

Privacy Commissioner slams Canadian Border Agency for 'Border Security' TV

By Zool Suleman | Opinion, Politics | June 13th 2016



Canada's Privacy Commissioner Daniel Therrien in Ottawa on January 25, 2016. File photo by The Canadian Press.

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In a scathing report released last week, three years after an initial complaint was lodged, federal Privacy Commissioner Daniel Therrien has found the Canada Border Services Agency (CBSA) to be in breach of Canada's Privacy Act. The investigative [report](#) details the context within which the CBSA permitted Force Four Productions Ltd. to film a raid for its TV show [Border Security](#), on a job site in Vancouver on March 2013. The complainant was the British Columbia Civil Liberties Association ("BCCLA") on behalf of Oscar Mata Duran, one of the people filmed in the raid and eventually removed from Canada. I was pro bono legal counsel to Mr. Duran after the raid took place.

"Border Security" is one of those "reality" TV shows in which policing forces are shown engaging in the daily operation of their "front line" work. Similar to [Cops](#) in the United States, the show follows CBSA officers as they question and examine people who come to Canada's airports and land borders. The CBSA has admitted to spending \$200,000 per year for each of the three seasons that the show appeared on TV for a total cost of \$600,000, not including the time spent by CBSA staff appearing on the show or facilitating the production of the show. It would not surprise me if the true costs to tax payers if all costs were counted could well be in excess of \$1 million.

After three seasons in Canada, it appears that the show is now focusing on "[America's Front Line](#)" rather than "Canada's Front Line" because, as the report makes clear, CBSA has ceased its involvement with the TV program. While the time lines are not clear, it appears that privacy rights caused the falling out between the CBSA and the TV show.

All along, migrant rights groups had [claimed](#) the filming of the CBSA raid by the TV show compromised the privacy rights of the migrants who were captured on film. While they may or may not have had the legal right to work, their migration status should not have subjected them to becoming unwilling human actors in the search for television drama and the CBSA's desire to create propaganda for its security mission. When the third season of the CBSA/TV show agreement came up for renewal, internal CBSA [reports](#) were opposed to continued involvement but former Conservative public safety minister Steven Blaney approved the production agreement for another season all the same.

A [Change.org petition](#) involving another one of my clients garnered over 25,000 signatures and urged for the show to be cancelled. The page now features the comments "Victory! Border Security TV show finally cancelled." In a news release, Laura Track, counsel for the BCCLA states: "This decision should sound the death knell for the unfortunate trend of treating law enforcement as if it's Hollywood entertainment. Deportation is not entertainment, and neither are the stops, searches or arrests of people by police in similarly vulnerable situations."

The clash, between privacy rights and public security agencies giving filming access to private companies, is not new in Canada. In 2013, the RCMP [pulled out](#) of plans to make a reality show about Canada's North due to fears that the show would treat policing as entertainment and that vulnerable people would be exploited. In 1995, the information and privacy commissioner of BC issued a [report](#) on the TV show "To Serve and Protect" and ruled that the public who interacted with the Vancouver Police Department should have their identities protected, by blurring the faces and other means.

In my view, this latest report is not the end of the matter, but merely the beginning.

The CBSA as a federal public body is subject to privacy laws and scrutiny. Having been found in breach of the Privacy Act, will the CBSA now apologize to Oscar Mata Duran who was vilified and humiliated in service to some vague CBSA goal to promote its work? Should this matter be yet another example of why the CBSA should be subject to public independent oversight?

Will Force Four be accountable to anyone for its conduct in this privacy breach or will it simply continue selling previous seasons of the Canadian show worldwide and then export its moneymaking formula to the United States where it appears to now be working with their border police? Perhaps, all its copies of TV shows with Canadian content should be marked "privacy breached" or, perhaps, "we are really sorry"? Force Four executives have previously [stated](#) in the media that they are "very proud" of the show and that they only record after seeking "informed consent." Is Force Four willing to apologize, now that the Privacy Commissioner has decided they have not met the test for informed consent?

What this whole story makes clear is that if public agencies entrusted with the right to detain and incarcerate people do not uphold privacy rights with the highest standards, it is members of the public who will suffer.

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Zool Suleman
Immigration and Refugees
[@canadavisalaw](#)