

BILL C-26: CANADA BORDER SERVICES AGENCY ACT

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LEGISLATIVE HISTORY OF BILL C-26

HOUSE OF COMMONS

Bill Stage	Date
First Reading:	23 November 2004
Second Reading:	13 December 2004
Committee Report:	7 March 2005
Report Stage:	8 June 2005
Third Reading:	13 June 2005

SENATE

Bill Stage	Date
First Reading:	14 June 2005
Second Reading:	29 June 2005
Committee Report:	1 November 2005
Report Stage:	
Third Reading:	2 November 2005

Royal Assent: 3 November 2005

Statutes of Canada 2005, c.38

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

Legislative history by Peter Niemczak

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TABLE OF CONTENTS

	Page
BACKGROUND	1
A. The Auditor General's Report	1
B. The Canada Border Services Agency	2
C. The Smart Border Declaration	3
D. Canada's National Security Policy	4
DESCRIPTION AND ANALYSIS	5
A. Clauses 3 to 5: Establishment and Mandate of the Canada Border Services Agency	5
B. Clause 6: The Minister.....	5
C. Clauses 7 to 10: President and Executive Vice-president.....	6
D. Clause 11: Human Resources	6
E. Clauses 12 to 14: Powers of the Agency	6
F. Clauses 16 to 29: Transitional Provisions.....	6
G. Clauses 30 to 143: Consequential Amendments.....	7
H. Clauses 144 to 146: Coordinating Amendments	8
I. Clause 147: Coming Into Force	8
COMMENTARY	8



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BILL C-26: CANADA BORDER SERVICES AGENCY ACT*

Bill C-26, An Act to establish the Canada Border Services Agency (the Canada Border Services Agency Act), was introduced in the House of Commons on 23 November 2004. The bill implements the Government of Canada's decision of 12 December 2003 to create a border services agency: it formally establishes the Canada Border Services Agency (CBSA) as a corporate body and defines its mandate, powers and authorities. In establishing the CBSA as a legal entity, Bill C-26 also changes the machinery of government by vesting in the CBSA some of the powers and authorities that existed in the three "legacy organizations" – the Canada Customs and Revenue Agency, Citizenship and Immigration Canada, and the Canadian Food Inspection Agency. The bill also includes consequential amendments to many statutes to reflect these changes.

BACKGROUND

A. The Auditor General's Report

On 30 March 2004, the Auditor General released a report containing a chapter entitled "National Security in Canada – The 2001 Anti-Terrorism Initiative."⁽¹⁾ This audit examined the spending of \$7.7 billion in new funds that had been allocated to the Public Security and Anti-Terrorism Initiative, following the terrorist attacks on the United States of 11 September 2001. The audit was conducted before the Government of Canada reorganized

* 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) Available on-line on the Auditor General's Web site:
<http://www.oag-bvg.gc.ca/domino/reports.nsf/html/20040303ce.html>.

national security programs on 12 December 2003, and it found a lack of coordination among security agencies as well as weaknesses at airports and border crossings that needed to be addressed. The audit noted the overall lack of a framework that would allow the Canadian government to focus on the most important threats and allow it to direct complementary actions in separate agencies or choose between conflicting priorities.

Prior to the creation of the CBSA by Order in Council, the Auditor General found that departments and agencies were unable to share some security information and their systems were not all able to communicate with each other. She also found that watch lists used to screen visa applicants, refugee claimants, and travellers seeking to enter Canada were not consistently accurate and up-to-date. In addition, the audit determined that information about the 25,000 Canadian passports lost or stolen each year was not available to front-line officers, even though these passports could be used by terrorists or other criminals. Finally, another major finding of the audit was that Transport Canada did not have full access to criminal intelligence held by the RCMP when screening airport employees working in controlled-access areas where baggage and freight were handled and aircraft were serviced. Based on a review by the RCMP of a sample of files, the audit estimated that 5.5% – or 4,500 – of the individuals holding restricted area clearances at five major airports had possible criminal associations warranting further investigation.

