A Macdonald-Laurier Institute Publication

MLI

True North In Canadian Public Policy

Straight Talk

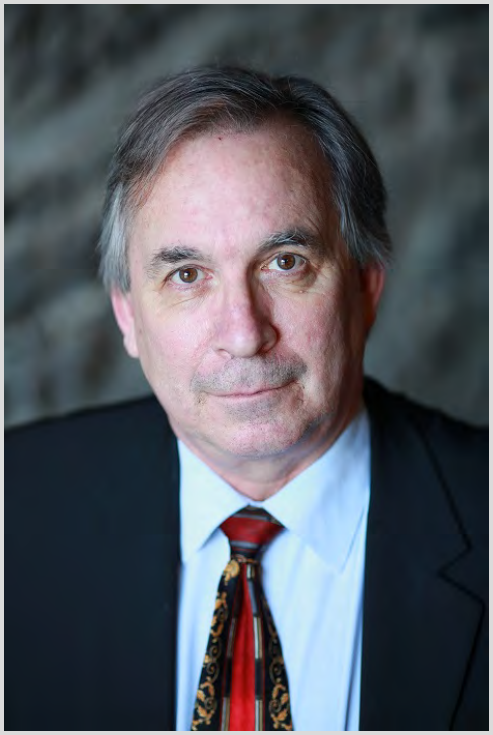
Jan. 2013

Scott Newark on immigration and national security

This is the fifth instalment in a dedicated six-part series of the Macdonald-Laurier Institute's Straight Talk on the subject of immigration and national security with nationally-recognized expert Scott Newark. This instalment examines the physical border.

MLI: Canadians want to ensure a generous immigration policy while keeping out the people who pose a risk to us or who aren't eligible to enter in the first place. We have talked already in this series about how we try to screen people and some of the weaknesses there, but one of the things that seems to be a problem is people we don't manage to screen. We have a long border with the United States, much of it not covered by fences or guard posts. We also have extensive coastlines and there are places where Aboriginal reserves straddle the border. How worried should we be about the physical rather than administrative porousness of our immigration system?

Newark: The place to start when contemplating a border strategy is to pull out a map because as we try to enforce our laws and secure our border, our operational security decisions must address the physical realities of the length of our borders and their often challenging terrain.



Scott Newark's 30-year criminal justice career began as an Alberta Crown Prosecutor, with subsequent roles as Executive Officer of the Canadian Police Association, Vice Chair and Special Counsel for the Ontario Office for Victims of Crime, and as a security and policy advisor to both the Ontario and federal Ministers of Public Safety.

Let me give you an example. I remember a presentation back in 2009 from a scientist from Boeing who was here doing a border security presentation on the US Department of Homeland Security's Secure Border Initiative. Ninety-nine percent of his presentation was, of course, about the US-Mexican border. He had one slide on the US-Canadian border and he was clear that given the terrain, the key components would be surveillance and mobile interdiction. He then said that was why the US was going to work closely with the Canadian border patrol. After the presentation I had to tell him we don't actually *have* a border patrol, which is a bit of a defect in the strategy to put it mildly.

People need to appreciate that as we do a better job of screening and identifying people trying to get visas, criminals and terrorists will adapt. If we're doing a better job at ports of entry they'll try to get in between the ports of entry. That is something intelligence agencies in this country have reported for years and it is a simple truth, but it is a fundamental issue that we have to deal with if we are going to be successful.

MLI: Even if we had a border patrol it would be an enormous job to cover our border given how long it is and how sparsely inhabited it is in places.

Newark: Yes. And that's one more reason proper intelligence-led enforcement, which is necessary on the border given its breadth and size, is vital to fighting both crime and terrorism. This dual vulnerability has been noted in relation to seaports, for example, by the Criminal Intelligence Services of Canada. This is important because as we reduce weaknesses that can be exploited by criminals, we can also fix potential security vulnerabilities.

