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THE SMART BORDER: MOVEMENT OF PEOPLE –
IMMIGRATION AND REFUGEE/ASYLUM
AND OTHER ASPECTS

Charlotte M. Janssen[†]
Canadian Speaker

Canada, as much as I may be a big of critic of Canadian immigration, on the temporary entry side we are still very much open for business. There have been a lot of new measures, but they have not affected the on-line processing or at the border point of entry processing. They have given more authority to officers, but things are still moving along on the same set of laws and with some predictability.

The spousal employment issue in Canada has spread to all foreign workers. Spouses of all foreign workers can work, as can common law partners and same sex partners. We still have walk-in service, even though in the busier consulates, it is better to mail it in and not just show up. So our timing at port of entry is a little bit quicker.

Canada's focus on immigration has always been quite different than the United States. Today, I am not speaking about immigration per se as much as I am on entry and public security. For the past four centuries, Canada was a land built with immigrants. Immigrants and their descendants have steadily arrived in Canada and together formed a nation. The immigrants have forged trading alliances, as you can tell from Bill Graham, with the countries from which they come and with their neighbor, the United States. We depend economically and socially on the openness of our borders.

We always had a generous immigration policy. In the past few years, we have been allowing in 200,000 individuals on a permanent residence basis. There is absolutely no indication that that number will be lowered. At the moment there are fewer applicants because there was a major change in the law, but we are still welcoming immigrants to Canada. This 200,000 person number is in addition to approximately 285,000 temporary entries that we allowed into Canada in 2001. Of the 285,000, 94,000 are to the United States. Those 94,000 were work permits. Of the 94,000, 24,000 were

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permits issued to Americans. There were approximately 5,000 student visas. You can see more than 100,000 of our 250,000 are Americans. With the \$1.5 billion in trade and provisions of NAFTA allowing for walk-in applications,¹ I would gather that the vast bulk of those visas were issued at port of entry at one of our very busy borders.

PUBLIC SECURITY

The challenge for Canada is how to continue to allow the openness of our border and enhance public security. We have 9,000 kilometers of shared border and \$1.5 billion worth of trade. We must allow people to continue to flow while still addressing the concern of U.S. and public security. The focus of immigration policy and the affect of public security on it have been under intense scrutiny. The scrutiny from the U.S. has been especially intense, since the Montréal resident had Ahmed Ressam was stopped at the Canada/U.S. border in route to bomb the Los Angeles airport during the millennium celebration.² Some may remember after September 11th, there were a lot of accusations that Canada was a haven for terrorists. Luckily for Canada, no connection was ever proven linking the September 11th attackers to Canada. However, it certainly did raise an issue.

Canadian Legislation

Canada did not take the thought it may be the porous border lightly. In response to September 11th and as a general trend in the world for greater public security, Canada passed a number of statutes in late 2001 and early 2002 addressing public security. There were acts to amend the criminal code. The Anti-Terrorism Act and the Budget Implementation Act served to amend close to 20 statues including public safety and charities registration.³ There were two statutes introduced along with them. The Charities Registration Act for Terrorist Funding and Biological Toxins Weapons Convention Limitation

¹ North American Free Trade Agreement, Dec. 17, 1992, Can.-Mex.- U.S., 32 I.L.M. 289 (entered into force Jan. 1, 1993).

² Colin Nickerson, *Border Arrest Sets Off Manhunt for Millennium Terrorists: A Bilateral Sweep Seems from U.S. Perceptions that Canada is a Haven for International Criminals*, PORTLAND OREGONIAN, A29, Dec. 19, 1999, available at 1999 WL 28286767

³ Bill C-36, An Act to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities, in order to combat terrorism, 1st Sess., 37th Parl., 2001 (assented to 18 December 2001), S.C. 2001, c. 41 [Anti-Terrorism Act]; Budget Implementation Act, 2002, c. 9, available at www.canlii.org/ca/sta/b-9.85/

Act were passed as well as a number of Acts relating to air, port of entry, the criminal code, export/import.⁴ There were a number of changes.

One of the more interesting ones was the Pre-clearance Act, passenger regulations.⁵ A list of information is now given by Canadians to the Americans at our airports. The list is of everyone coming in on our flights that may be in transit to the U.S. so that the U.S. knows in advance who will be traveling thru Canada to the U.S. If they have concerns based on the name and passport, they have a right to get another 20 or 30 questions answered about that person. We in turn obtain from the information from the airline. The additional information may include who the travel agent is, where they live, their phone number, and where they are going. The days of privacy are changing, but as you will see from this declaration there is lot of information sharing going on between governments.

