

**BILL C-60: KEEPING CANADIANS SAFE
(PROTECTING BORDERS) ACT**

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LEGISLATIVE HISTORY OF BILL C-60

HOUSE OF COMMONS

Bill Stage	Date
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First Reading: 27 November 2009

Second Reading:

Committee Report:

Report Stage:

Third Reading:

SENATE

Bill Stage	Date
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First Reading:

Second Reading:

Committee Report:

Report Stage:

Third Reading:

Royal Assent:

Statutes of Canada

N.B. Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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CANADA

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BILL C-60: KEEPING CANADIANS SAFE
(PROTECTING BORDERS) ACT^{*}

BACKGROUND

Bill C-60, An Act to implement the Framework Agreement on Integrated Cross-Border Maritime Law Enforcement Operations between the Government of Canada and the Government of the United States of America (short title: Keeping Canadians Safe [Protecting Borders] Act), was introduced in the House of Commons on 27 November 2009. Public Safety Canada, the department responsible for the bill, in a statement released the day the bill received first reading, cites the Minister of Justice, the Honourable Rob Nicholson, as saying:

This proposed legislation is a new approach to border law enforcement. With its accompanying regulatory changes, the proposed legislation provides a proper legal framework and ensures effective integrated law enforcement operations can occur in boundary waters.¹

A. “Shiprider” Agreement

Bill C-60 implements the *Framework Agreement on Integrated Cross-Border Maritime Law Enforcement Operations between the Government of Canada and the Government of the United States of America*, which was signed on 26 May 2009. The agreement was signed by the Canadian Minister of Public Safety, Peter Van Loan, and the US Department of Homeland Security Secretary, Janet Napolitano.

* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

¹ Public Safety Canada, “Government of Canada introduces legislation to fight cross-border crime in shared waterways,” News release, Ottawa, 27 November 2009.

The agreement makes permanent a joint Canada–US pilot program – referred to as “Shiprider” – which was created in 2005 to address security concerns along the maritime border. Shiprider enabled armed officers from the United States Coast Guard and the Royal Canadian Mounted Police to jointly patrol shared waterways and to continue to easily pursue suspects from one country to the other. Furthermore, it allowed each government to confer upon the other country’s participating law enforcement officers the authority of peace officers in order to facilitate the enforcement of their respective laws across the international border.

Shiprider was initially based out of the Windsor/Detroit Integrated Border Enforcement Team (IBET) station. Although the IBET concept of cross-border law enforcement cooperation dates back to the mid-1990s, it was only after 2001 that Canada and the United States formally committed to setting up a series of IBETs as part of their joint management of the Canada–US border. The IBET program targets regions between the various ports of entry along the border and comprises the following core agencies: Royal Canadian Mounted Police, Canada Border Services Agency, the US Coast Guard, the US Customs and Border Protection/Office of the Border Patrol and the US Joint Task Force–North.² Shiprider was therefore an extension of the IBET program.

In 2007 Shiprider was expanded to other areas along the Canada–US maritime border to include areas along the British Columbia and Washington state border. Finally, in 2008, based on the success of Shiprider, the governments of Canada and the United States announced their intention to negotiate a framework for a more permanent, joint maritime law enforcement program. This led to the signing of the Canada–US Framework Agreement on Integrated Cross-Border Maritime Law Enforcement Operations in May 2009.

The purpose of the agreement is to provide the parties with additional means in shared waterways to prevent, detect, suppress, investigate and prosecute criminal offences or violations of law, including, but not limited to, illicit drug trade, migrant smuggling, trafficking of firearms, the smuggling of counterfeit goods and money, and terrorism.³ The Integrated Cross-Border Maritime Law Enforcement operations under the agreement are to be intelligence-drive, based on joint Canada–US threat and risk assessment and coordinated with existing cooperative cross-border policing programs and activities.

² Royal Canadian Mounted Police, “Canada-United States IBET Threat Assessment 2007,” 27 May 2008, <http://www.rcmp-grc.gc.ca/ibet-eipf/reports-rapports/threat-menace-ass-eva-eng.htm>.

³ *Framework Agreement on Integrated Cross-Border Maritime Law Enforcement Operations between the Government of Canada and the Government of the United States of America*, 26 May 2009, Article 1, <http://www.publicsafety.gc.ca/prg/le/fl/int-cross-brdr-maritime-eng.pdf>.

In order for the agreement to be brought into force, both Canada and the United States must complete internal processes after signing the international agreement. In Canada, this requires that implementing legislation be introduced in the House of Commons and be passed by the House of Commons and the Senate. While the United States does not require similar implementing legislation, the US government is in the final stages of completing its own internal procedures to incorporate the agreement into national law and bring it into force.

DESCRIPTION AND ANALYSIS

A. Definitions, Purpose and General Provisions (Clauses 2 to 4)

Clause 2 of the bill sets out definitions for the key terms and concepts used in the proposed legislation. For the purposes of this summary, a few definitions are worth noting. First, the “Commission” referred to in the bill is the Royal Canadian Mounted Police Public Complaints Commission established by section 45.29 of the *Royal Canadian Mounted Police Act*.⁴ The term “designated officer” refers to an individual who is appointed as a cross-border maritime law enforcement officer by Canada or by the United States. “Integrated cross-border operation” refers to the deployment of a vessel crewed jointly by designated officers from Canada and the United States for cross-border law enforcement purposes in undisputed areas of the sea or internal waters along the Canada–US border. Finally, references to the “Minister” are to the minister of Public Safety and Emergency Preparedness.

