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Bill S-13: Keeping Canadians Safe (Protecting Borders) Act

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Katherine Simonds
International Affairs, Trade and Finance Division

Dominique Valiquet
Legal and Legislative Affairs Division

Parliamentary Information and Research Service

Legislative Summary of Bill S-13

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Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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LEGISLATIVE SUMMARY OF BILL S-13: KEEPING CANADIANS SAFE (PROTECTING BORDERS) ACT

1 BACKGROUND

Bill S-13, An Act to implement the Framework Agreement on Integrated Cross-Border Maritime Law Enforcement Operations between the Government of Canada and the Government of the United States of America (short title: Keeping Canadians Safe [Protecting Borders] Act), was introduced in the Senate on 26 October 2010. Public Safety Canada, the department responsible for the bill, in a statement released the day the bill received first reading, cites the Honourable Vic Toews, Minister of Public Safety, as saying:

The proposed legislation would permit designated Canadian and United States law enforcement personnel to jointly work on maritime law enforcement vessels in boundary waters, such as the Great Lakes and St. Lawrence Seaway, and off both east and west coasts. Working together, these officers would be authorized to enforce the law on both sides of the border, and pursue criminals who try to exploit law enforcement gaps at our shared waterways.¹

In February 2011, the Standing Senate Committee on National Security and Defence heard witness testimony and proposed amendments to clause 22 of Bill S-13, dealing with the public complaints process. On 10 March 2011, Bill S-13 was passed by the Senate, but died on the *Order Paper* on 26 March 2011 with the dissolution of the 40th Parliament.

1.1 “SHIPRIDER” AGREEMENT

Bill S-13 implements the Framework Agreement on Integrated Cross-Border Maritime Law Enforcement Operations between the Government of Canada and the Government of the United States of America, which was signed on 26 May 2009. The agreement was signed by the then Canadian Minister of Public Safety, Peter Van Loan, and the US Department of Homeland Security Secretary, Janet Napolitano.

The agreement makes permanent a joint Canada–US pilot program – referred to as “Shiprider” – which was created in 2005 to address security concerns along the maritime border. Shiprider enabled armed officers from the United States Coast Guard and the Royal Canadian Mounted Police to jointly patrol shared waterways and to continue to easily pursue suspects from one country to the other. Furthermore, it allowed each government to confer upon the other country’s participating law enforcement officers the authority of peace officers in order to facilitate the enforcement of their respective laws across the international border.

Shiprider was initially based out of the Windsor/Detroit Integrated Border Enforcement Team (IBET) station. Although the IBET concept of cross-border law enforcement cooperation dates back to the mid-1990s, it was only after 2001 that

Canada and the United States formally committed to setting up a series of IBETs as part of their joint management of the Canada–US border. The IBET program targets regions between the various ports of entry along the border and comprises the following core agencies: Royal Canadian Mounted Police, Canada Border Services Agency, the US Coast Guard, the US Customs and Border Protection/Office of the Border Patrol and the US Joint Task Force–North.² Shiprider was therefore an extension of the IBET program.

In 2007 Shiprider was expanded to other areas along the Canada–US maritime border to include areas along the British Columbia and Washington state border. Finally, in 2008, based on the success of Shiprider, the governments of Canada and the United States announced their intention to negotiate a framework for a more permanent, joint maritime law enforcement program. This led to the signing of the Canada–US Framework Agreement on Integrated Cross-Border Maritime Law Enforcement Operations in May 2009.

The purpose of the agreement is to provide the parties with additional means in shared waterways to prevent, detect, suppress, investigate and prosecute criminal offences or violations of law, including, but not limited to, illicit drug trade, migrant smuggling, trafficking of firearms, the smuggling of counterfeit goods and money, and terrorism.³ Integrated cross-border operations under the agreement are to be intelligence-driven, based on joint Canada–US threat and risk assessment and coordinated with existing cooperative cross-border policing programs and activities.

In order for the agreement to be brought into force, both Canada and the United States must complete internal processes after signing the international agreement. In Canada, this requires that implementing legislation be introduced in Parliament and be passed by the House of Commons and the Senate. While the United States does not require similar implementing legislation, the US government has completed its own internal procedures to incorporate the agreement into national law and to make the Shiprider program permanent.⁴

2 DESCRIPTION AND ANALYSIS

2.1 DEFINITIONS, PURPOSE AND GENERAL PROVISIONS (CLAUSES 2 TO 4)

Clause 2 of the bill sets out definitions for the key terms and concepts used in the proposed legislation. For the purposes of this summary, a few terms are worth noting. First, while not specifically defined, the “Commission” referred to in the bill is the Royal Canadian Mounted Police Public Complaints Commission established by section 45.29 of the *Royal Canadian Mounted Police Act*.⁵ The term “designated officer” refers to an individual who is appointed as a cross-border maritime law enforcement officer by Canada or by the United States. “Integrated cross-border operation” refers to the deployment of a vessel crewed jointly by designated officers from Canada and the United States for cross-border law enforcement purposes in undisputed areas of the sea or internal waters along the Canada–US border.