We did have deficiencies in our law. We are not perfect. We obviously saw we had holes in our own laws that need to be changed and we have been acting on that. Canada announced it was going to bring a new immigration act in December of 2001, which came into force on June 28, 2002. It is called the Immigration and Refugee Protection Act.⁶ It is probably the biggest change in Canada immigration law this century. The good news is that it did not change any of our institutions. Our delivery system has remained in place and we have just given more authority or changed the rules on different categories of immigration.

It had a dramatic effect on permanent resident calculations. We made temporary entry easier than NAFTA.⁷ We have taken a lot of frequent U.S. business travelers into Canada and we made them visitors as opposed to work permits, one category of workers that we used to have to deal with. In addition to that it has given way to faster examination because nothing has actually changed from a practical delivery point of view.

⁴ Bill C-17, An Act to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety, 2d Sess., 37th Parl., 2002 (as amended by the Legislative Committee on C-17, 7 May 2003) [Public Safety Act]; Charities Registration Act was established by Part 6 of Bill C-36, the Anti-Terrorism Act; *Also see*, Library of Parliament, Legislative summaries, Bill C-16: Charities Registration (Security Information) Act, LS-400E (April 10, 2001), *available at* www.parl.gc.ca/common/bills_ls.asp?Parl=37&Ses=1&ls=c16

⁵ Agreement on Air Transport Preclearance between The Government of Canada and The Government of the United States of America, CAN.-U.S., signed January 18, 2001, entered into force May 2, 2003, *available at* 2003 WL 21654038; Preclearance Act, S.C. 1999, c. 20; Passenger Information Regulations (Preclearance Act) P.C. 2002-545, April 11, 2002, *available at* laws.justice.gc.ca/en/P-19.3/SOR-2002-147/text.html

⁶ Immigration and Refugee Protection Act, S.C. 2001, c. 27, *available at* www.cic.gc.ca/english/pdf/pub/C-11_4.pdf

⁷ NAFTA, CHAPTER 16, *supra* note 1.

Canadian-U.S. Joint Initiatives

There have also been a number of joint initiatives with the United States. All of these affect the immigration area. The first one was the Statement of Cooperation on Border Security and Regional Migration Issues later seemed to be adopted more specifically in the Smart Border Declaration and Action Plan, and also the Safe Third Country Agreement, which someone mentioned this morning deals with the duplication of processing of refugee claims.⁸ We cannot have a refugee get refused in Canada and then come to the U.S. We cannot have someone whose been sitting in the U.S. for a long time come to Canada and claim refugee.

Pursuant to these three joint initiatives, Canada has the Integrated Border Enforcement Teams.⁹ IBETs are created from multi-agencies of law enforcement to allow officials to share information and technology and to coordinate activities between Canada and the U.S. so that they can avoid duplication. The idea is to be better on enforcement at the borders. They started with five. I think Mr. Hague mentioned this morning they are up to nine, and will have 14 of these teams across the border by the end of this year. Immigration control officers have also been sent over by both countries to do pre-clearance and provide information to the U.S. and to Canada. I think we have similar information being delivered back to us. So both Canada and the U.S. can see in advance, people traveling, if there is a worry of someone who is getting on the planes.

There is project North Star, which is increased coordination and sharing of information among various police organizations, police or security organizations. They also worked with the United Nations closely in sharing information to come up with a list of terrorists and individual organizations that individuals should be watching for and not working with. Canada has adopted it under the United Nations Act¹⁰ and also under the Criminal Code.

NEXUS borders are definitely important in our view. Not so much for Canada, but more because of concern with the registration system in the

⁸ Canada-United States Issue Statement on Common Security Priorities, *Public Safety and Emergency Preparedness Canada*, Aug. 10, 2002, available at www.sgc.gc.ca/publications/news/20011203_2_e.asp; *The Smart Border Declaration: Building a Smart Border for the 21st Century on the Foundation of a North American Zone of Confidence*, CANADIAN EMBASSY, Dec. 12, 2001, available at www.canadianembassy.org/border/declaration-en.asp; *Canada-U.S. Negotiators Agree to Final Draft Text of Safe Third Country Agreement*, CITIZENSHIP AND IMMIGRATION CANADA, Sept. 9, 2002, available at www.cic.gc.ca/english/policy/safe-third.html

⁹ *Canada-United States Integrated Border Enforcement Teams*, CANADIAN CUSTOMS AND REVENUE AGENCY, Sept. 2002, available at www.ccr-aadrc.gc.ca/newsroom/factsheets/2002/sep/teams-e.html

¹⁰ *United Nations Act*, R.S.C. 1985, c. U-2, as am. S.C. 2001, c. 41, s. 112.

