

# COUNTRY REPORT

## IMMIGRATION DETENTION IN CANADA: IMPORTANT REFORMS, ONGOING CONCERNS

*June 2018*



GLOBAL **DETENTION** PROJECT

## THE GLOBAL DETENTION PROJECT MISSION

The Global Detention Project (GDP) is a non-profit organisation based in Geneva that promotes the human rights of people who have been detained for reasons related to their non-citizen status. Our mission is:

- To promote the human rights of detained migrants, refugees, and asylum seekers;
- To ensure transparency in the treatment of immigration detainees;
- To reinforce advocacy aimed at reforming detention systems;
- To nurture policy-relevant scholarship on the causes and consequences of migration control policies.

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## GLOSSARY

<b>CBA</b>	Canadian Bar Association
<b>CBSA</b>	Canada Border Services Agency
<b>CIC</b>	Citizenship and Immigration Canada
<b>CCR</b>	Canadian Council for Refugees
<b>CRC</b>	Canadian Red Cross
<b>DCO</b>	Designated Country of Origin
<b>DFN</b>	Designated Foreign National
<b>FY</b>	Financial Year
<b>GDP</b>	Global Detention Project
<b>GTA</b>	Greater Toronto Area
<b>IHC</b>	Immigration Holding Centre
<b>IRB</b>	Immigration and Refugee Board of Canada
<b>IRCC</b>	Immigration, Refugees and Citizenship Canada
<b>IRPR</b>	Immigration and Refugee Protection Act
<b>NIDF</b>	National Immigration Detention Framework
<b>PRRA</b>	Pre-Removal Risk Assessments
<b>RAD</b>	Refugee Appeal Division
<b>RLA</b>	Refugee Lawyers Association
<b>TBP</b>	Toronto Bail Program
<b>TIHC</b>	Toronto Immigration Holding Centre
<b>UPR</b>	UN Universal Periodic Review



## KEY CONCERNS

- Despite the introduction of a "National Immigration Detention Framework" in 2017—which aims to improve detention conditions and reduce the use of prisons—Canada continues to confine approximately one third of its immigration detainees in prisons;
- Canada does not place a limit on the length of time people can spend in immigration detention;
- Children may be “housed” in detention as “guests” in order to avoid the separation of families;
- Canada is among a small number of countries to have mandatory detention provisions, including detention for up to 12 months without judicial review;
- Non-citizens with psychosocial disabilities or mental health conditions can be placed in either immigration detention centres or maximum-security provincial jails, where they may have little or no access to proper treatment;
- Canada does not have an institutionalised framework for independent monitoring of detention conditions and there is no formal mechanism for immigration detainees to lodge complaints;
- There is very little publicly available information about which provincial prisons are in operation at a given time for immigration-related purposes;
- “Security certificate” anti-terrorism provisions in its immigration legislation can be used to detain and deport foreign nationals for issues unrelated to immigration.





## 1. INTRODUCTION<sup>1</sup>

When Canadian Prime Minister Justin Trudeau assumed office in 2015, he offered a refugee-friendly message that contrasted sharply with the acrimonious anti-immigration rhetoric that has prevailed in much of North America and Europe. Even as the number of “irregular” asylum seekers arriving at the Canadian border began to increase after he took office—due in part to the harsh anti-immigrant policies and rhetoric of the Trump administration—Trudeau remained on message, tweeting in early 2017: “Regardless of who you are or where you come from, there's always a place for you in Canada.”<sup>2</sup> That year, Canada received the most asylum applications in its history (50,420) as the number of Haitians arriving from the United States surged.<sup>3</sup>

Canada has recently implemented important reforms to its detention practices. In 2016 the Minister of Public Safety and Emergency Preparedness, responding to growing public pressure, announced Canada’s intention to “transform” its immigration detention system to “better align itself with international and domestic standards.”<sup>4</sup> The country implemented a [New National Immigration Detention Framework](#) in 2017, which included a pledge for a 138 million CAD investment to improve immigration detention, primarily by expanding and renovating federal immigration detention facilities.<sup>5</sup> The Canada Border Services Agency (CBSA) says the framework is intended to keep children out of detention and families together “as much as humanly possible,”<sup>6</sup> decrease the number of long-term detainees, reduce

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<sup>1</sup> The Global Detention Project would like to thank Meena Oberdick for her assistance drafting this profile and Janet Cleveland for reviewing an early version and providing comments and advice. Any errors in the profile are the responsibility of the GDP.