Clause 3 states the purpose of the Act, which is to implement the Canada–US Framework Agreement on Integrated Cross-Border Maritime Law Enforcement Operations and its objectives. These objectives, as described above, are to provide additional means to prevent, detect and suppress criminal offences and violations of the law in undisputed areas of the sea or internal waters along the border of Canada and the United States and to facilitate the investigation and prosecution of the offences.

Clause 4 of the bill establishes the underlying principles for the agreement and the proposed Act. It states that Canada and the United States recognize that they have a common interest in the security of the undisputed areas of the sea or internal waters on the border between the two countries. It recognizes that integrated cross-border operations must respect the sovereignty of each state and that operations must be intelligence-driven, based on threat and risk assessments, and conducted in accordance with the rule of law. It further stresses that in Canada, all integrated cross-border operations must be conducted in accordance with the *Canadian Charter of Rights and Freedoms*.

2.2 GENERAL IMPLEMENTING PROVISIONS (CLAUSES 5 TO 15)

Clauses 5 to 7 of Bill S-13 deal with the creation of the Central Authority for Canada, the body in charge of coordinating the implementation of the agreement as mandated in Article 5 of the agreement. In Canada, the Central Authority has been designated as the Commissioner of the Royal Canadian Mounted Police, or his or her delegate. The Central Authority is responsible for the direction and management of integrated cross-border operations and can appoint cross-border maritime law enforcement officers.

Clauses 8 to 10 set out the requirements for the appointment of a designated officer, an individual appointed as a cross-border maritime law enforcement officer. An individual may be appointed by the Central Authority only if he or she has satisfactorily completed the required training program for appointment as a designated officer. Article 7 of the agreement requires that the Central Authorities of Canada and the United States coordinate the development of and approve a joint training program for designated officers that includes training in the applicable laws, regulations, constitutional considerations and policies of both parties, including the use of force and operational procedures.

Clause 11 provides that in the course of an integrated cross-border operation, every designated officer is considered to be a peace officer in Canada, and therefore has the same power to enforce laws as a member of the Royal Canadian Mounted Police.

Clauses 12 and 13 clarify that the laws of Canada apply to any person detained or taken into custody within Canada as well as to any vessel or other “thing” seized within Canada in the course of an integrated cross-border operation. Furthermore, no person detained or vessel or thing seized may be removed from Canada except in accordance with Canadian laws.

Clause 14 provides that where a vessel or other “thing” is seized in the United States but is brought into Canada out of operational or geographic necessity, the vessel or other thing remains in the custody and control of the American designated officer.

Clause 15 of the bill states that no Act of Parliament relating to the import or export of goods applies to the import or export of vessels or other “things” as set out in the bill.

2.3 AMENDMENTS TO THE *ROYAL CANADIAN MOUNTED POLICE ACT* (CLAUSES 16, 17 AND 22)

Clauses 16 and 17 contain amendments to the *Royal Canadian Mounted Police Act*. Included within these amendments are procedures for dealing with public complaints concerning the conduct of a designated officer in the performance of any duty or function in the course of an integrated cross-border operation. Any member of the public may make a complaint to the commission or the appropriate provincial authorities responsible for complaints by the public against police.

Under the complaint procedure, the Central Authority must be notified of all complaints received by the commission or provincial authorities relating to activities of the designated officers. On being notified of a complaint, the Central Authority must inform the designated officer whose conduct is in question of the complaint, unless the authority is of the opinion that doing so might adversely affect or hinder an investigation.

The Central Authority must consider whether a complaint can be disposed of through an informal process and may attempt to do so, with the consent of the parties involved. Although the Central Authority is obliged to consider the possibility of an informal resolution process, the use of the term “may” indicates that the Central Authority has a degree of discretion in its decision whether to proceed with an informal process. If the complaint cannot be disposed of informally by the Central Authority or the person designated for that purpose by the Central Authority, the complainant has the right to refer the complaint to the commission for review.

The commission chair must review every complaint referred to the commission. If the commission chair is not satisfied with the status of the complaint, or believes further inquiry is warranted, the chair may subsequently:

- a) submit a report with findings and recommendations to the minister, the appropriate provincial minister responsible for policing, and the Central Authority;
- b) request the Central Authority to conduct a further investigation into the complaint; or
- c) investigate the complaint further or institute a hearing to inquire into the complaint, if it is advisable in the public interest.

The commission chair may also initiate his or her own complaint into the conduct of a designated officer if the chair is satisfied that there are reasonable grounds for an investigation. Furthermore, the commission has, in relation to the complaints before it, the powers conferred on a board of inquiry by sections 24.1(3)(a) to (c) of the *Royal Canadian Mounted Police Act*.⁶

A final report setting out findings and recommendations with respect to the complaint must be prepared by the commission chair and sent to the minister, the appropriate provincial minister responsible for policing, and the Central Authority. The bill provides that the Central Authority must maintain a record of all complaints it receives under the Act and make that record available to the commission upon request.

