly directed to consider, in their investigations, activity reviews and reports, the impact of systemic racism and whether, in addition, there is evidence of overt or implicit racism.

With respect to the CBSA Code of Conduct, the publicly available version contains a note stating: “This version of the CBSA Code of Conduct has not been updated since it was posted on October 29, 2018 as many references have since been rescinded. If you would like an updated version, please contact cbsa.integrity-integrite.asfc@cbsa-asfc.gc.ca.”¹² An email request yields a PDF version of the Code of Conduct, which is labeled “Version: December 2020”. Almost immediately after, however, there is text stating: “This revised CBSA Code of Conduct came into force on September 5th 2012.”

It is regrettable that the CBSA has not made it a greater priority to post their current version of the Code of Conduct.

Recommendations

12. 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.
13. Recommend to the CBSA that it ensure that its Code of Conduct is updated and publicly available.

¹¹ Adapted from [RCMP Act, s. 37](#)

¹² <https://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/acc-resp/code-eng.html>.

2. Filing a complaint

Section 33 of the bill specifies that a complaint regarding the CBSA must be made to the Agency (or to the Commission) (subsection 33(8)). In contrast, a complaint concerning the RCMP can be made to any member or employee of the RCMP ((subsection 33(7)).

We are concerned that the CBSA is proposing to require that all formal complaints be submitted online. This limits access to the complaint mechanism, which is particularly problematic for individuals who have limited literacy in English or French, or who do not have access to digital devices and to the internet.

Given the additional challenges faced by the many vulnerable people with whom the CBSA interacts, access to filing a complaint with the CBSA should certainly not be more restricted than for the RCMP.

3. Timing of complaint

Section 33(3) requires that a complaint be made within one year of the alleged incident, but also provides in 33(5) for the Commission or the CBSA President to extend the timeline if they are “of the opinion that there are good reasons for doing so and that it is not contrary to the public interest.”

It is our view that because of the insecurity faced by many people dealing with the CBSA, the one year timeline should be extended to at least two years. In our experience, a common reason for delay will be that a person is not comfortable to make a complaint until they have secure immigration status (for example, a refugee claimant may want to wait until they have been recognized as a refugee by the Immigration and Refugee Board). Since immigration processing times are often more than a year, we consider it more appropriate to provide two years for a complaint to be made. A longer timeline might also be required by a person who suffered mistreatment at the hands of the CBSA and was then deported: they may be fully occupied with meeting their immediate needs in their new circumstances, and only able to turn later to presenting a complaint about their mistreatment.

We acknowledge that a time limit is advisable in order to have an effective investigation as close to the time as possible when the events took place. The President and the Commission should however use their discretion to extend the timeline beyond the two years we recommend, where warranted, taking into account the situation of people with precarious status. The same considerations should apply to the Commission when dealing with review requests that are filed beyond the 60 days provided for in the legislation (56(2)).

Recommendation

14. 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).

4. Initial complaints through the CBSA

Bill C-20 provides that complaints may be made to the Commission or to the CBSA (s. 33(8)), but – unless the Commission decides otherwise – the complaint must first be examined by the CBSA (s. 37).

We note that the current process at the CBSA for handling complaints lacks clarity or rigour, as reported by our members, and as observed by the CCR itself in its dealings and discussions with the CBSA. The process needs to be significantly strengthened.

We are also concerned that Bill C-20 does not provide any timeline for the CBSA to deal with complaints issued to them. For the same reasons that time limits are established for complainants, the CBSA should be subject to time limits in investigating complaints.

Recommendation

15. 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.

5. Review initiated by the Chairperson of the Commission

Section 56 requires the complainant who is dissatisfied with an investigation to request a review by the Commission.

We hold that the Commission should be empowered to initiate a review in cases where the complainant has not requested it, in the same way that the Chairperson is able to initiate a complaint (section 36). A complainant may have been deported from Canada and therefore be unable to pursue the complaint, or they may be disheartened by the result of the investigation. The Commission may see that the complaint fits a pattern of issues that means it merits review, even though the complainant is not available to pursue it.