In my experience, the American priority on the border is still security-related after 9/11. Generally, Canada is more concerned about illegal drugs and guns, and now people, coming north. But effective intelligence-led enforcement at the border accomplishes both goals. That's why the forward-thinking, proactive approach of the 2011 Canada-US Border Agreement is so welcome, including its focus on protecting the perimeter of North America. If we are doing a better job at reducing threats, whether criminal or security, entering the external perimeter then it necessarily reduces the potential for bad stuff and people reaching and crossing the internal Canada-US border.

MLI: Given that we do not have a Canadian border patrol, who is meant to be watching our land and sea borders? What are they are doing in places like the Detroit-Windsor corridor where there is physical border infrastructure? And what are they doing in the many places where there is not?

Newark: In the places where there aren't designated ports of entry, the short answer is: not a heck of a lot. As a result of a 1932 Order in Council, the RCMP was assigned responsibility for enforcement between designated ports of entry. Again, take out a map and look at the size of that challenge. The RCMP literally does not have the boots or hooves on the ground, or keels in the water, to be able to cover it. Since 2003, we have had the Canada Border Services Agency (CBSA) with, obviously, border enforcement in its mandate. Although things are improving given the Government's clear priority on this subject, in my experience, CBSA management's historic risk-averse approach to enforcement duties will likely be the most significant challenge.

Let me give you an example. Canada and the US have a very sensible cross border marine patrol and enforcement agreement known as the "Shiprider" program where our specially designated officers are empowered to enforce each other's laws. You know who is not a part of this border enforcement agreement? The CBSA. Clearly this needs to be resolved. Unfortunately, the Government continued CBSA's exclusion from Shiprider when they passed C-38 which ratified the original agreement.

MLI: Any chance of improvement?

Newark: With C-38 now passed, we will need new legislation to correct the Shiprider program. Beyond that, the good news on coverage between ports of entry is that the current CBSA management seems to be getting more pragmatic and the current president, Luc Portelance, acknowledged about a year ago that CBSA officers do have the lawful authority to engage in enforcement of mandate duties away from designated ports of entry. In other words it's a policy issue, not a legal one. That's important.

In the Conservative's 2008 election platform, the current government announced they would launch a pilot joint force mobile border patrol, which they did in Lacolle, Quebec. Again, unfortunately, the actual patrol component did not include CBSA officers, but I understand they are still working on it. Frankly, in today's world of scarce resources and increased challenges, not using CBSA to its full potential is just unacceptable.

MLI: Does CBSA not want to be in it?

Newark: Good question. In my view it's a carryover from an Ottawa bureaucratic culture of risk aversion within the organization that used to just collect customs duties. Times have changed and they are now a law enforcement agency which inherently involves risk. That's why we train them and give them guns. In the Shiprider Agreement, the US is headed by the Coast Guard and includes local police and federal law enforcement agencies. On the Canadian side, it's headed by the RCMP but only includes provincially created police services such as the SQ, OPP, or local police services. It expressly does not include Canadian federal law enforcement which means CBSA is excluded which is absurd if we are serious about providing the right resources to do the right job(s).

The Canada-US Border Agreement emphatically endorses 'intelligence-led enforcement' which is the traditional Canadian approach. Instead of just putting more people out there, we gather relevant information and then target our resources. That is what a joint force border patrol can do in both land and marine environments.

MLI: Do we have drones or people in planes flying over the southern border of British Columbia looking for anything suspicious?

Newark: The Americans have reportedly deployed a couple of UAVs (drones) out near Montana and they certainly use aircraft. We also have assets; the RCMP and Coast Guard have some boats as does the CBSA, although it's unclear as to the extent that they are actually deployed for use on the water. Having an asset is not the same thing as using it but requiring all the appropriate players to participate is definitely the first step.

What we need to do – and we're already doing to a certain extent—is to deploy a network of integrated sensors along the border with interagency and cross border information sharing. That creates the basis for intelligence-led enforcement which acts like a force multiplier by deploying our assets more effectively.

