



CUSTOMS AND IMMIGRATION UNION  
SYNDICAT DES DOUANES ET DE L'IMMIGRATION

Customs and Immigration Union (CIU)

**Submission on Bill C-20, *An Act establishing the  
Public Complaints and Review Commission  
and amending certain Acts and statutory instruments***

**Senate Standing Committee on  
National Security, Defence and Veterans Affairs (SECD)**

**October 7, 2024**

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In our original brief to the House of Commons Standing Committee on Public Safety and National Security (SECU) regarding C-20, the Customs and Immigration Union had noted several areas of concern with the bill. We are glad to see that some of these issues were addressed in the version of the bill adopted by the House of Commons, thanks to recommendations by SECU. However, concerns remain, and we are providing the following additional information in the hope that it will help the Senate Standing Committee on National Security, Defence and Veterans Affairs further strengthen Bill C-20.

**1. Allowing CBSA personnel to make a complaint**

A major concern of the union lies around the ability of our members to avail themselves of the recourses that are to be offered by the Public Complaints and Review Commission (PCRC). As noted in our previous brief, it is difficult for Canada Border Services Agency (CBSA) employees to see complaints about management go addressed through existing channels. Moreover, if the aim of the PCRC is to bring about effective change around issues of overreach, discrimination, and abuse of authority, allowing CBSA employees to make the Commission aware of what they're witnessing can only be of benefit to the mission of the PCRC.

Section 33 (2) of the bill states that *“Any individual or third party 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”*.

**We would like to see the bill state more explicitly that “any individual” includes employees of the Agency.** We suggest adding “Any individual, including employees of the Agency...”.

More generally, it is still not clear if the bill in its current form will help address issues related to management’s behaviour and issues of a systemic nature within the Agency — including toxic work environment and need for cultural change within CBSA management — if employees cannot make complaints to the Commission.

Current reporting avenues are limited for employees submitting complaints about management. The lack of accountability within the Agency’s management is now infamous (thanks to the ArriveCAN debacle) and CBSA’s reporting/internal investigative structure is severely in need of being overhauled. Bill C-20 could help with that, and clear language around an employee’s right to report problematic conduct from superiors (outside of what is already covered by existing avenues) should be added.

## **2. Union representation**

Another concern is the ability for our members to benefit from union representation for PCRC matters. We noted in our previous brief that Bill C-20 should include clear language around union representation, allowing employees to benefit from union representation for any complaints administered by CBSA and/or the Commission.

We are glad to see that this has been somewhat addressed. The bill now mentions third parties and, **based on the evidence recorded** as part of SECU’s work on C-20, it seems the intent is to include unions representing employees.

However, **“third party” should be defined more clearly** to include these unions.

New sections 44 (1.1) and 59(7) also mention union representatives:

*44(1.1) Union representatives for the RCMP employee or CBSA employee, as the case may be, whose conduct is the subject matter of the complaint must also be given an opportunity to make representations.*

*59(7) The parties and the union representatives for the RCMP employee or CBSA employee, as the case may be, whose conduct is the subject matter of the complaint, and any other person who satisfies the Commission that they have a substantial and direct interest in a complaint before the Commission, must be allowed an opportunity, in person or by legal counsel, to present evidence, cross-examine witnesses and make representations at the hearing.*

**Both sections could be clearer.** The French version of 44(1.1) reads as follows: “*Les représentants syndicaux de l’employé de la GRC ou de l’employé de l’ASFC en cause ont également la possibilité de présenter leurs observations.*” We recommend removing “as the case may be” from the English version to ensure clarity and consistency: “*Union representatives for the RCMP employee or CBSA employee whose conduct is the subject matter of the complaint must also be given an opportunity to make representations.*” 59(7) should be modified in a similar way.