Clause 3 states the purposes of the Act, which are to implement the Canada–US Framework Agreement on Integrated Cross-Border Maritime Law Enforcement Operations and its objectives. These objectives, as described above, are to provide additional means to prevent, detect and suppress criminal offences and violations of the law in undisputed areas of the sea or internal waters along the border of Canada and the United States and to facilitate the investigation and prosecution of the offences.

Clause 4 of the bill establishes the underlying principles for the agreement and the proposed Act. It states that Canada and the United States recognize that they have a common interest in the security of the undisputed areas of the sea or internal waters on the border between the two countries. It recognizes that integrated cross-border operations must respect the

⁴ *Royal Canadian Mounted Police Act* [RCMP Act], R.S.C., 1985, c. R-10.

sovereignty of each state and that operations must be intelligence-drive, based on threat and risk assessments, and conducted in accordance with the rule of law. It further stresses that in Canada, all integrated cross-border operations must be conducted in accordance with the *Canadian Charter of Rights and Freedoms*.

B. General Implementing Provisions (Clauses 5 to 15)

Clauses 5 to 7 of Bill C-60 deal with the creation of the Central Authority for Canada, the body in charge of coordinating the implementation of the agreement as mandated in Article 5 of the agreement. In Canada, the Central Authority has been designated as the Commissioner of the Royal Canadian Mounted Police, or his or her delegate. The Central Authority is responsible for the direction and management of integrated cross-border operations and can appoint cross-border maritime law enforcement officers.

Clauses 7 to 10 set out the requirements for the appointment of a designated officer, an individual appointed as a cross-border maritime law enforcement officer. An individual may be appointed by the Central Authority only if he or she has satisfactorily completed the required training program for appointment as a designated officer. Article 7 of the agreement requires that the Central Authorities of Canada and the United States coordinate the development of and approve a joint training program for designated officers that includes training in the applicable laws, regulations, constitutional considerations and policies of both parties, including the use of force and operational procedures.

Clause 11 provides that in the course of an integrated cross-border operation, every designated officer is considered to be a peace officer in Canada, and therefore has the same power to enforce laws as a member of the Royal Canadian Mounted Police.

Clauses 12 and 13 clarify that the laws of Canada apply to any person detained or taken into custody within Canada as well as to any vessel or other “thing” seized within Canada in the course of an integrated cross-border operation. Furthermore, no person detained or vessel or thing seized may be removed from Canada except in accordance with Canadian laws.

Clause 14 provides that where a vessel or other “thing” is seized in the United States but is brought into Canada out of operational or geographic necessity, the vessel or other thing remains in the custody and control of the American designated officer.

Clause 15 of the bill states that no Act of Parliament relating to the import or export of goods applies to the import or export of vessels or other “things” as set out in the bill.

C. Public Complaints Commission Provisions (Clauses 16 to 25)

Clauses 16 to 24 establish a public complaints commission, the Royal Canadian Mounted Police Complaints Commission, and sets out the procedures for any member of the public to make a complaint concerning the conduct of a designated officer in the performance of any duty or function in the course of an integrated cross-border operation. The creation of this commission is mandated under Article 11 of the agreement, which states that there shall be a mechanism to hold designated officers accountable for their conduct.

Under the complaint procedure, the Central Authority must be notified of all complaints received by the commission relating to activities of the designated officers. The Central Authority must consider whether a complaint can be disposed of through an informal process and may attempt to do so, with the consent of the parties involved. Although the Central Authority is obliged to consider the possibility of an informal resolution process, the use of the term “may” indicates that the Central Authority has a degree of discretion in its decision whether to proceed with an informal process. If the complaint cannot be disposed of informally, the Central Authority must refer the complaint to the commission for review.

The commission chairman must review every complaint referred to the commission and may subsequently submit a report with findings and recommendations to the minister and the Central Authority, investigate the complaint or institute a hearing to inquire into the complaint, if it is advisable in the public interest. The commission chairman may also initiate his or her own complaint into the conduct of a designated officer if the chairman is satisfied that there are reasonable grounds for an investigation. Furthermore, the commission has, in relation to the complaints before it, the powers conferred on a board of inquiry by sections 24.1(3)(a) to (c) of the *Royal Canadian Mounted Police Act*.⁵

⁵ RCMP Act, ss. 24.1(3)(a)–(c), states:

(3) A board of inquiry has, in relation to the matter before it, power

(a) to summon any person before the board and to require that person to give oral or written evidence on oath and to produce such documents and things under that person’s control as the board deems requisite to the full investigation and consideration of that matter;

(b) to administer oaths;

(c) to receive and accept on oath or by affidavit such evidence and other information as the board sees fit, whether or not such evidence or information is or would be admissible in a court of law.

Clause 25 of the bill provides that the Central Authority must maintain a record of all complaints it receives under the Act and make that record available to the commission upon request.

D. Consequential Amendments to Statutes (Clauses 26 to 32)

Bill C-60 contains amendments that, as a consequence of the proposed legislation, must be made to a number of existing pieces of legislation, namely the *Criminal Code*, the *Customs Act*, the *Export and Import Permits Act*, the *Immigration and Refugee Protection Act* and the *Royal Canadian Mounted Police Act*. In particular, clauses 26 to 32 make amendments to various statutes as a result of the creation of the designated officers and the enhanced powers of the Royal Canadian Mounted Police Commission to review the conduct of designated officers.

E. Coming into Force (Clause 33)

The provisions of Bill C-60 come into force on a day or days to be fixed by order of the Governor in Council.