MLI: What sort of sensors? Radar?

Newark: On the ground, they are literally sensors that activate when someone passes, including detecting the direction of travel. And we are beginning to deploy analytical automated marine radar. In the interest of full disclosure I should say I actually help a company that is involved in doing that and it is absolutely critical when you look at a map to detect the relevant traffic. With these systems you can not only detect and track a ship or low flying aircraft or boat, you can tell the difference between an 800 gazillion-ton tanker and a small vessel that is much more likely to fit the profile of a smuggler or other lawbreaker. We can also now incorporate other data systems like AIS vessel tracking which is valuable as well. You need real-time communications to get your

interdiction force to go and get it. You need data storage. And without getting into all of the details – yes, we have some of that deployed, but we need more. One of the most prominent features in the Canada-US agreement is the conclusion that we need to move forward on this. But all the information generated by these incredibly sophisticated technologies doesn't matter if you don't have people available to do the interdiction.

MLI: I imagine, say, Montana's border as a lonely place. Are there, in fact, roads that cross the border where there is no one watching – or is there someone in a hut on every road?

Newark: No. Unguarded roads, especially in Quebec, are a reality and a problem. The intelligence focused Integrated Border Enforcement Teams (IBETs) are led by the RCMP and include the Americans and CBSA. In their 2009 Report, the IBETs revealed that for the first time since data has been kept, there were more apprehensions of people coming northbound illegally into Canada than southbound into the US. There was also a 70 percent increase in the numbers of persons noted as being interdicted from the previous year's report and the area of biggest concern was Quebec, because they have so many unguarded roads.

MLI: I was thinking about out west.

Newark: No, the main problem, north and south, is where the US population centres are. And here's the kind of frustration you get on this issue: this report comes out saying we have more northbound human smuggling than ever and a major vulnerability is unguarded roads in Quebec and so in the CBSA 2011 Strategic Review, what did they do? They closed more ports of entry and reduced hours of operation at the ones they kept open in Quebec, thus creating more unguarded roads. And…they didn't tell the Americans who operate adjoining facilities that they were doing it. Those same isolated and unmanned ports of entry are the ones the human smugglers picked to bring in the latest vanloads of Roma 'refugee' claimants by the way.

MLI: Amazing.

Newark: Those types of operational decisions ostensibly to 'save money' are so short-sighted, but that's why this new, details focused border agreement that is now signed is a cause for optimism.

In my experience, one of the things that happen too often in Ottawa is that the RCMP gets duties loaded onto it without the money required. That's got to change. CBSA has officers that are now fully trained and equipped and we should be using them as well as the officers from the police services all along those marine border areas. Both the OPP and SQ are now actively engaged and expansion of this joint force approach is something we need to expand.

MLI: You mentioned the problem of roads leading into the part of Quebec south of the St. Lawrence. But there are also major vulnerabilities with the St. Lawrence itself. Any part of a river is a "road" and there are reserves that straddle the border or the river whose inhabitants deny that either Canadian or American law applies. How big a hole does that create?

Newark: Let's start with the waterway itself. In 2008, former RCMP Commissioner Bill Elliott candidly told the House of Commons Public Security Committee that marine surveillance capacity in the St. Lawrence/Great Lakes was "inadequate". In January 2012, Defence Research Development Canada released a report detailing the region's marine vulnerabilities. The Canada-US border features the St. Lawrence/Great Lakes system plus some big inland lakes that we have to deal with. Instead of a bow to stern marine fence, we need automated, analytical, real time, marine radar technology which also covers low flying aircraft because that is how stuff gets moved back and forth across the border. It's a technology issue plus a force deployment issue. We have both capacities, it is just a question now of getting it deployed and done.

MLI: What about reserves?

