



**HOUSE OF COMMONS
CANADA**

**CHAPTER 7, DETENTION AND REMOVAL OF
INDIVIDUALS - CANADA BORDER SERVICES
AGENCY OF THE MAY 2008 REPORT OF THE
AUDITOR GENERAL OF CANADA**

**Report of the Standing Committee on
Public Accounts**

**Hon. Shawn Murphy, MP
Chair**

MAY 2009

40th PARLIAMENT, 2nd SESSION



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THE STANDING COMMITTEE ON PUBLIC ACCOUNTS

has the honour to present its

NINTH REPORT

Pursuant to its mandate under Standing Order 108(3)(g), the Committee has studied Chapter 7, Detention and Removal of Individuals - Canada Border Services Agency of the May 2008 Report of the Auditor General of Canada and has agreed to report the following:

INTRODUCTION

Ensuring the integrity of Canada's borders is one of the federal government's most important responsibilities. Citizenship and Immigration Canada (CIC) and the Canada Border Services Agency (CBSA) share responsibility for the *Immigration and Refugee Protection Act* (IRPA). CIC has responsibility for overall immigration policy, issuing visas, and pre-removal risk assessments, while the CBSA is responsible for enforcing the Act. CBSA's enforcement role includes detaining people found to be inadmissible to Canada, and deporting people subject to removal orders.

The CBSA can detain a person if they believe the person will not appear for their immigration proceedings, will pose a risk to the public, or are not satisfied with the accuracy of a person's identity. The CBSA prioritizes removals by first deporting individuals who pose a threat to the security of Canada, such as those involved in terrorist activities and organized crime, followed by refused refugee claimants and other people deemed inadmissible to Canada.

In its May 2008 report, the Office of the Auditor General (OAG) released an audit on detention and removals performed by the CBSA.¹ To ensure that detentions and removals are carried out in a fair, consistent, and timely manner, the Committee met with officials from the OAG and the CBSA on 24 February 2009.² From the Office of the Auditor General, the Committee met with Hugh McRoberts, Assistant Auditor General, and Gordon Stock, a Principal at the OAG. The CBSA was represented by Stephen Rigby, President; Kimber Johnston, Vice-President, Enforcement Branch; and Barbara Hébert, Vice-President, Operations Branch.

BACKGROUND

There are a number of constraints on the CBSA's power to detain people or carry out removals. Legal safeguards, including the *Charter of Rights and Freedoms* ensure that an individual is not detained or removed without due process and cause. Most foreign nationals subject to removal orders can appeal to the Immigration and Refugee Board. After being issued a removal order, a foreign national can apply for a pre-removal risk assessment, designed to prevent deportations where an individual's

¹ Report of the Auditor General of Canada, "Chapter 7: Detention and Removal of Individuals – Canada Border Services Agency," May 2008.

² House of Commons Standing Committee on Public Accounts, 40th Parliament, 2nd Session, Meeting 5.

life is at risk, or he or she could be subject to cruel and unusual treatment. Many foreign nationals may also be eligible to apply to CIC for permanent residence status on humanitarian and compassionate grounds. All of these procedures are subject to judicial review, which can draw out the removal process. In some cases, the CBSA is not able to obtain travel documents for people subject to a removal order, or is restricted from carrying out a removal by airports or airlines due to security concerns.

In a 2003 audit,³ the Office of the Auditor General (OAG) reported that a growing number of people remained in Canada despite a removal order being issued against them. The OAG estimated that the number had increased by about 36,000 people over the previous six years. The OAG noted a lack of clear roles and accountabilities between CIC and the CBSA; a lack of consistency in decisions for detention; and an inadequate system to recover costs from airlines for removals.

In May 2008 the OAG released a second audit (the Audit) of the CBSA's detention and removal programs. The Audit was undertaken following a request by the Public Accounts Committee to report back on whether the management of the detention and removal programs had improved under CBSA since 2003. The Audit examined whether the CBSA and CIC had articulated their respective responsibilities for administering IRPA; the CBSA managed the detention of individuals consistently, and with due regard to economy; and the CBSA removed individuals from Canada cost-effectively and based on the risks they present.