B. The Canada Border Services Agency

On 12 December 2003, Prime Minister Martin announced the creation of the Canada Border Services Agency. Under the *Public Service Rearrangement and Transfer of Duties Act*,⁽²⁾ three Orders in Council were enacted that transferred certain portions of Citizenship and Immigration Canada, the Canada Customs and Revenue Agency, and the Canadian Food Inspection Agency to the CBSA.⁽³⁾ The CBSA is part of the portfolio of the new Department of Public Safety and Emergency Preparedness, which is to be formally created by Bill C-6, currently being examined by the Senate. Other agencies in the new department include the Royal Canadian Mounted Police, the Canada Firearms Centre, the National Parole Board, the Canadian Security Intelligence Service, and Correctional Service Canada.

(2) R.S.C. 1985, c. P-34.

(3) Order in Council P.C. 2003-2063 of 12 December 2003, registered as SI/2003-215; Order in Council P.C. 2003-2064 of 12 December 2003, registered as SI/2003-216; and Order in Council P.C. 2003-2065 of 12 December 2003, registered as SI/2003-217.

The stated goal in creating the CBSA is to bring together all the major players involved in facilitating and managing the movement of people and goods into and out of Canada.⁽⁴⁾ It will integrate several functions previously spread among three organizations: the Customs program from the Canada Customs and Revenue Agency; the Intelligence, Interdiction and Enforcement program, and the Immigration program at ports of entry, from Citizenship and Immigration Canada; and the Import Inspection at Ports of Entry program from the Canadian Food Inspection Agency.

The role of the CBSA is to manage Canada's borders by administering and enforcing approximately 90 domestic Acts and regulations, as well as international agreements that govern trade and travel. All people and goods entering Canada must report to the CBSA at a port of entry. The CBSA employs approximately 11,000 public servants and operates at 1,369 service points in Canada and 39 locations abroad. The Agency serves more than 170,000 commercial importers and approximately 92 million travellers per year.

The President of the CBSA reports directly to the Minister of Public Safety and Emergency Preparedness. The Agency is composed of the following seven branches: Strategy and Coordination; Admissibility; Enforcement; Innovation, Science and Technology; Operations; Human Resources; and Comptrollership. Among the issues addressed by the CBSA are terrorism, illegal migration, illegal trade of weaponry, drugs and unsafe goods and foodstuffs, and the attempted introduction of contaminants and threats to public health. The CBSA is also responsible for preventing the admission into Canada of persons involved in war crimes or crimes against humanity, for assistance in combating money laundering, and for the detention and removal from Canada of inadmissible persons.

C. The Smart Border Declaration

The CBSA is intended to build upon the Canada–United States Smart Border Declaration, which was designed to improve the secure flow of goods and people at the border. Current cross-border traffic amounts to more than \$1.9 billion in goods and 300,000 people each day. Signed on 12 December 2001, the Smart Border Declaration outlines a 32-point Action Plan for Creating a Secure and Smart Border,⁽⁵⁾ based on the following four pillars: the secure

(4) See the backgrounder entitled “The Canada Border Services Agency,” available on-line at: http://www.cbsa-asfc.gc.ca/newsroom/releases/2004/1123ottawa_backg-e.html.

(5) See the Department of Foreign Affairs and International Trade's Canada–United States Relations Web site at: <http://www.dfait.gc.ca/can-am/menu-en.asp?print=1&act=v&mid=1&cat=10&did=1670>.

flow of people; the secure flow of goods; secure infrastructure; and coordination and information sharing in the enforcement of these objectives. Some examples of anticipated coordinated actions include: the development of common biometric identifiers in travel documents; the establishment of criteria for the creation of small, remote joint border facilities; the deployment of interoperable technologies such as transponders and electronic container seals; and the expansion of IBET/IMET (Integrated Border and Marine Enforcement Teams) to other areas of the border.

D. Canada's National Security Policy

The CBSA is also intended to be an integral component of Canada's National Security Policy. Tabled in Parliament on 27 April 2004, *Securing an Open Society: Canada's National Security Policy*⁽⁶⁾ is designed to integrate the Government of Canada's strategy in responding to current and future threats. The document outlines some of the actions taken by the Government of Canada following the terrorist attacks of 11 September 2001. These include the creation of the Immigration Intelligence Branch, currently located in the CBSA, to better support the screening of persons suspected of terrorism, organized crime and war crimes or crimes against humanity; and the introduction of the new Permanent Resident Card. The government also imposed new visa requirements on 10 countries and implemented an advanced passenger information/passenger name record system to obtain information on travellers destined for Canada.

