

Annex A

Supporting amendments to Bill C-20 *An Act establishing the Public Complaints and Review Commission and amending certain Acts and statutory instruments*

[...]

Review and report

28 (1) For the purpose of ensuring that the activities of the RCMP are carried out in accordance with the Royal Canadian Mounted Police Act or the Witness Protection Program Act, any regulations or ministerial directions made under them or any policy, procedure or guideline relating to the operation of the RCMP or for the purposes of considering the impacts of policies, procedures or guidelines, including compliance with international and domestic human rights law and standards and whether they result in systemic discrimination, the Commission may, on the request of the Minister, the request of a third party, or on its own initiative, conduct a review of specified activities of the RCMP and provide a report to the Minister and the Commissioner on the review.

Review and report

(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 or for the purposes of considering the impacts of policies, procedures or guidelines, including compliance with international and domestic human rights law and standards and whether they result in systemic discrimination, the Commission may, on the request of the Minister, the request of a third party, 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.

Conditions

(3) In order to conduct a review on its own initiative, the Commission must be satisfied that

~~(a) sufficient resources exist for conducting the review and the handling of complaints under Part 2 will not be compromised; and~~

~~(b) no other review or inquiry has been undertaken on substantially the same issue by a federal or provincial entity.~~

[...]

(9) In their comments to the Commission, the Commissioner or the President, as the case may be, must explain how they will address, or why they are unable to address, the findings and recommendations in the report regarding the adequacy, appropriateness, sufficiency or clarity of any policy, procedure or guideline relating to the operation of the RCMP or Agency, as the case may be.

[...]

Complaints

33 (1)(a) Any individual or third party may make a complaint concerning the conduct, in the performance of any duty or function under the Royal Canadian Mounted Police Act or the Witness

Protection Program Act, of any person who, at the time that the conduct is alleged to have occurred, was an RCMP employee.

(b) Any individual or third party may make a complaint concerning the policies, procedures or services provided by RCMP.

Complaints

(2)(a) 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.

(b) Any individual or third party may make a complaint concerning the policies, procedures or services provided by CBSA.

Time limit

~~(3) The complaint must be made within one year after the day on which the conduct is alleged to have occurred or any longer period permitted under subsection (4) or (5):~~

(3) The Commission, Commissioner or President may decline to investigate a complaint if two years have passed since the day on which the conduct is alleged to have occurred, or since the day on which the conduct was discovered, only if:

- (a) Carrying out the investigation is not in the public interest or
- (b) Carrying out the investigation is no longer reasonably practicable

~~Extension of time limit — subsection (1)~~

~~(4) The Commission or the Commissioner may extend the time limit for making a complaint under subsection (1) if the Commission or the Commissioner, as the case may be, is of the opinion that there are good reasons for doing so and that it is not contrary to the public interest.~~

~~Extension of time limit — subsection (2)~~

~~(5) The Commission or the President may extend the time limit for making a complaint under subsection (2) if the Commission or the President, as the case may be, is of the opinion that there are good reasons for doing so and that it is not contrary to the public interest.~~

Notice

(6) If a complaint is made after the end of the ~~one-year~~ two-year period following the day on which the conduct is alleged to have occurred or is discovered to have occurred and the Commission, Commissioner or President ~~does not extend the time limit for the making of the~~ declines to investigate the complaint, he or she must so notify the complainant and the Commission.

[...]

Investigation by RCMP or Agency

37 (1) Subject to subsections (2) to (4) and sections 38, 46 and 47, the RCMP or Agency, as the case may be, must investigate, in accordance with the rules made under section 39, any complaint made under this Part.

Restriction on power to investigate

(2) The RCMP or Agency must not commence an investigation of a complaint if the Commission has notified the Commissioner or President, as the case may be, that it will investigate that complaint or institute a hearing to inquire into that complaint.

Restriction on power to investigate — RCMP

(3) The RCMP may postpone ~~must not commence~~ the commencement of an investigation of a complaint if, in its opinion, ~~doing so~~ the investigation would ~~compromise or~~ seriously hinder the investigation or prosecution of any offence until such a time that the investigation would no longer seriously hinder the investigation or prosecution of said offence.

