

No Documents, No Entry: The Canada-U.S. Border Transformed

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Homeland Security and the Canada-US Border

As of January 31, 2008, every individual travelling to the US by car or boat will be required to hold a valid passport or driver's licence plus a birth certificate or citizenship card. For those under eighteen, a birth certificate will be mandatory. Canada had hoped for an exemption from the sweeping consequences of the new US legal requirements passed by the US Congress, but none was obtained. If a Canadian citizen does not have the required documents, they will be turned back at the border. (see attachment) The new stringent requirements will, overnight, transform the management of North America's borders and effectively establish a new border regime for Canadians.

In theory, the model of border management should be one of cooperation and close coordination. Canada and the US as well as Mexico and the US have a long history of formal and informal cooperation between law enforcement, intelligence, and the bureaucracies charged with protecting their country's national sovereignty and national security. Each year over three hundred million cross-border visits occur, and it remains to be seen how the dramatic increase in work load will be handled by the US Customs and Border Protection Agency and the Canada Border Services Agency.

Document verification at heavily used border crossings is a logistical nightmare. Papers for every occupant in each car have to be verified by the border official. It is maddeningly slow and time consuming work. Imagine a vehicle arriving at the Ambassador Bridge with four individuals—one born in Canada, the other three are naturalized citizens. The car arrives and stops; the individuals fumble around looking for their papers (first delay). They hand their papers to the border official (second delay); the passports are scanned (third delay). Then they are returned to the car occupants and further questioning and verification occurs (more delays). Should an individual be born in one of the twenty or so countries on the US watch list, the individual will be asked to leave the car for further verification including finger print and document scanning as well as a photograph. (another even longer delay)

Compare the typical major border crossing experience to Pearson International airport's pre-US customs clearance security process. They have twenty-five agents on duty who process between ten to twenty thousand visitors daily during heavily travelled periods. Passengers are required to fill out customs forms and have their passports at the ready. The pre-clearance area is well-lit, indoors and secure. Even so, wait times vary from ten to thirty minutes during peak periods. Border crossing-customs processing zones are never a good environment; they are places of delay, irritation and inefficiency. I hope a return to heavily bureaucratized and policed central European-style borders will not occur between Canada and the US. It is difficult to see how this scenario will be

avoided. US authorities expect a high standard of document verification unless border officials are directed otherwise.

The Public Policy Challenge

Given the magnitude of the new procedures and the volume of work for Canadian and US border officials on the northern border, the questions are, are the existing financial resources adequate to cope with the intensity of these changes? How many more agents do the CBSA and the US CBP require? Do Ottawa and Washington have a full-fledged management strategy to address the legal and administrative challenges that will inevitably arise? How are the rights of Canadian citizens to be protected from intrusive and arbitrary decisions at the border by officials? Is there a consensus between American and Canadian publics on the need for more and heightened security measures?

Since 9/11, Canadian governments have invested over ten billion dollars in enhancing border security behind and at the thickening border with respect to passport issuance, port inspection, and air and land traffic. At the cabinet level, both the Martin and Harper governments appointed high-level ministers to coordinate public safety and security policy across the face of government. The current minister, Stockwell Day, and his predecessor Anne MacLellan, liaised with their American counterparts on a regular basis. As well there is vast on-going administrative networking across the face of both governments between officials charged with transportation, food security, immigration, commerce justice and intelligence gathering. Despite the ideal scenario that cooperation provides

the framework of management of the Canada-US border, Canadian politicians and bureaucrats will face three major challenges.

With only fifteen percent of Americans having passports compared to thirty-five percent of Canadians, the border will be seen increasingly as a zone of bureaucratic inefficiency, frustration and delay. It is expected that the number of those refused entry into the US and Canada will rise dramatically due primarily to individuals lacking the proper documentation. It is predictable that there will be a strong backlash by both individuals and commercial establishments of both countries against the new inflexible requirements of cross-border travel and visits that will reduce cross border shopping and other kinds of commercial activity.