Recommendation

16. 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.

6. Exclusion of complaints that could be dealt with in another forum

Subsection 52(5) states that “The Commission must refuse to deal with a complaint if the complaint has been or could have been adequately dealt with, or could more appropriately be dealt with, according to a procedure provided for under any Act of Parliament — other than this Act — or any Act of the legislature of a province.”

We are concerned that the wording here will lead to meritorious complaints being turned away. What happens if the Commission refuses to deal with the complaint on the basis that another forum would be more appropriate, but that forum then also declines to hear the complaint? Or a person attempts the other avenue first, without success, and then the time limit for complaining to the Commission has been exceeded?

We note that under the current legislation for the RCMP review body, the Commission “may” refuse to deal with the complaint on the basis of an alternative forum, rather than “must” refuse.¹³

We believe that it is more appropriate to give the Commission discretion to decide whether to refuse to hear the complaint, since there may be good reasons in specific cases to entertain the complaint.

Where the complaint is refused, the Commission should be required to identify the alternative remedy and provide information about initiating a complaint there.

Recommendations

17. Amend subsection 52(5) to say that the Commission “may” (not “must”) refuse to deal with a complaint if there is an alternative forum.
18. 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).

7. Public interest

Section 51 says the Commission must “investigate the complaint or institute a hearing to inquire into it if the Chairperson is of the opinion that it would be in the public interest for the Commission to do so.”

¹³ <https://laws.justice.gc.ca/eng/acts/R-10/page-9.html#h-422021>

We note that there are many different visions of the public interest. From the perspective of the CCR, key elements at the core of the public interest are respect for our international human rights obligations, how we treat the most vulnerable and how we address racism and other forms of oppression.

We also underline the importance of ensuring that the Commission has the resources necessary to investigate complaints when it is in the public interest to do so.

8. Investigating complaints: challenges of data

One of the major challenges faced in the investigation of complaints is that there are often no witnesses to immigration enforcement activities, nor are there independent records. The CBSA does not record or videotape interviews, or interactions with a person being detained or deported.

As a result, many complaints go nowhere because there is only the account of the complainant and that of the CBSA officers involved, or the notes that the officers have made about the interaction. And of course, CBSA officers rarely report in their notes when they have acted inappropriately.

In these circumstances there is a tendency to give more weight to the officers' version of events.

The CCR experienced this issue when it asked the CBSA to investigate a case involving allegations that an officer at a Port of Entry made improper threats when speaking on the telephone to a family member of a refugee claimant seeking an exception under the Safe Third Country Agreement. (The family member said that the officer had threatened to intervene to prevent him from obtaining Canadian citizenship). The CBSA responded to the CCR that a review of the file "failed to substantiate" the allegation (as if an officer might have noted in the file that they made improper threats).¹⁴

One practical solution that would alleviate the problem of the lack of independent data would be for the CBSA to record all interviews. This has been a longstanding recommendation of the CCR.¹⁵

The challenges in determining what happened in an individual incident also reinforce the need for proactive investigations in addition to reviews of complaints. In our view, the Commission

¹⁴ CCR and Sojourn House, [Welcome to Canada: The Experience of Refugee Claimants at Port-of-Entry Interviews](#), 2010, p. 22.

¹⁵ See Resolution 18, November 1995, [Port of Entry Interviews](#); and [Welcome to Canada](#), p. 30

should be sending representatives to observe CBSA activities that occur behind closed doors, particularly at Ports of Entry and in deportation proceedings – where NGOs are not able to go.

For example, on various occasions the CCR has heard a pattern of allegations that people trying to make refugee claims at a Port of Entry were prevented by CBSA officers from doing so. Having observers on the ground gathering information might be a more effective way of discovering the truth than simply trying to establish whether an individual complaint is well-founded.