ACTION PLAN AND PROGRESS REPORT

The Audit made three recommendations: that the CBSA and CIC develop and implement processes to ensure the quality of the Temporary Resident Permit program; that the CBSA develop suitable policies and procedures for detentions and removals to ensure that risks, situations, and individuals are treated in a consistent manner; and that the CBSA improve its data and level of analysis to allow it to better manage detentions and removals. The Committee fully supports these recommendations. As the CBSA has agreed with the recommendations, the Committee expects that they will be fully implemented.

³ Report of the Auditor General of Canada, "Chapter 5: Citizenship and Immigration Canada – Control and Enforcement," April 2003.

The Committee acknowledges the work done by the CBSA in attempting to ensure that resources are being effectively managed. In order to demonstrate commitment to the implementation of OAG recommendations, the Committee expects departments to prepare an action plan that details what actions will be taken in response to each recommendation; specifies timelines for the completion of the actions; and identifies responsible individuals who will ensure the actions are undertaken in a prompt and effective manner. While the Committee acknowledges the actions taken by the CBSA in response to the Audit, as outlined by the President of the CBSA in his opening statement before the Committee, this does not constitute a fully fledged action plan. Moreover, in order to close the accountability loop it is necessary to report on progress on implementing action plans. Hence, the Committee recommends:

RECOMMENDATION 1

That the CBSA develop a detailed action plan to implement the recommendations of the May 2008 audit by the Office of the Auditor General, along with recommendations in the 2003 audit that remain unresolved. This action plan should be provided to the Public Accounts Committee by 30 June 2009.

RECOMMENDATION 2

That the CBSA provide an interim status report to the Public Accounts Committee on its progress in implementing the Office of the Auditor General's and the Committee's recommendations by 30 June 2010.

ISSUANCE OF TEMPORARY RESIDENCE PERMITS

The Audit found that CIC and the CBSA had made progress on articulating their respective accountabilities for detentions and removals through a memorandum of understanding (MOU), and were reviewing improvements to the MOU that would support the delivery of the program. The Committee is encouraged by the CBSA's progress in this regard.

The OAG found that CIC and the CBSA had not come to an agreement on ensuring the consistency and quality of information supporting decisions to issue a temporary residency permit (TRP). Both the CBSA and CIC have a statutory authority to issue TRP's, which allow the temporary entry of people found inadmissible to Canada for technical, medical, or criminal history reasons. CBSA officers may issue TRP's at

ports of entry to inadmissible individuals when there are compelling reasons to do so, after weighing the risk posed to Canadians. The CBSA issued 9,489 TRP's in 2006, representing about 70 percent of the 13,412 permits issued that year.

The Audit found that in many cases CIC and the CBSA were not documenting their reasons for issuing a TRP. In a random sample of TRP's issued by CBSA in 2006 to individuals inadmissible for serious criminality, the OAG found that adequate reasons were clearly documented in only 68 percent of the files. In two out of four cases, a TRP was issued to someone found inadmissible on national security grounds without supplying proper reasons. The Audit noted that once a TRP is issued, the CBSA has no way of knowing if it is complied with, since Canada does not monitor people exiting the country. The OAG went on to recommend that the CBSA and CIC develop and implement processes to ensure the quality of the TRP program.

In their appearance before the Committee, CBSA officials agreed that there was a need for clearer policy direction, and an enhanced training and monitoring framework. The CBSA expected that implementation of these changes would commence in March 2009.

The Committee shares the OAG's concern over the consistency of decision making in the TRP Program. The Committee believes that this issue is especially pertinent where TRP's are issued to applicants who would otherwise be inadmissible due to criminality or national security concerns. Given the serious nature of the grounds for inadmissibility, the Committee recommends:

RECOMMENDATION 3

That the CBSA continue to develop its national training and monitoring framework to ensure that TRP's are properly documented, and report to the Committee by 30 September 2009 on the implementation of the framework.

CBSA DETENTION PROGRAM

Depending on the risk posed and the facilities available in the region, detainees may be held in either CBSA holding centres, provincial or municipal facilities, or can be released on terms and conditions. In the 2006–07 fiscal year, 72 percent of detainees were held in CBSA holding centres, with the remainder in provincial or other facilities, which housed detainees who posed a higher risk. Throughout the period of

detention or release on terms and conditions, the CBSA is responsible for monitoring the individual.