Secondly, while the new documentation requirements are not in themselves onerous they nonetheless harken back to the kind of borders that existed in the 1960s and 1970s when border officials were slow and methodical and the queues were long and trying. The staffing levels required to inspect the travel documents of millions of visitors will require massive investments from both Canadian and American governments. The number of border officials during peak times will have to be doubled or tripled. Border crossings are very difficult to manage because even with scanners, much of the work is labour intensive and cannot be automated.

The question is do Ottawa and Washington have contingency plans for dramatically expanding, improving and enhancing border management practices at the same time as the processing of individuals becomes more time consuming and labour intensive? Experts now acknowledge that most of the delays and

bottlenecks at the Peace and Rainbow Bridges, which are responsible for three quarters of all cross border movement, are due to financial cutbacks and staff shortages.

Thirdly, increased security practices require increased protection of citizen rights, particularly with respect to naturalized Canadians who were born in many parts of the world that American authorities consider high risk such as Pakistan, India and the Middle East. In 2006, 80,000 Americans were refused the right to board airplanes for flights they had purchased because they were on the no-fly list. The bureaucratic process for removing one's name from the list is slow, costly and time consuming as US authorities have been overwhelmed by the workload. Both in terms of privacy issues and constitutional guarantees, the Canadian government requires a means of protecting its own citizens from the arbitrary and discriminatory actions of border officials blocking access to the US. As yet, no mechanism or tribunal has been established to protect Canadian and American citizens from perceived prejudicial behaviour of customs agents.

New Constitutional Anxieties

The unilateral decision by the Bush Administration under the Homeland Security Act will continue to challenge the legal responsibility of Canadian authorities to manage borders in accordance with Canadian law and the Charter of Rights and Freedoms. American authorities are equally charged with implementing Homeland Security and protecting American national interests though the laws of congress and the US constitution. The prospects for disaccord and clashes of national sovereignty have never been more imminent.

In the *Globe and Mail*-Strategic Council poll published in *The Globe and Mail* on January 15, 2008, only four percent of those surveyed, indicated that security was a primary concern. By contrast, the economy trumps terrorism and government leadership as a source of worry. The dissimilarity with the US could not be starker. In the October 2007 *Wall Street Journal* poll, Americans responded that terrorism, health care and immigration were their primary concerns. Why is the Canadian public offside on the importance of security while the American public is dramatically onside?

One key factor is that the Maher Arar inquiry in Canada left Canadians deeply sceptical of the Homeland Security doctrine of rendition and the role of the RCMP in providing false information to US authorities. This information resulted in Arar being sent to Syria where he was imprisoned and tortured for a year. In a major public enquiry headed by a superior court judge, Arar was vindicated and the government apologized to Arar and his family and paid \$10 million in compensation. Canadians were told that the RCMP wrongly acted against an innocent Canadian citizen. Significantly Arar remains on the US security watch list; no apology has been offered by the Bush Administration and he remains barred from any travel to the US. The fallout from the Arar enquiry has focused Canadian attention again on very deep problems between the two countries on the management of the Canada-US security file.

These anxieties were heightened further in late December 2006 when the Canadian Supreme Court struck down the use of security certificates to hold suspects indefinitely without trial, access to a lawyer or constitutional protections

and has required the government to provide new legislation. There is a growing consensus among human rights, legal activists and key opinion makers in the mass media that Canadian governments have gone too far with intrusive security measures and have neglected the due process and rule of law guaranteed by the Charter of Rights and Freedoms. As Ottawa continues to struggle to find the right balance between security and individual rights, the new border regime adds a whole new layer of complexity and urgency to Canada-US security relations. Finding adequate solutions to the new border regime will take the better part of the next decade as costs, delays and diplomatic conflicts inevitably multiply and spin out of political control without proper oversight and regulatory mechanisms in place.