The National Security Policy outlines action to be taken in six areas: intelligence; emergency planning and management; public health; transport security; border security; and international security. Funding of \$690 million is being provided from the Security Reserve.⁽⁷⁾ In the area of border security, the Government of Canada has pledged in the National Security Policy to implement the Passport Security Strategy, including facial recognition biometric technology on the Canadian passport, at a cost of \$10.31 million. As well, \$99.78 million has been allocated for the completion of the RCMP's Real Time Identification Project to automate and modernize the existing fingerprint system. Other measures in the National Security Policy

(6) Available on the Privy Council Office Web site at:
http://www.pco-bcp.gc.ca/docs/Publications/NatSecurnat/natsecurnat_e.pdf.

(7) See the backgrounder entitled "Securing an Open Society: Canada's National Security Policy," available on-line at: <http://pm.gc.ca/eng/news.asp?id=188>.

include the development of a smart borders agenda with Mexico and the United States to build on the Smart Borders Declaration, and an effort to streamline the refugee determination process to ensure efficient protection for people genuinely in need and the removal of people attempting to abuse the refugee determination system.

DESCRIPTION AND ANALYSIS

Bill C-26 consists of 147 clauses. The following description highlights selected aspects of the bill and does not review every clause.

A. Clauses 3 to 5: Establishment and Mandate of the Canada Border Services Agency

Clause 3 of the bill establishes the Canada Border Services Agency as a body corporate, while clause 4 states that the head office of the Agency is to be in the National Capital Region. Clause 5 sets out the mandate of the Agency. The CBSA will be responsible for providing integrated border services that will enhance national security and public safety while at the same time facilitating the free flow of persons and goods, including animals and plants, that meet all requirements under the program legislation. A number of ways in which the Agency may carry out this mandate are specified, including the implementation of agreements between the Government of Canada or the Agency and a foreign state or the government of a province to carry out an activity, provide a service or administer a tax or program.

B. Clause 6: The Minister

Clause 6 of the bill makes the Minister, defined in clause 2 as the Solicitor General of Canada, responsible for the Agency. The Minister may delegate to any person any power, duty or function conferred on the Minister under Bill C-26 or under the program legislation, except for the power to make regulations. “Program legislation” is defined in clause 2 of the bill to mean such statutes as the *Customs Act*, the *Immigration and Refugee Protection Act* and the *Canada Agricultural Products Act* that the CBSA will be authorized to administer and enforce.

C. Clauses 7 to 10: President and Executive Vice-president

Clause 7 of the bill affords the Governor in Council the power to appoint a President and an Executive Vice-president of the Agency to hold office during pleasure for a five-year term, which term may be renewed for one or more further terms. Clause 8 sets out the role of the President, which is to have control and management of the Agency, subject to the direction of the Solicitor General of Canada. He or she will have the rank and all the powers of a deputy head of a department. Clause 9 furnishes the President of the CBSA with the power to delegate his or her powers and to designate any person as an officer under the *Customs Act*, a plant or food inspector under a number of statutes such as the *Meat Inspection Act*, or an officer under the *Immigration and Refugee Protection Act*.

D. Clause 11: Human Resources

Clause 11 makes it clear that officers and employees necessary for the proper conduct of the work of the Agency shall be appointed in accordance with the *Public Service Employment Act*.

E. Clauses 12 to 14: Powers of the Agency

Clause 12 furnishes the Agency and its properly appointed officers or employees with the legal authority to exercise the powers, and perform the duties and functions, that relate to the program legislation and that are conferred on, or delegated, assigned or transferred to, the Solicitor General under any Act or regulation. Clause 13 gives the Agency the power to enter into an agreement with a foreign state, an international organization, the government of a province, a department or agency of the Government of Canada, or any person or organization for the purposes of carrying out the mandate of the Agency.