U.S.,¹¹ which I will talk about a little bit later. The project North Star lane is effectively a way you can go through a special roadway or clearance. You have a biometric type card you pass clearance from both the U.S. and Canadian government. We are hoping to prevent people who are subject to registration under the NSEERS program¹² from having to get fingerprinted every time they enter and leave the U.S. This is a huge issue for Canada going in the other direction because you might have someone who is a Syrian resident or a citizen of Canada for 33 years, who has hardly anything to do with the country, yet every time he goes across the Windsor/Detroit border to visit his daughter, he is forced to register on the way in and on the way out. If he stays more than 30 days, then he registers every 30 days. We are hoping maybe NEXUS will be expanded to do the low risk individuals from the Middle East and give some relief to the registration system.

Finally, the Safe Third Country Agreement will turn back at the port of entry anyone who claims refugee status in Canada who is in the U.S. and has the potential to claim it there. The idea behind that is we are both members of the Geneva Convention. We both have somewhat different, but similar motivations in the way we implement refugee claim system and to try to avoid people from trying to sort of forum shopping. From Canada's perspective, the Immigration and Refugee Protection Act¹³ has introduced still further restrictions on people who have been refused or who are out of status. We have gotten a lot stronger and are less tolerant in terms of people who are out of status. We have a dual process system for inland Canada. We have refused access to the refugee claimants for anyone who has applied before and been refused. We are also refusing access to refugee claims for anyone who is a refugee in a European country but has travel documents and is perfectly able to live there.

In terms of all of changes we spent \$7.7 billion in the 2001 budget, another \$6.5 to 7.7 billion in the 2001 budget to implement the IBETS teams to the computer share. Three hundred million of that is going to the Windsor/Detroit border alone. One hundred fifty of that has already been spent and there is another 150 to go. So, Canada has actually passed its budget bills to support initiatives that are in place.

In terms of immigration, we will continue to encourage immigration into Canada. I think that is quite a different policy than the United States. That is our history. That is where we are. We are trying to be more selective. We

¹¹ *United States - Canada Nexus Program*, THE WHITE HOUSE, OFFICE OF THE PRESS SECRETARY, Sept. 9, 2002, available at www.whitehouse.gov/news/releases/2002/09/20020909-1.html

¹² *The National Security Entry-Exit Registration System*, fact sheet, U.S. Dept. of Justice (2002), available at www.usdoj.gov; See also Notices, AG ORDER NO. 2636-2002, 67 FED. REG. 77,136 (Dec. 16, 2002).

¹³ *Immigration and Refugee Protection Act*, R.S.C. 2001, c. 27.

are not saying anyone can come to Canada. We are actually getting much higher on our threshold in terms of what you need to have in terms of business experience or working experience, working education, to qualify for immigration to Canada, but the objectives are to continue to promote social, cultural, and economic benefits.

The interesting thing about the Immigration Refugee Protection Act, it incorporates now into the objectives more security concerns. It has changed wording in what it does as well as who it allows and does not allow. They must, for example, when assessing a refugee claim look at security, not just criminal. It used to be just a reference more to the criminality, now it is criminal and security in a broader sense of the word. We are not just looking at terrorists, but more generally security in any sort of reasonable concern.

On entry to Canada, only Canadian citizens and Indians registered have the automatic right to enter and remain. Permanent residences have very generous rate of entry, although they are continually examined to ensure they meet the conditions of the Act once they get into the Canada. As a general rule applications for temporary entrance into Canada other than NAFTA, GATT and a few other very limited qualifications, must apply outside of Canada at a consulate.¹⁴ Although refugees may file a claim for refugee status, they may be subject to a three-day eligibility determination prior to proceeding in a whole case and will never be processed at the border.¹⁵

All persons who require a visa from a visa-exempt country can enter Canada as visitors. However, if they do not have their documents in order they will not be let in at any other country. If you show up at the border and you do not have your papers, you will be allowed in. You will be subject to examination and could be asked to leave or have conditions imposed on your stay. Every type of application has documentation requirements and everyone must have a valid passport or travel document.¹⁶ We do not accept South African Homeland documents, Palestine documents, or British visitor passports. Anyone staying for more than six months needs a special permit. Study permits and work permits under NAFTA can be applied at the border.

The bottom line is that Canada is open for business. We do invite people to come, but be prepared and be honest. If you are not the computer systems between the two countries will find you.

¹⁴ NAFTA, *supra* note 1; General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, T.I.A.S. 1700, 55 U.N.T.S. 194.

¹⁵ Immigration and Refugee Protection Act, S.C. 2001, c. 27, s. 100.

¹⁶ Immigration and Refugee Protection Act, S.C. 2001, c. 27, s. 117.