

**Joint submission regarding**  
**Bill C-20: *An Act establishing the Public Complaints and***  
***Review Commission and amending certain Acts and***  
***statutory instruments***

submitted to the  
Standing Senate Committee on National Security,  
Defence and Veterans Affairs

submitted by  
Amnesty International Canada (English Section)  
British Columbia Civil Liberties Association  
Canadian Association of Refugee Lawyers  
Canadian Civil Liberties Association  
Canadian Council for Refugees  
Canadian Immigration Lawyers Association  
Canadian Muslim Lawyers Association  
Canadian Muslim Public Affairs Council  
International Civil Liberties Monitoring Group

September 25, 2024

Our organizations, with decades of expertise in the areas of immigration and refugee law, criminal law, human rights, international law, civil liberties, and national security, are coming together to ensure that the Public Complaints and Review Commission (PCRC), to be established through Bill C-20, sets up an effective, independent, fair and accessible accountability process, from start to finish, in regard to the activities of the Royal Canadian Mounted Police (RCMP) and the Canada Border Services Agency (CBSA).

While we were pleased to see important changes made when Bill C-20, *An Act establishing the Public Complaints and Review Commission and amending certain Acts and statutory instruments*, was considered by the House of Commons Standing Committee on Public Safety and National Security, additional changes are needed to ensure the Bill's effectiveness.

Such changes must:

1. Ensure access and remove barriers for complainants and their advocates;
2. Allow complaints about patterns of behaviour;
3. Require the Commission to investigate complaints of a serious nature;
4. Allow the Commission to recommend interim protective measures and ensure redress for well-founded complaints; and
5. Remove limitations on judicial review.

Our organizations have proposed specific amendments to Bill C-20 to address our concerns in Annex A. Annex B shows the proposed amendments implemented into the Bill.

**SIGNED BY:**

Amnesty International Canada (English Section)  
British Columbia Civil Liberties Association  
Canadian Association of Refugee Lawyers  
Canadian Civil Liberties Association  
Canadian Council for Refugees  
Canadian Immigration Lawyers Association  
Canadian Muslim Lawyers Association  
Canadian Muslim Public Affairs Council  
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## ANNEX A

### **Joint concerns and recommendations regarding Bill C-20, *An Act establishing the Public Complaints and Review Commission***

#### **1. Amendments are required to remove barriers to making well-founded complaints.**

While Bill C-20 was amended to allow third parties, including public-interest organizations and NGOs, to file complaints, complaints can be rejected under sections 38(1)(b.1) and 52(1)(b.1) if the complaint is from a third party that is “not directly concerned by the subject matter of the complaint”. The standard for third party complaints should be “genuine interest”, which is a well-established test to determine whether organizations should be granted public interest standing before the courts. Further, allowing “trivial” complaints to be dismissed could lead to valid complaints being dismissed and obscure patterns of racial and other forms of discrimination.

- To facilitate third party complaints, “is not directly concerned by” in sections 38(1)(b.1) and 52(1)(b.1) should be replaced by “does not have a genuine interest in”.
- The word ‘trivial’ should be deleted from s. 38(1)(a) and 52(1)(a).

#### **2. Amendments are required to allow complaints regarding patterns of behaviour.**

Complaints regarding the RCMP and CBSA must not be limited to individual cases, and instead must be amended to allow for the public to file complaints regarding patterns of behaviour.

Allowing third parties to make representations, even when they are not the complainant, could also help to shed light on patterns of behaviour.

- Add to section 2 a subsection confirming that complaints under subsections 33(1), 33(2), 36(1) and 36(2) may be complaints about a pattern of behaviour by one or several officers.
- To facilitate participation by third parties that are not complainants, including civil society organizations, which can add context and provide insights on patterns of behaviour:
  - Amend s. 44(1) to explicitly allow third parties to make representations.
  - Amend s. 59(7) by removing the requirement for parties to have a “direct” interest in the complaint to make representations and otherwise participate in hearings if it is in the interest of the public.
- Add that reviews of specified activities can be conducted for the purposes of considering the impacts of policies, procedures or guidelines to section 28(1) and 28(2)

### **3. Amendments are required to ensure independence of investigations for complaints of a serious nature.**

Section 37 provides that complaints are investigated by the RCMP or CBSA, unless the Commission notifies that it will investigate the complaint or institute a hearing. For complaints of a serious nature, having the RCMP and CBSA investigate themselves will lead to perceptions of bias and may make people reluctant to complain, particularly when they are in vulnerable situations, such as immigration detention.

As such, section 51 should be amended to set out circumstances under which the Commission must investigate the complaint or institute a hearing into it, such as when the complaint is about conditions of or site of detention; physical, psychological, or sexual abuse or harm is alleged; or about the removal process. Note that the restrictions in section 52 would still apply, meaning the Commission could still refuse to deal with a complaint that is, for example, frivolous.

- Section 51(3) should be added to section 51 to require the Commission to investigate the complaint if :
  - a) Physical, psychological, or sexual abuse or harm is alleged;
  - b) The complaint is about conditions or site of detention, including immigration detention;
  - c) The claim is about discrimination;
  - d) The complaint is about the removal process; or
  - e) Any other criteria established by regulation

### **4. Amendments are required to ensure recourse during an investigation, and redress upon success**

To give force to the complaints process, the PCRC must be armed with necessary powers to address interim needs during an investigation and provide redress upon a successful complaint.

- Amend section 28 to require the Commissioner or the President to explain how they will address, or why they are unable to address, the findings and recommendations in the report;
- Amend sections 35, 70 and 84 to allow the PCRC to:
  - Recommend a stay of removal and other interim remedies during the investigation of a complaint;
  - Recommend certain forms of redress, particularly in the form of halting removals from Canada or allowing re-entry;
  - Order financial redress or awards for founded complaints.

## **5. Amendments are required to ensure judicial recourse**

The work of any administrative body must be subject to judicial review, in accordance with the principle of administrative law that government actors are subject to the powers of superior courts, as confirmed by the *Federal Courts Act*.

- Remove s. 65, which precludes possibility of judicial review.

## Annex B

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

Note:

- Text underlined and highlighted in yellow are additions to the bill.
- Text ~~struck through and in red~~ are deletions.

[...]

#### Definitions

2(7) Complaints under subsections 33(1), 33(2), 36(1) and 36(2) may be complaints about a pattern of behaviour by one or several officers.

[...]

#### 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, the Commission may, on the request of the Minister or 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, the Commission may, on the request of the Minister or 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.

[...]

(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.

[...]

#### **Interim measures**

(35.2) 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 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.1) the complaint is from a third party that does not have a genuine interest in ~~is not directly concerned by~~ the subject matter of 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 patterns of behaviour by the RCMP or CBSA**, 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;

(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 an interest in the complaint.**

[...]

**51(3) Subject to section 52, after receiving or being notified of a complaint, the Commission must investigate the complaint or institute a hearing to inquire into it if :**

**(a) Physical, psychological, or sexual abuse or harm is alleged;**

**(b) The complaint is about conditions or site of detention, including immigration detention;**

**(c) The claim is about discrimination;**

**(d) The complaint is about the removal process; or**

**(e) Any other criteria established by regulation**

#### **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.1) the complaint is from a third party that **does not have a genuine interest in** ~~is not directly concerned by~~ the subject matter of the complaint.

[...]

#### **Rights of persons interested**

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, **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.

[...]

#### **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 any court.~~

[...]

#### **Removals, etc.**

**70.1 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**

70.2 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

[...]

**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.~~

[...]