

## A Mistake That People Make After Getting Into Trouble With The CBSA

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I often receive calls from individuals who have had their NEXUS membership cards cancelled or confiscated by the Canada Border Services Agency (“CBSA”). Many of these individuals believe that the CBSA was sympathetic to their situation and was trying to help when the CBSA officer suggested that they write a letter explaining their side of the story. The CBSA officer instructed the individual to send the letter to him/her or the port. The CBSA officer says that if a letter is written, the individual may get their NEXUS card back. The individual writes the letter as soon as he/she get home and sends it in. Then the question – was this the correct thing to do?

The answer is that it may not have been helpful to write the letter and the letter may have made matters worse.

First, the letter is a written confession. The CBSA officer will use this letter to justify the confiscation of the NEXUS card. If the individual admits to failing to declare goods, failing to declare currency over \$CDN 10,000 or making a mistake, even an inadvertent or innocent mistake, it is grounds to cancel the NEXUS privileges for 6 years.

Second, the proper procedure for appealing a NEXUS confiscation is writing to the NEXUS program – not the CBSA officer. The CBSA is requesting a confession to improve the evidence in their file. It may be that the grounds or evidence is weak. It could be that the letter is just what the CBSA needs to justify the actions of a CBSA officer. I cannot tell you how many times I see the Recourse Directorate quoting the confession letter as evidence of a failure.

Third, if the CBSA officer has charged a penalty, issued a Seizure Receipt, issued a Statement of Goods Seized, issued Notice of Violation or similar document, it is necessary to file an appeal (actually called a request for decision) with the CBSA Recourse Directorate AND succeed before the NEXUS program will entertain a request for a review of the NEXUS cancellation. Many individuals think they have taken the appropriate steps when they write to the CBSA officer (as suggested by the CBSA officer) when they have not. The *Customs Act* contains a statutory 90 day period for filing the appeal and if you miss the deadline, the Recourse Directorate will not open a file. The CBSA officer may or may not send the letter to the Recourse Directorate (I have seen situations where it is sent and other situations where the CBSA office put the letter in the file at the port).

The best advice that I can give you is to point out that if the CBSA officer was sympathetic to you, he/she would have given you a warning (they can do that). If the CBSA officer took enforcement action and confiscated your NEXUS card, that is an exercise of discretion to elevate the matter from “understandable error” to “blameworthy conduct”. The CBSA officer now needs to justify their use of discretion. Don’t hand it to them in a written confession without talking to a specialist.



**Cyndee Todgham Cherniak**  
**cyndee@lexsage.com**  
Mobile: (416) 389-8999

The Gooderham “Flatiron” Building  
49 Wellington Street East, Suite 501  
Toronto, Ontario M5E 1C9

Phone: 416-307-4168/416-760-8999  
Main Office: 647-290-4249  
Fax: 416-760-899

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