Newark: Any time there is a hesitation on enforcement, it opens a door because there is less chance people are going to get checked. It is one thing if cigarettes are smuggled off Cornwall Island. But as I said at the beginning, one vulnerability translates into others. Once a smuggling route is created for, say, cigarettes, it can also be used for drugs, guns, and people who end up on the streets in communities all across Canada potentially doing bad things. It differs from community to community but it is no secret to anyone that it is a challenge that must be confronted, on both sides of the border.

MLI: Is anything getting done here?

Newark: The Americans actually developed a *Northern Border Counternarcotics Strategy Act* about a year ago that specifically deals with the need for enhanced border security areas on the US-Canada border including, specifically, in relation to reserves. It's not entirely clear where we're headed. The CBSA had its port of entry on Cornwall Island for years until the local Band council objected because the officers had guns on what they claim as their 'territory'. There was essentially a showdown and CBSA decided to move the port of entry off Cornwall Island and into Cornwall which, theoretically, requires people to drive across the reserve after returning to the Island from the US to report in.

The Border Agreement includes a commitment to re-locate the port of entry to Massena, New York where it will be run as a joint facility like we do elsewhere. This means people will be checked *before* they come onto the island but not when they leave it heading north. So obviously if you can get things illicitly onto the island without going through that port of entry, it makes it easier to get them into Canada.

Clearly, we will have to step up the enforcement activities around Cornwall Island to ensure we are doing as good a job as we possibly can to interdict illicit goods or people coming onto the island from the US.

MLI: What about Canada's coastlines? Obviously it's a lot harder to get something to an isolated part of Newfoundland than to put cocaine in your trunk and drive it from New York to Quebec. On the other hand, I expect there is even less surveillance. Do we have a significant problem on our ocean borders?

Newark: You need a different kind of surveillance because it goes out further. I can tell you it is literally evolving as we speak, developing that same capacity first of detection, tracking, and identification with real time communication, and then for interdiction at sea. There may be less small vessel traffic than in the St. Lawrence and Great Lakes, but you still have to deal with it. Having persistent surveillance coverage is the key rather than just satellites or aircraft coverage, both of which are significantly more expensive than what's required and provide less persistent coverage. I expect this sphere will see more involvement by the Coast Guard and Navy simply because of their existing responsibilities and assets. And again, as we improve in stopping criminal activity (or worse) at the domestic borders, we need to watch for bad guys trying to exploit other points of entry. My focus has been more on the Canada-US border but your point is absolutely correct.

MLI: Before we get to practical recommendations, is there any estimate of, say, how much drug smuggling takes place through designated ports of entry versus the amount smuggled through areas that are not guarded?

Newark: Both the CBSA and RCMP through its IBET programs publish statistics annually about what gets captured and detected. But you'd need to ask them for an estimate of how much is getting through, which of course is not a hard number. I think the most significant thing, and it's not surprising, is that as we do a better

job at designated ports of entry, the illicit traffic is moving between ports of entry. We need to make sure we stay one step ahead.

MLI: You have obviously touched on a number of things. But what are the three most important things that we need to do to strengthen the security of our borders for immigration and other purposes?

Newark: Jointly deploy the integrated network of automated, integrated, analytical sensors in appropriate environments at the Canada-US border. Concurrent with that, especially in Canada, deploy the necessary multi-agency resources for interdiction in an operationally- and cost-effective way including focusing on intelligence capacities. Finally, invoke clear interagency and cross border information sharing authorizations for law enforcement and security purposes. No more silos.

For the first time in a long time, I am optimistic when I look at the details and specifics in the Canada-US Border Agreement. I think there is a firm understanding of what is required at the political level and a direction from the highest authority to get it done.

Recommendations

1) Cross border deployment of automated, integrated, analytical sensor networks at appropriate locations on the Canada-US border and our coasts.

2) Deploy necessary resources for mobile, joint force interdiction including more energetic use of CBSA personnel and increased intelligence capacities.

3) Engage in full interagency and cross border information sharing regarding border security issues as authorized by law.

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