



THE CANADIAN
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September 24, 2009

Tara Cosgrove
Director, Program Communications
Canada Border Services Agency
191 Laurier Avenue West, 9th Floor
Ottawa, Ontario K1A 0L8

Dear Ms. Cosgrove:

Re: CBSA Branding Initiative

I am writing on behalf of the Canadian Bar Association's National Citizenship and Immigration Law Section (the CBA Section) in response to your consultation with external stakeholders on the Canada Border Services Agency's (CBSA) development of a new brand. We would like to take this opportunity to thank you for allowing us to participate in this process, as we value the work the CBSA performs.

The CBA is a national association representing 37,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice. Your questionnaire asks a series of questions with respect to how the CBSA is currently projecting key values (such as professionalism, fairness, consistency) with its image. It is in this context that we would like to address some key issues for our membership.

In our view, one of the core values the CBSA should incorporate into its new brand is the proper administration of justice. The CBSA is entrusted with the important mission of administering many Canadian acts and regulations (including the *Immigration and Refugee Protection Act*), various government policies and procedures, as well as international agreements relating to the flow of persons and goods. A key aspect of reflecting a positive image is ensuring that CBSA officers apply an accurate and consistent interpretation of applicable laws, regulations and policies to all those who seek entry into Canada, in a manner that reflects both the enforcement and the facilitation aspects of CBSA's mandate.

Application of the Laws and Regulations

Given the vast number of offices and locations where the CBSA provides services, we understand that the uniform application of the numerous laws, regulations and policies can be a significant challenge. However, our members and clients have often encountered front-line

officers who do not have the necessary knowledge of the pertinent legislation to make informed decisions, and thus, officers will often misinterpret and misapply regulations or policies.

The decisions rendered by CBSA officers are of fundamental importance to the administration of the *Immigration and Refugee Protection Act* (IRPA) and Parliament's goals in securing Canada's economic and social objectives. Further, officers' decisions can significantly affect families, businesses, and a person's future in Canada. In light of the serious impact that an ill-informed decision could have, we recommend additional training for officers to ensure they are fully informed about the governing laws, regulations and policies.

Consistency

Unfortunately, the experience of our members across the country has been a lack of consistency in the service provided by CBSA officers. Variation from one office to another and within the same office has long been identified as an issue that requires attention. Consistency is important so that applicants can predict the standards used to assess their applications, regardless of which officer reviews the file. A lack of consistency may give rise to perceptions of unfairness, and lead applicants to incur additional costs for legal opinions or to obtain detailed reviews of their circumstances. It can also create and perpetuate processing inefficiencies within the CBSA, as individuals may seek out different ports of entry because of perceptions of where their applications may receive the best treatment.

Balanced Approach to CBSA Mandate

IRPA's objectives include "to protect the health and safety of Canadians and to maintain the security of Canadian society" and "to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks." The CBSA plays an important role in maintaining the safety and security of Canada's borders, and it appears, by virtue of the decision to arm CBSA officers, that there is an increasing emphasis on enforcement.

We appreciate the commitment and dedication of CBSA officers. However, our members have noticed an increasingly aggressive attitude from some CBSA officers, which we believe followed this shift in emphasis. On occasion, CBSA officers appear to be resistant to the mere presence or involvement of counsel. A greater understanding of the role of counsel in the immigration process would benefit CBSA officers, as we have similar objectives – the safe, efficient and lawful movement of people across Canada's border. We believe that an atmosphere of mutual respect for each other's role in this process would contribute to the new and positive branding CBSA is seeking.

Another important objective under IRPA is family reunification. However, the CBSA has removed persons while they have pending spousal applications. Particularly given the long delays in processing these applications, we recommend that the CBSA work with Citizenship and Immigration Canada (CIC) to ensure that *bona fide* couples are not separated. Requests from CBSA to CIC to review spousal applications prior to removal would likely avoid this problem and assist in fulfilling this important legislative objective. While we understand that protection is an important part of the mission of the CBSA, we do not feel that this would be sacrificed with a more balanced approach.

Conclusion

As part of its new brand strategy, the CBA Section recommends that CBSA implement additional training of officers, to ensure consistent application of the law, a balanced approach by officers in fulfilling CBSA's mandate, and a greater understanding of the role of counsel in the immigration process.

Thank you for the opportunity to share our views as you take on this new endeavour.

If you have any additional questions, please do not hesitate to contact the undersigned.

Yours truly,

(original signed by Stephen Green)

Stephen Green
Chair, National Citizenship and Immigration Law Section