F. Clauses 16 to 29: Transitional Provisions

Clause 17 deems the current President and Executive Vice-president of the CBSA to be appointed to the same positions in the CBSA formally established under clause 3 of the bill. Other employees of the current CBSA will continue in their positions in the newly established CBSA. Clause 18 transfers the powers, duties and functions of the President and employees of

the current CBSA to the new Agency. Pursuant to clause 19, references to the existing CBSA are deemed to be a reference to the new Agency in a number of statutes, including the *Access to Information Act*, the *Privacy Act*, the *Public Service Staff Relations Act*, the *Auditor General Act*, the *Canadian Security Intelligence Service Act*, and the *Public Service Employment Act*.

Clauses 20 and 21 ensure that all employees, rights and property of the Canada Customs and Revenue Agency continue as employees, rights and property of the Canada Revenue Agency. Some portions of the Canada Customs and Revenue Agency, however, are transferred to the CBSA. Clause 22 ensures the continuation of the Canada Customs and Revenue Agency as the Canada Revenue Agency, except for those responsibilities that have been transferred to the CBSA by Order in Council P.C. 2003-2064. Clauses 23 to 26 clarify that the Canada Revenue Agency and the CBSA will inherit from the Canada Customs and Revenue Agency the real property, documents, and legal proceedings that had accrued to the former agency.

G. Clauses 30 to 143: Consequential Amendments

Provisions in many statutes will be amended to take into account the creation of the CBSA, the new role played by the Solicitor General of Canada, and the transformation of the Canada Customs and Revenue Agency into the Canada Revenue Agency. As one example, clause 33 will amend the *Canada Agricultural Products Act* so that the President of the CBSA, as well as the President of the Canadian Food Inspection Agency, may designate inspectors.

The most extensive consequential amendments are made to two statutes, part of whose functions are being transferred to the CBSA. Clauses 34 to 52 contain amendments to the *Canada Customs and Revenue Agency Act*, which is to be renamed the *Canada Revenue Agency Act*, since the agency will be continued as a body corporate under the new name. This name reflects the fact that the customs functions are being transferred to the CBSA. This fact is also reflected in clauses 60 to 85, which amend the *Customs Act*. Thus the term “Agency” in that Act is now defined as the CBSA, while the term “Minister” now refers to the Solicitor General of Canada (except in Part V.1, “Collections,” of the Act).

The transfer of powers over certain immigration matters to the CBSA is reflected in the amendments to the *Immigration and Refugee Protection Act*. Clause 118 makes it clear that the Solicitor General, not the Minister of Citizenship and Immigration, will now be responsible for immigration matters relating to examinations at ports of entry, the enforcement of

the statute, including arrest, detention and removal, and the establishment of policies respecting inadmissibility on grounds of security, organized criminality or violating human or international rights.

The transfer of powers over certain aspects of food and plant inspection is reflected in the change to the *Canada Agricultural Products Act* outlined above, as well as in similar changes to other statutes. For example, clause 122 will give to the President of the CBSA the power to designate inspectors for the purpose of enforcing the *Meat Inspection Act*. Clause 123 gives the President this power for the enforcement of the *Plant Protection Act*, while clause 131 does the same for the purposes of the *Seeds Act*.

Clause 138 will change references in numerous statutes from the “Canada Customs and Revenue Agency” to the “Canada Revenue Agency.” Clause 139 will change other references to the “Canada Border Services Agency.” Clause 140 changes references in certain statutes from the “Commissioner of Customs and Revenue” to the “Commissioner of Revenue,” while clause 141 changes these references in some provisions of the *Customs Tariff* to the “President of the Canada Border Services Agency.”

H. Clauses 144 to 146: Coordinating Amendments

Clause 144 will coordinate amendments to a number of statutes, including Bill C-26, if the *Public Service Modernization Act* comes into force before Bill C-26 comes into force. Clause 145 looks to the passage of Bill C-6, the Department of Public Safety and Emergency Preparedness Act. Should Bill C-6 receive Royal Assent, references in certain provisions to the “Solicitor General of Canada” will be replaced by a reference to the “Minister of Public Safety and Emergency Preparedness.”

I. Clause 147: Coming Into Force

The provisions of the bill, except for the coordinating amendments found in sections 144 to 146, will come into force on a day to be fixed by order of the Governor in Council.

COMMENTARY

No commentary on Bill C-26 has been noted to date.