### 3. Time limits

In our brief to SECU, we noted concerns with section 33(3) of the bill. Under the original version of the bill, complaints could be made up to a full year after the alleged incident occurred, and possibly extended as per 33(5). In the version of the bill that was adopted, 33(3) has been changed from one to two years: *“The complaint must be made within two years after the day on which the conduct is alleged to have occurred or any longer period permitted under subsection (4) or (5).”*

**Our concerns remain the same:** How is an officer supposed to respond to an incident that allegedly happened twenty-four months ago? Unlike RCMP officers, CBSA officers often interact with hundreds of travellers a day depending on location, and interactions can be very brief. Long delays — whether twelve or twenty-four months — can put officers subject to a complaint at a disadvantage when they are notified and must respond to an incident said to have occurred more than a year ago. We therefore recommend a shorter time limit for complaints submission — under a year would be preferable.

We also noted that there is a glaring lack of time limit requirements for the Commission to complete an investigation, which is only amplified by the absence of time limit requirements for the Commission to submit a final report following reception of the CBSA President’s response to an interim report (section 64). An investigation could take years to complete, which is neither fair to the employee under investigation nor to the complainant.

We had recommended to SECU that Bill C-20 include clear language around time limits for every step of the process. This does not appear to have been addressed in the latest version of the bill. Our recommendation remains the same.

### 4. Concerns with section 38(1)(d)

Section 38(1) reads as follows:

*38(1) The Commissioner may direct the RCMP — or the President may direct the Agency — not to commence an investigation of a complaint, other than a complaint initiated under subsection 36(1) or (2), if, in his or her opinion, ...*

*(d) the complaint relates to a disciplinary measure taken, or not taken, by the President; or*

It is unclear where the logic lies in allowing the President of the Agency to direct the Agency not to commence an investigation of a complaint related to measures not taken or taken by the President. This should be clarified.

### 5. Concerns with sections 38(1)(b.1) and 52(1)(b.1)

Sections 38(1)(b.1) and 52(1)(b.1) read as follows:

*38(1) The Commissioner may direct the RCMP — or the President may direct the Agency — not to commence an investigation of a complaint, other than a complaint initiated under subsection 36(1) or (2), if, in his or her opinion, ...*

*(b.1) the complaint is from a third party that is not directly concerned by the subject matter of the complaint;*

*52(1) The Commission may refuse to deal with a complaint if, in its opinion, ...*

*(b.1) the complaint is from a third party that is not directly concerned by the subject matter of the complaint.*

We would like to see language establishing that the union (the “third party”) cannot be excluded if the complaint concerns one of its members, under any circumstance.

## **6. Right to grieve and collective agreement rights**

We noted in our previous brief (p. 2) that sections 67 and 68 might allow the Commission and the Agency to bypass the existing grievance process. To mitigate this, we recommended that Bill C-20 include clear language about the right of an employee and/or the union to grieve the disciplinary process or the disciplinary measure imposed as a result of a recommendation by the Commission.

This has not been addressed in the bill as adopted by the House. It’s unclear if these concerns might be mitigated by 38(2) and, to a lesser extent, 52(5), and we still recommend that clear language be introduced on this.

We had also recommended that Bill C-20 include general language indicating that, beyond 71(c), collective agreement rights are maintained for all processes covered by the PCRC, to ensure that the bill — in part or as a whole — is not in violation of collective agreements. This has also not been addressed, and our recommendation remains.

## **7. Creation of an advisory panel**

The bill makes provisions for the hiring of staff and other persons to provide technical assistance or specialized knowledge — sections (6(3) and (4)). In addition to these resources, to help assist the Commission in its work touching on highly specialized areas of CBSA and RCMP duties, it may be of interest to create an advisory panel to the Commission as part of Bill C-20. This advisory panel could be composed of diverse expert representatives from outside organizations with experience on subject matters such as specific legal domains, labour relations, law enforcement duties, human rights, etc. By building this advisory panel directly into the Commission and inviting external advisors to sit as part of the panel, the PCRC would ensure it benefits from a broad range of independent expertise without having to hire additional staff.

Should such a panel be created, we would recommend that a representative from each union representing CBSA and RCMP employees be invited to join the panel. These representatives have unique insight on matters ranging from labour relations to field operational knowledge, which can only be of help to the PCRC in fulfilling its mandate.