



September 4, 2008

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Re: Consultation on Integrated cross border law enforcement initiatives

Dear Sirs,

Please find attached the response from the Canadian Association of Police Boards (CAPB) with respect to this extremely important subject. We wish to congratulate the Government of Canada for launching this effort and for including non federal agencies in the discussions. As you will see from our response, we are firmly convinced that a like inclusion of provincial and local law enforcement (where applicable) is a cornerstone to maximizing the effectiveness of this clearly necessary public safety and security enhancement.

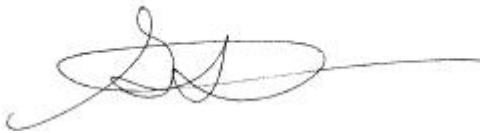
Our response is presented by answering the specific questions posed although we have assembled additional materials including an analysis of existing relevant statutory authority for the myriad of issues identified. It is clear from that and from past experience that lawful authority for what appears to be proposed already exists and thus a new federal enactment, while perhaps preferable, does not appear necessary which should

expedite proceeding with this matter. Naturally, the CAPB would be pleased to discuss this with you further should that be of interest.

It is also our suggestion that the wisely contemplated joint Threat Risk Analysis should include a local police agency such as the OPP whose participation, as noted, would greatly enhance this effort.

Finally, we wish to stress the paramount importance of *complete* reciprocity in authority and obligation and the assurance that this endeavour will not in any way facilitate unauthorized investigations or enforcement actions in Canada by US officials. With this important understanding and with the recommendations contained within, this initiative has the full support of the CAPB and we offer our continuing co-operation and assistance as it proceeds.

Sincerely Yours,

A handwritten signature in black ink, appearing to be 'GD', with a long horizontal line extending to the right.

Greg Dionne
President
Canadian Association of Police Boards

QUESTIONS AND CAPB RESPONSES

1. What benefits and concerns, if any, might result from the deployment of integrated Canada-U.S. cross-border law enforcement operations?

Benefits

The potential benefits flowing from a properly organized, resourced and deployed cross border joint force initiative include

- *Increased interdiction of drugs, guns and people involved in criminal activity within Canada especially if joint force utilized
- *Enhanced prosecution through better evidence
- *Supports domestic joint force patrol with federal funding for local policing involvement
- *Maximized productivity in using all assets and personnel available who have direct value added capacity
- *Enhanced intelligence on related issues for local law enforcement
- *Support for development of proper civilian oversight of federal law enforcement in the RCMP and CBSA.
- *Clarification of cross border authority and liability
- *Re-inforces need for requirement of statutory authorization for non Canadian law enforcement active in Canada as recently confirmed by RCMP Public Complaints Commission in BC Texas Rangers case.
- *Confirms prohibition of unauthorized US law enforcement activities within Canada
- *Clarifies propriety of information sharing with US agencies and inter agencies within Canada
- *Builds appropriate foundation for Canada-US co-operation in anticipation of SBI Net North

Concerns

*Need to ensure local operational control of all US officers in Canada at all times which can be unpredictable in dynamics of law enforcement

*Need to ensure conformity with Canadian law enforcement standards at all times while in Canada

*Need to ensure inclusion of all relevant domestic agencies and not just federal agencies

*There must be complete reciprocity in the arrangement. Restrictions and entitlements must be 100% reciprocal.

*Perhaps the biggest concern in the recommended approach is for new federal legislation to authorize these cross border activities. Given that previous cross border activities have been conducted pursuant to existing legislative authority and that the proposal recommends empowering individual officers and not agencies, it is unclear why resort to the time consuming process of new legislation is recommended. Put differently, we pass laws as a means to an end and not as end itself so determining *why* a new law is required should be explained especially given the operational urgency and the inevitable delay in enacting a new law.

2. What benefits and concerns might result from granting U.S. law enforcement officers “peace officer” status as part of integrated cross-border law enforcement operations?

Benefits

*Increased admissibility of evidence and reduced challenges to search and seizure, arrest etc...

*Greater control of US actions and ensuring conformity to Canadian standards

*Enhanced officer protection from claims of misconduct and liability issues

Concerns

*Based on conduct, Canada may wish to reject an otherwise ‘peace officer’ qualified officer for the initiative and thus participation approval should be a joint and ongoing responsibility.

3. Are there other national interests, values or principles that should also be taken into consideration?

The following other issues should be considered:

>The Federal government acknowledgment of cross border illegality problem and domestic impact/cost of failing to act is an important development.

>The appropriate mandate of the integrated cross border initiative is critical and should be mutually agreed upon to include intelligence gathering/sharing, surveillance, patrol, interdiction, pursuit and apprehension/prosecution.

*The initiative should have both marine and land patrol capacity

*The conduct of the recommended joint Threat and Risk Analysis to establish deployment should include the RCMP, CBSA and OPP as part of Canadian team.