Recommendations

19. Recommend to the CBSA that it systemically record all interviews.

9. Specific concerns of people in detention

People held in immigration detention face additional barriers to pursuing complaints. Because they are detained, they have limited access to the practical tools used to prepare a complaint (such as access to a computer and the internet) as well as to networks of support.

Those in detention also often have very immediate fears about the potential negative consequences of anything that they say or do in relation to their efforts to be released from detention. These fears are not unfounded: it is not unusual for CBSA officers to bring up at detention reviews reports of what the detained person has said or done as evidence of the person's lack of cooperation.

Detention, especially over the longer term, has dramatic impacts on mental health. People feel disempowered and tend not to advocate for their rights. They may become increasingly passive. The Immigration and Refugee Board's external audit into long-term detention reported on one extreme case where a person suffered a mental breakdown while in detention: his reaction to the situation was to cease to participate meaningfully:

Although at one hearing, CBSA describes him as “mumbling incoherently”, at another hearing, the Hearing Officer describes his conduct as a “passive protest”. In many decisions over this period, Members characterize his behavior as non-cooperative, finding that he is “obstructing the removal process in a very extreme way”; “not willing to attend”; “has chosen not to participate in this hearing”; “is refusing to cooperate”.¹⁶

¹⁶ [Audit on long-term detention reviews at the Immigration and Refugee Board of Canada \(IRB\)](#), 2018.

For people in provincial jails, they face practical barriers to making a complaint that are specific to the rules imposed by the provincial authorities. While they may be able to complain to the relevant provincial mechanism about conditions in the jail, they need also to have access to complaints to the CBSA, which is the agency responsible for their detention and for the choice of the facility at which they are held. Those held under immigration detention in provincial jails also continue to have interactions with CBSA officers, who oversee their detention and investigate enforcement proceedings.

As noted above (pages 9ff), third party complaints are particularly relevant for people in detention, given the barriers they face.

Section 86 of Bill C-20, on “Right to be informed”, sets out that those detained must be informed of their right to make a complaint. We note that for the right to make a complaint to be effective, more than information is required. Will they have access to details about how to make a complaint, access to technology and the internet required to submit a complaint and access to interpretation, if they are not fluent in English or French?

We note the following recommendation to the Government of Canada made by the jury at the recent inquest into the death of Abdurahman Hassan:

Establish an independent oversight body to:

- a. Review and investigate conditions of detention for immigration detainees,*
- b. Receive complaints about the conditions of detention, and*
- c. Investigate critical incidents and fatalities involving immigration detainees.¹⁷*

Recommendations

20. Ensure that those in detention have effective access to make complaints. This would include measures to facilitate the making of complaints, not simply informing people of the right to make complaints. Information must be available not only during the admission process (when people are often too overwhelmed to take much in), but in an ongoing manner.
21. 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.

¹⁷ Office of the Chief Coroner (OCC) for Ontario, <https://www.ontario.ca/page/2023-coroners-inquests-verdicts-and-recommendations#section-0>

22. 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.
23. Require investigation in every case of critical incidents and fatalities involving people in immigration detention.

10. Overseas complaints

We note that complaints against the CBSA will be more likely to come from people overseas than is the case with most other government bodies. A significant number of people with complaints against the CBSA may have been deported, or left Canada, before they make the complaint, or before the complaint is fully investigated.

It is therefore important to ensure that processes take this reality into account and offer facilitation where necessary. For example, when a complainant needs to be interviewed, Canadian government representatives abroad should provide facilities for a remote interview, if requested by the complainant.

11. Composition of the Public Complaints and Review Commission

We emphasize the importance of the Commission staff being representative as far as possible of the range of people who will be bringing complaints.

This includes racial diversity, LGBTQ+ representation and familiarity with the CBSA and its activities.

It will also be important for the Commission staff to receive training and to consult with relevant organizations, on an ongoing basis, in order to raise awareness of a range of issues, including disability, mental health, trauma informed practices and refugee issues.