The OAG reported that the CBSA's detention policy provided substantial latitude in decision making. The CBSA did not collect enough information to determine whether its policies are consistently applied, and could not therefore be assured that individuals across Canada were receiving consistent and fair detention decisions. For example, the OAG found that regions with limited holding spaces were less likely to detain individuals. This suggests that decisions on detention may be the result of expediency rather than an assessment of risk. Where public safety concerns are at stake, the Committee believes that every person that poses a risk ought to be detained, and that the logistics of providing detention facilities should not be driving decision making. The Committee recommends:

RECOMMENDATION 4

That the CBSA develop regional detention capacity to ensure that decisions on detention are being made consistent with the risks posed to the public, and that the CBSA provide the Committee with a detailed plan on how to address the regional detention capacity issue by 31 December 2009.

The Audit determined that the CBSA does not carry out aspects of detentions with due regard to cost, and that the capacity of the CBSA to detain individuals in its holding centres varies by location. For example, the CBSA often relied on provincial detention facilities, but had negotiated agreements with only two provinces (British Columbia and Alberta), and CBSA could not control the cost and quality of service for detainees in other provincial facilities. In testimony before the Committee, the CBSA stated that it has developed a quality assurance plan to better monitor regional adherence to national detention standards, which it plans to implement by September 2009. The CBSA said that it expected that agreements with Ontario and Quebec would be concluded by 2009, and that agreements for the remainder of the provinces would be concluded by 2011. Given the importance of these agreements with the provinces to the CBSA's ongoing efforts to provide national standards for detention, the Committee recommends:

RECOMMENDATION 5

That the CBSA provide an interim status report to the Committee by 31 December 2009 on its ongoing negotiations with provinces regarding the use of provincial detention facilities, including timelines for when it anticipates that the agreements will be concluded, and that the CBSA provide the Committee with a final report on negotiated agreements by 31 December 2011.

The Audit noted that CBSA detention facilities in Toronto, Montreal and Vancouver have at times been overcrowded. In one case, a holding cell designed for three people had been used to house ten detainees. The CBSA did have an agreement with the Canadian Red Cross to monitor conditions in its facilities, which has provided some oral reports to the CBSA. Officials from the CBSA told the Committee they had started work on developing best practices and national procedures to address excess capacity in detention centres. The target implementation date for these national procedures is June 2009.

Many of the foreign nationals that are being detained and removed from Canada are not criminals. Some are temporarily detained because their documentation is not clear and officers need additional verification. Some are foreign nationals who have come into Canada illegally in search of better economic opportunities or a new way of life. The Committee is concerned that overcapacity and the lack of clear national guidelines for provincial detention facilities may be subjecting foreign nationals awaiting removal to conditions of detention that are not acceptable. The Committee recommends:

RECOMMENDATION 6

That the CBSA take immediate steps to ensure that detainees are held in adequate facilities in the event of overcapacity, and that the CBSA allow the Canadian Red Cross to monitor conditions at a national level.

The Audit revealed that the CBSA used alternatives to detention, such as the imposition of security deposits (cash bonds), but did not monitor the level of compliance. In the 2004–2005 fiscal year, the CBSA did not know the whereabouts of 190 individuals who forfeited their cash bonds, and had issued immigration warrants for their arrest. Approximately 18 out of these 190 individuals had a criminal history. The Audit noted that the CBSA did not monitor the extent to which individuals were

complying with the conditions of their release, and had not determined whether non-compliance resulted in undue risk to the public. The Committee is especially concerned over the OAG's finding that although infrequent, there have been cases where individuals released with conditions have committed violent crimes. The Committee recommends:

RECOMMENDATION 7

That the CBSA undertake a broad review of the extent to which individuals are complying with the conditions of their release and whether non-compliance is resulting in undue risk to the public, and that the CBSA report back to the Committee with a summary of its findings and a remedial action plan by 31 March 2010.

CBSA REMOVAL PROGRAM

In 2007-2008, 12,315 people were removed from Canada, of which 1,724 were high-priority removals. As of September 2007, there were about 63,000 individuals with either enforceable removal orders or outstanding immigration warrants for removal remaining in Canada. The CBSA working inventory consists of 22,000 individuals subject to removal orders whose whereabouts are known. When the CBSA is no longer able to find an individual subject to a removal order, it may issue an immigration warrant, and remove the case from its working inventory. The remaining 41,000 individuals are subject to immigration warrants, and their whereabouts are unknown to the CBSA. The number of removal cases in the working inventory has decreased over time, however the number of outstanding immigration warrants has increased, due at least in part to a lack of exit controls.