Restriction on power to investigate — Agency

(4) The Agency may postpone ~~must not commence~~ the commencement of an investigation of a complaint if, in its opinion, ~~doing so~~ the investigation would ~~compromise or~~ seriously hinder ~~the administration or enforcement of program legislation or~~ the investigation or prosecution of any offence until such a time that the investigation would no longer seriously hinder the investigation or prosecution of said offence.

Right to refuse investigation

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,

(a) the complaint is ~~trivial~~; frivolous, vexatious or made in bad faith;

~~(b) the complaint is from an individual who~~

~~(i) is not the individual at whom the conduct was directed;~~

~~(ii) is neither the guardian, tutor, curator or mandatary — under a protection mandate — of the individual at whom the conduct was directed nor a person who is appointed to act in a similar capacity on behalf of the individual;~~

~~(iii) did not see or hear the conduct or its effects as a result of not being physically present at the time when and the place where the conduct or its effects occurred;~~

~~(iv) has not been given written permission to make the complaint from the individual at whom the conduct was directed; or~~

~~(v) has not suffered loss, damage, distress, danger or inconvenience as a result of the conduct;~~

(b) The Commissioner or President determines that it would not be in the public interest to consider the complaint.

(c) the complaint concerns a decision under Part IV of the Royal Canadian Mounted Police Act;

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

~~(e) having regard to all the circumstances, it is not necessary or reasonably practicable to commence an investigation of the complaint.~~

[...]

Right to make representations

44 (1) If a complaint is made under this Part with respect to the conduct of an RCMP employee or CBSA employee, or with respect to policies, procedures or services, the following persons must be given an opportunity to make representations with respect to that conduct's impact on them or the individual at whom the conduct was directed:

(a) the complainant;

(b) the guardian, tutor, curator or mandatary — under a protection mandate — of the individual at whom the conduct was directed or a person who is appointed to act in a similar capacity on behalf of the individual; and

(c) an individual who has written permission to make the representations from the individual at whom the conduct was directed; and

(d) If it is in the interest of the public, any other individual or entity with a substantial interest in the complaint.

[...]

46 (2) The Agency may suspend ~~must not continue~~ an investigation of a complaint if, in its opinion, ~~doing so~~ continuing the investigation would ~~compromise or~~ seriously hinder ~~the administration or enforcement of program legislation or~~ the investigation or prosecution of any offence until such a time that the investigation would no longer seriously hinder the investigation or prosecution of said offence.

[...]

Restriction

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

(a) the complaint is ~~trivial,~~ frivolous, vexatious or made in bad faith; or

~~(b) the complaint is from an individual who~~

~~(i) is not the individual at whom the conduct was directed;~~

~~(ii) is neither the guardian, tutor, curator or mandatary — under a protection mandate — of the individual at whom the conduct was directed nor a person who is appointed to act in a similar capacity on behalf of the individual;~~

~~(iii) did not see or hear the conduct or its effects as a result of not being physically present at the time when and the place where the conduct or its effects occurred;~~

~~(iv) has not been given written permission to make the complaint from the individual at whom the conduct was directed, or~~

~~(v) has not suffered loss, damage, distress, danger or inconvenience as a result of the conduct.~~

(b) The Commission determines that it would not be in the public interest to consider the complaint.

[...]

Other procedures

(5) The Commission **may** ~~must~~ refuse to deal with a complaint if **investigation of** the complaint **would seriously hinder the investigation or prosecution of any offence.** ~~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.~~

Program legislation or offences

(6) The Commission **may suspend** ~~must refuse to deal~~ **consideration of** ~~with~~ a complaint if dealing with the complaint would ~~compromise or~~ seriously hinder **the investigation or prosecution of any offence until such a time that the investigation would no longer seriously hinder the investigation or prosecution of said offence.**

~~(a) the administration or enforcement of program legislation; or~~

~~(b) the investigation or prosecution of any offence.~~

[...]