*The initiative should be intelligence led with use of multiple sensors rather than simple patrol (Canadian automated, analytical radar system used by RCMP and CBP and endorsed by OPP as well as ground sensor, cameras, command and control (C2) communications etc..)

*There is a critical need for inter-operable communications systems as a priority.

*Any supposed barriers to full information sharing capacity should be addressed up front and resolved. Section 8 of the Privacy Act as well as other authorizing statutes have mechanisms to accomplish this but Canada must ensure there is full reciprocity on this subject.

*There must be complete reciprocity in the arrangement. Restrictions and entitlements must be 100% reciprocal.

*The best way to ensure public and legal acceptability is to mandate (and require) local agency operational control depending on location. This should also include an overt priority not to have US officers engaged in activities that will involve them in post arrest prosecution to the greatest extent possible and vice versa.

*A foundation principle of this initiative is the application of local laws. Canada/US officers are assisting in cross border activities which result in local law enforcement actions on either side of the border. Neither country's officers are bringing their laws with them.

*Designation must be of officers and not agencies- This vests local authority with greater control of who qualifies for specialized duties. Approval of participating officers should be a joint responsibility.

*Firearms issues- Legislation exists in Canada under the Firearms Act to accomplish US officers being armed while in Canada and presumably in the US.

*No unauthorized investigations- This agreement must explicitly confirm that in no way does it permit or authorize US/Canadian investigations in each others territory that would otherwise require special authorization. It is imperative we have this clarified and adhered to.

*Measuring performance - Like ShipRider, it is recommended that the cross border program once launched should be jointly reviewed after one year of operation to assess results.

*Oversight mechanisms issues- Oversight of the initiative should involve independent bodies with binding authority over a participating agency in defined areas. This is potentially contentious as CBSA has no statutory independent oversight and the RCMP oversight is not binding on the RCMP Commissioner. This process might contribute to modernizing these federal agencies in this area.

*The CAPB recommends non federal inclusion in development of the policy and legal framework and seek a specific timeline for its completion.

4. What preconditions should U.S. law enforcement officers have to meet (such as training requirements) prior to being granted “peace officer” status?

*Purpose specific foreign officer training- The object of the training should be specific to the intended scope of activity. We don’t want US officers taking statements in Canada if possible.

*Familiarity with Canadian use of force models and standards and with defined and required policies for operational activities should be required.

*An effort should be made to standardize or harmonize the officer conduct requirements (use of force, drawing weapon etc...) for *all* officers participating in this initiative.

5. Where U.S. law enforcement officers are involved in joint cross-border operations in Canada:

a. What level of Canadian oversight would be appropriate?

Oversight should be independent of the individual agencies involved and with jurisdiction over officer conduct in Canada as well as potentially the collective activities of the initiative in Canada. This latter area may be problematic with regard to US agencies and indeed legitimate security issues exist for such domestic scrutiny as well.

While the RCMP has a largely independent public complaint process, it is not binding on the RCMP in its recommendations although this is apparently under current review. The CBSA internal review is just that; without independence from the Agency which we understand to be the case for the Coast Guard as well.

It must also be noted that the RCMP, alone among all law enforcement agencies in Canada, also lacks an independent mechanism for employee representation which is

an essential component of meaningful oversight. This too may be remedied in the current RCMP Transformation process.

b. What might be an appropriate oversight mechanism?

If a national independent and effective law enforcement oversight mechanism is established for the RCMP (possibly applicable to the CBSA given their heightened law enforcement mandate), that, hopefully, includes independent employee representation, this would be optimal.

Failing that, a single existing oversight mechanism could be selected or officers could be simply subject to their own oversight processes.

Whatever model is chosen, the rights and obligations of it on officers not operating in their own country should be reciprocal even if they are different in the different countries.

6. Should issues of discipline of U.S. officers be a matter for U.S. authorities to deal with?

Clearly, US officers acting in US territory will be subject US discipline from US authorities. As noted above, the CAPB emphatically suggests that the principle of complete reciprocity be adhered to above all else for officers acting in each other's territory.

As a matter of public acceptance and respect for individual sovereignty, it is recommended that the local law and oversight apply, on *both* sides of the border, to officers from *both* countries.

7. Should U.S. law enforcement officers be allowed to engage in cross-border law enforcement operations in Canadian jurisdiction only under the direction and control of a Canadian law enforcement officer?

YES

8. Should such joint operations be limited to the federal law enforcement agencies of both countries or should provincial/state and/or municipal police forces also be able to participate in integrated cross-border law enforcement operations?

The CAPB is emphatic in its view that participation in this initiative by the RCMP, CBSA, CCG, possibly DND *and* local and provincial policing agencies is critical. It will enhance the capacity and consequential benefit of the initiative. Local border agencies also have local assets that will significantly enhance capacity.