The OAG reported that since its previous audit, the CBSA had made improvements in its management of removals by better estimating the number of outstanding cases, and focusing on the removal of high-risk individuals. However the OAG also found that the CBSA did not have adequate information on removals at the national level, which in turn prevented it from properly monitoring the delivery of the program. In addition, the OAG found that the CBSA does not ensure that decisions to escort people being removed are made consistently and in a cost-effective manner.

CBSA officials told the Committee that they were responding to the concerns voiced in the Audit. To ensure consistency in removals, the CBSA will be

reviewing and revising its policy manuals to ensure that they are relevant and up to date. The CBSA has launched a Process Monitoring Framework that monitors removal and detention activities for consistency, and will be conducting a pilot project to track removals in the Greater Toronto region, with a view to implementing the scheme nationally. The CBSA is improving their investigative capabilities by enhancing data mining to better detect the whereabouts of individuals subject to warrants. The CBSA stated that since restrictions on the development of the NCMS had been lifted in June 2008, improvements had been made to the case management system.

While many of these responses will improve management of removals, the Committee notes the OAG's observations on the difficulties in accurately tracking individuals subject to removal orders. The Committee understands that the tracking of foreign nationals (individuals who are not Canadian citizens or permanent residents) could be accomplished in a number of ways. Canada could ascertain the whereabouts of foreign nationals through reciprocal information sharing agreements with foreign governments. The CBSA could also study the feasibility of using some form of exit tracking system for foreign nationals. The Committee is aware that an exit tracking system may have broad implications for privacy, may be expensive to implement, and presents a logistical challenge for a nation with so many land crossings. The Committee notes, however that the European Union has recently announced it is studying whether to institute an exit tracking system with a view to preventing cross-border crime,⁴ and that Australia currently uses such a system. The Committee recommends:

RECOMMENDATION 8

That the CBSA study the feasibility of using reciprocal information sharing agreements with foreign governments, or an exit tracking system, to ascertain whether foreign nationals have left Canada.

NATIONAL CASE MANAGEMENT SYSTEM

The Audit noted that Global Case Management System (GCMS) was to have replaced the National Case Management System (NCMS) in 2005. The GCMS was a Major Crown Project approved in 2001, and was led by CIC. The GCMS was meant to integrate 14 legacy systems, including NCMS, which the CBSA uses to

⁴ European Commission- Justice and Citizen's Rights, "Managing Borders in a Globalised World", February 2008.

manage the detentions and removals program. In April 2007, CIC and the CBSA agreed to reduce the scope of the GCMS to no longer include replacement of the NCMS, which will be retained to manage the detentions and removals program. As a result, the CBSA's ability to track individuals in the detention and removal process remains limited, and the recommendations in the 2003 audit relating to case tracking and NCMS still need to be addressed. The Committee is concerned about the amount of money that appears to have been wasted on this project to date, and recommends:

RECOMMENDATION 9

That the CBSA and CIC report to the Public Accounts Committee by 30 September 2009 on the current status of the GCMS and the implementation of the required upgrades to the NCMS, including when the NCMS is expected to be fully operational.

CONCLUSION

The Committee acknowledges the progress the CBSA has made since the 2003 audit. The CBSA better estimates its outstanding caseload and is increasingly focused on removing the higher-risk individuals. Nonetheless, significant challenges remain. National standards for detention remain a challenge, and there is insufficient accountability in the issuance of TRP's and the granting of conditional release. The tracking of persons subject to removal orders is problematic due to delays in upgrading the NCMS. The Committee sincerely hopes that CBSA will take prompt action to ensure that our immigration system is not being compromised, and that the integrity of Canada's border controls is upheld.

APPENDIX A LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
Canada Border Services Agency Barbara Hébert, Vice-President, Operations Branch Kimber Johnston, Vice-President, Enforcement Branch Stephen Rigby, President	2009/02/24	5
Office of the Auditor General of Canada Hugh McRoberts, Assistant Auditor General Gordon Stock, Principal, Public Safety and Emergency Preparedness Canada, Justice		

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings ([Meetings Nos. 5, 8, 13 and 17](#)) is tabled.

Respectfully submitted,

Hon. Shawn Murphy, MP

Chair