Interim measures

(10) The Commission **may, on an interim basis, recommend to the appropriate Minister that interim measures be taken to protect the integrity of their investigation, including:**

(a) A stay of removal for individuals impacted by the complaint,

(b) The re-entry to Canada of individuals impacted by the complaint, or

(c) Any other measure deemed to be necessary and appropriate in the circumstances.

Right to discontinue investigation

53 (1) The Commission may decide to discontinue an investigation of a complaint if, in its opinion,

(a) any of the reasons for which the Commission may refuse to deal with a complaint under paragraph 52(1)(a) or (b) applies; or

~~(b) having regard to all the circumstances, it is not necessary or reasonably practicable to continue to investigate the complaint.~~

[...]

Rights of persons interested

(7) The parties, and **if it is in the interest of the public,** any other **individual, entity or** 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.

[...]

Duty to suspend

60 (1) The Commission ~~may~~ **must** suspend an investigation, review or hearing with respect to a complaint if, in its opinion, continuing it would ~~compromise or~~ seriously hinder ~~the administration or enforcement of program legislation or~~ the investigation or prosecution of any offence **until such a time that the investigation, review or hearing would no longer seriously hinder the investigation or prosecution of said offence.**

[...]

Final and conclusive

~~65 All of the findings and recommendations that are contained in the Commission's final report under subsection 58(2) or 64(3) are final and are not subject to appeal to or review by court.~~

[...]

Disciplinary process

67 **(3) Should the Commissioner or President, as the case may be, decline to initiate the recommended process, the Chairperson may initiate such a process. The Chairperson must, within the prescribed time, inform the Commissioner or President, as the case may be; the Minister; and the member, person, officer or employee of their initiation of a disciplinary process.**

Disciplinary measure

68 **(3) Should the Commissioner or President, as the case may be, decline to impose the recommended measure, the Chairperson may impose such a disciplinary measure. The Chairperson must, within the prescribed time, inform the Commissioner or President, as the case may be; the Minister; and the member, person, officer or employee of the disciplinary measure being imposed.**

[...]

Removals, etc.

71¹ **The Commission, upon completion of the investigation of a complaint, and finding the complaint to be founded, may recommend to the appropriate Minister to enact appropriate remedies, including but not limited to:**

- (a) Suspending or canceling a removal order of an individual; or**
- (b) Allowing an individual re-entry to Canada**

Monetary award

72 **The Commission, upon completion of the investigation of a complaint, and finding the complaint to be founded, may direct the Minister to provide a monetary award to the complainant, taking into consideration:**

- (a) The severity of the impact of the impugned conduct on the individual or the group affected**
- (b) The length and complexity of the hearings**
- (c) The documented expenditures of the complainant**

[...]

1 Numbering of subsequent sections will require updating

No effect

84 The making of a complaint under subsection 33(1) or (2) or section 36, the investigation into a complaint made under any of those provisions or the review of a complaint under section 57 is not to

- ~~(a) delay any investigation of an offence under an Act of Parliament or of the legislature of a province or prevent any such investigation from commencing;~~
- ~~(b) delay any action taken under any program legislation or prevent any such action from being taken;~~
- ~~(c) delay any removal proceedings or prevent the enforcement of any removal order;~~
- ~~(d) delay any extradition proceedings or prevent the extradition of any individual to or from Canada;~~
~~or~~
- ~~(e) permit any individual to enter Canada or to remain in Canada beyond the end of the period for which they are authorized to so remain.~~

[...]

Review

93 (1) Every five years beginning on the day on which this Act comes into force, the administration and operation of this Act shall be reviewed by the committee of the House of Commons, of the Senate or of both Houses that is designated or established for that purpose.

(2) The Public Safety Minister must cause a report responding to the committee's review to be laid before each House of Parliament within 90 days after the receipt of the committee's report.

(3) If the Committee report identifies any deficiencies in the application of this Act the Minister's report must include a plan to remedy those deficiencies — including any proposed legislative amendments — and a timeline for its implementation.