Following the testimony of expert witnesses in February 2011, the Standing Senate Committee on National Security and Defence amended clause 22 of the bill. The general purpose of the amendments adopted by the Committee is twofold:

- **Firstly, the amendment to clause 22 provides the RCMP commission responsible for investigating public complaints (whether the current commission or the one to be created under Bill C-38, the proposed Ensuring the Effective Review of RCMP Civilian Complaints Act)⁷ with the authority to conduct a joint investigation, review or hearing with another authority responsible for investigating public complaints against law enforcement officers in Canada or abroad. For example, if a complaint were to be made against an officer from the Ontario Provincial Police or a US police officer appointed as a cross-border maritime law enforcement officer under Bill S-13, the RCMP commission could conduct a joint investigation with the Ontario Independent Police Review Director or the US authority responsible for investigating public complaints, as the case may be. Bill C-38 adds a similar provision to section 45.73 of the *Royal Canadian Mounted Police Act*.**
- **Secondly, the amendment to clause 22 of Bill S-13 also stipulates that a US officer appointed as a cross-border maritime law enforcement officer under Bill S-13 is under no obligation to appear as a witness before the RCMP commission responsible for investigating public complaints (whether the current commission or the one to be created under Bill C-38). Officials from the Department of Justice assured the Committee that such a clause exists in the United States with regard to Canadian officers being summoned as a witness before the US authority responsible for investigating public complaints.**

2.4 CONSEQUENTIAL AMENDMENTS TO STATUTES (CLAUSES 18 TO 21)

Bill S-13 contains amendments that, as a consequence of the proposed legislation, must be made to a number of existing pieces of legislation, namely the *Criminal Code*, the *Customs Act*, and the *Export and Import Permits Act*.

2.5 COORDINATING AMENDMENTS TO STATUTES (CLAUSES 22 TO 23)

The coordinating amendments contained in clauses 22 and 23 of Bill S-13 determine which amendments to the *Royal Canadian Mounted Police Act* will apply depending on the timing of passage and coming into force of Bill C-38, the proposed Ensuring the Effective Review of RCMP Civilian Complaints Act, and Bill C-43, the proposed Royal Canadian Mounted Police Modernization Act.

2.6 COMING INTO FORCE (CLAUSE 24)

The provisions of Bill S-13, with the exception of clauses 22 and 23, come into force on a day or days to be fixed by order of the Governor in Council.

NOTES

1. Public Safety Canada, "[Government of Canada takes action to fight cross-border crime in shared waterways](#)," News release, Ottawa, 26 October 2010.
2. Royal Canadian Mounted Police, "[Canada-United States IBET Threat Assessment 2007](#)," 27 May 2008.
3. [Framework Agreement on Integrated Cross-Border Maritime Law Enforcement Operations between the Government of Canada and the Government of the United States of America](#), 26 May 2009, Article 1.
4. Janet Napolitano, Secretary of the Department of Homeland Security, testified, "[We] have met numerous times with our Canadian counterparts over the past year to solidify new agreements to improve security coordination. This includes formalizing the Shiprider Program to conduct joint maritime law enforcement operations...." See United States Department of Homeland Security, [Testimony of Secretary Napolitano before the Senate Committee on the Judiciary, "Oversight of the Department of Homeland Security"](#), 9 December 2009. In addition, according to the Department of Homeland Security website, "The Department has made permanent the Shiprider Agreement with Canada to conduct joint law enforcement patrols along our international maritime border." See the United States Department of Homeland Security, *Department Responsibilities: Guarding against Terrorism*.
5. If Bill C-38 (the proposed Ensuring the Effective Review of RCMP Civilian Complaints Act) is adopted, "Commission" will then refer to the new Royal Canadian Mounted Police Review and Complaints Commission created by Bill C-38. For more information on this bill, see Lyne Casavant and Dominique Valiquet, *Legislative Summary of Bill C-38: An Act to amend the Royal Canadian Mounted Police Act and to make consequential amendments to other Acts*, Publication no. 40-3-C38-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 24 September 2010.
6. The *Royal Canadian Mounted Police Act*, ss. 24.1(3)(a)–(c), states:
 - (3) A board of inquiry has, in relation to the matter before it, power
 - (a) to summon any person before the board and to require that person to give oral or written evidence on oath and to produce such documents and things under that person's control as the board deems requisite to the full investigation and consideration of that matter;
 - (b) to administer oaths;
 - (c) to receive and accept on oath or by affidavit such evidence and other information as the board sees fit, whether or not such evidence or information is or would be admissible in a court of law.
7. Bill C-38 was introduced in the House of Commons in June 2010, and died on the *Order Paper* on 26 March 2011 with the dissolution of the 40th Parliament.