



June 25, 2021

Via email: ps.ministerofpublicsafety-ministredelasecuritepublique.sp@canada.ca

The Honourable Bill Blair, P.C., M.P.
Minister of Public Safety and Emergency Preparedness Public Safety Canada
269 Laurier Avenue West
Ottawa, ON K1A 0P8

Dear Minister Blair:

Re: Call for Release of CBSA's Internal Policies

I write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section) to request public disclosure of all policies and directives that guide CBSA officers in rendering decisions on immigration matters. CBSA officers' decisions impact the liberties of individuals in fundamental ways. Fairness requires full transparency of the policies and directives that guide them in making decisions. In the absence of public disclosure, immigration applicants will not know the case they must meet.

The CBA is a national association representing 36,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Section has approximately 1,200 members across Canada practising in all areas of immigration and refugee law.

The CBSA guidance currently available to the public is inadequate. According to our review of CBSA resources, the following sources of information would offer some insight into how CBSA makes decisions:

- Publications and forms¹
- Customs Notices²
- D Memoranda³
- Guides and Brochures⁴
- Operation Manuals / ENF Manuals⁵

¹ Canada Border Service Agency, [Publications and Forms](#).

² Canada Border Service Agency, [Customs Notices](#).

³ Canada Border Service Agency, [D Memoranda](#).

⁴ Canada Border Service Agency, [Guides and Brochures](#).

⁵ Canada Border Service Agency, [Operational Instructions and Guidelines](#).

Most of this information is out of date and incomplete. For instance, the Enforcement Manual available online was last updated in 2012, and many sections including ENF 13, 14 and 16 are missing entirely. The most current guides and brochures were last updated in 2018. In contrast, IRCC publicly discloses and regularly updates all policies and procedures that guide its systems.⁶

To address novel situations in the complex world of border security, CBSA officers must receive updated guidance and briefings, particularly as circumstances rapidly evolve due to the COVID-19 pandemic. We understand that during the pandemic, CBSA officers receive technical briefings prior to publication of Orders-in-Council and have the support of a “border task force” to assist with training.⁷ This guidance is not disclosed to the public.

The lack of transparency undermines procedural fairness as applicants do not know the case they need to meet. This has a disproportionate impact on self-represented individuals, who are not familiar with CBSA decision-making, and do not have the resources to retain counsel to assist them.

The CBSA’s lack of transparency about its policies is also a barrier to accountability. The CBA has long called for independent oversight of CBSA to enhance accountability.⁸ Increased transparency with the public about the policies that guide CBSA’s decision-making will also promote accountability. Transparency and oversight can help improve the public’s trust in CBSA, which has been undermined by recent reports.⁹

We propose, as a starting point, that CBSA share a compendium listing and attach all current policies and directives with the CBA Section for distribution to our members. We also recommend that CBSA create a system akin to IRCC’s system of sharing and regularly updating the policies and procedures that guide its systems. We are happy to consult with CBSA officials about establishing this system or creating a compendium of policies and directives.

Full disclosure of CBSA policy documents will enhance fairness and accountability for decisions that profoundly impact the lives of those who interact with CBSA. I trust you will agree.

Yours truly,

(original letter signed by Nadia Sayed for Mark Holthe)

Mark Holthe
Chair, CBA Immigration Law Section

⁶ Immigration, Refugees and Citizenship Canada, [Public Policies](#).

⁷ Office of the Auditor General of Canada, [Report 8 – Pandemic Preparedness, Surveillance, and Border Control Measures](#) (2021) at p. 31: “The Canada Border Services Agency, through its border task force, has expanded its support to front-line border services officers beyond the existing operational guidelines bulletins; live support access for 24 hours a day, 7 days a week; and regular case reviews. In addition, the agency has supplemented support by conducting detailed technical briefings prior to the implementation of new or amended orders-in-council.”

⁸ Resolution 15-04M, [Independent Oversight of the Canada Border Services Agency](#), 2015; [Privacy of Canadians at Airports and Borders](#), 2017.

⁹ See for example: Brendan Kennedy, The Star, [Latest Canada Border Services Agency scandal sparks renewed calls for oversight](#); Catherine Tunney, CBC, [The number of misconduct investigations of border officers rose last year](#).