<sup>2</sup> @CanadianPM, Tweet 16 March 2017, <https://twitter.com/CanadianPM/status/842371141037658113>

<sup>3</sup> Pew Research Centre, “Asylum claims in Canada reached highest level in decades in 2017,” 16 April 2018, <http://www.pewresearch.org/fact-tank/2018/04/16/asylum-claims-in-canada-reached-highest-level-in-decades-in-2017/>

<sup>4</sup> Canada Border Services Agency, “Archived - CBSA’s New National Immigration Detention Framework: A Summary Report of the Framework and Stakeholder Roundtable Discussions (August - December 2016),” January 2017, <https://www.cbsa-asfc.gc.ca/agency-agence/consult/consultations/nidf-cnmdi/menu-eng.html>

<sup>5</sup> B. Kennedy, “Ottawa is Rethinking its Approach to Immigration Detention,” *The Star*, 9 April 2017, <https://www.thestar.com/news/canada/2017/04/09/federal-government-exploring-ways-to-reduce-immigration-detention.html>

<sup>6</sup> Canada Border Services Agency, “Press Release: Minister Goodale Issues New Direction on Keeping Children out of Canada’s Immigration Detention System and Keeping Families Together,” *Newswire*, 6 November 2017, <https://www.newswire.ca/news-releases/minister-goodale-issues-new-direction-on-keeping-children-out-of-canadas-immigration-detention-system-and-keeping-families-together-655621173.html>

the use of maximum-security jails and reliance on provincial criminal facilities, and expand the use of “alternatives to detention” to “ensure that detention is truly a last resort.”<sup>7</sup>

The reforms have had some notable results: The number of detainees held for three months or longer dropped by almost 30 percent during financial year 2016-2017, and the overall number of detainees dropped by five percent over the same period. The average number of days in detention has also decreased by 20 percent over the same time period.<sup>8</sup>

However, observers point to ongoing concerns. Importantly, Canada maintains a policy of unlimited detention as there is no maximum length of detention in law. The country also continues to confine approximately a third of its immigration detainees (and almost all long-term detainees) in prisons.<sup>9</sup> As the Global Detention Project (GDP) has highlighted in its reports on other countries that have used their prison systems for immigration reasons (including [Switzerland](#) and [Germany](#)), the use of local prisons makes accessing up-to-date information about detention practices extremely difficult, raising questions about transparency. The use of prisons for administrative immigration procedures is also contrary to widely accepted human rights norms.

In October 2017, a group of Canadian civil society organisations issued a [joint submission](#) to the UN Universal Periodic Review (UPR) arguing that immigration detainees continue to suffer significant human rights violations in immigration detention. In particular, they pointed to the detention of vulnerable individuals—including children and individuals with mental health conditions and psychological disabilities—for indeterminate lengths of time, and in carceral environments. “In many cases, this treatment constitutes arbitrary detention, as well as cruel, inhuman, and degrading treatment. Canada’s treatment of children in the context of immigration detention also violates the Convention on the Rights of the Child.”<sup>10</sup> In their recommendations, the organisations called for improved protections for children and persons with mental health conditions, including: the creation of a screening tool for CBSA front-line field officers to assist with the identification of vulnerable individuals; the introduction of appropriate mental health assessments prior to detention decisions; and the revision of laws to ensure that children and families with children are not be detained except as a last resort and in exceptional

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<sup>7</sup> Canada Border Services Agency, “Archived - CBSA’s New National Immigration Detention Framework: A Summary Report of the Framework and Stakeholder Roundtable Discussions (August - December 2016),” January 2017, <https://www.cbsa-asfc.gc.ca/agency-agence/consult/consultations/nidf-cnmdi/menu-eng.html>

<sup>8</sup> Canada Border Services Agency (CBSA), “Arrests, Detentions and Removals: Annual Detention Statistics - 2012-2017,” 28 March 2018, <https://www.cbsa-asfc.gc.ca/security-secure/detent/stat-2012-2017-eng.html>

<sup>9</sup> Canada Border Services Agency (CBSA), “Arrests, Detentions and Removals: Annual Detention Statistics - 2012-2017,” 28 March 2018, <https://www.cbsa-asfc.gc.ca/security-secure/detent/stat-2012-2017-eng.html>

<sup>10</sup> International Human Rights Program (University of Toronto’s Faculty of Law), Amnesty International, Justice for Children and Youth *et al*, “Rights Violations Associated with Canada’s Treatment of Vulnerable Persons in Immigration Detention: Joint Submission to the Working Group on Universal Periodic Review to Assist in its Review of Canada, 30<sup>th</sup> Session (April-May 2018),” 2017, [https://ihrp.law.utoronto.ca/utfl\\_file/count/media/Canada%20UPR%20Final.pdf](https://ihrp.law.utoronto.ca/utfl_file/count/media/Canada%20UPR%20Final.pdf)

circumstances, and that they are instead accommodated in community-based “alternatives to detention.”<sup>11</sup>

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<sup>11</sup> International Human Rights Program (University of Toronto's Faculty of Law), Amnesty International, Justice for Children and Youth *et al*, "Rights Violations Associated with Canada's Treatment of Vulnerable Persons in Immigration Detention: Joint Submission to the Working Group on Universal Periodic Review to Assist in its Review of Canada, 30<sup>th</sup> Session (April-May 2018)," 2017, [https://ihrp.law.utoronto.ca/utfl\\_file/count/media/Canada%20UPR%20Final.pdf](https://ihrp.law.utoronto.ca/utfl_file/count/media/Canada%20UPR%20Final.pdf)





## 2. LAWS, POLICIES, PRACTICES

**2.1 Key norms.** Provisions and regulations related to immigration detention are provided in the [Immigration and Refugee Protection Act](#) (IRPA) and the [Immigration and Refugee Protection Regulations](#) (IRPR). There are several additional guidance documents and policy statements issued by the Canada Border Services Agency (CBSA) and Immigration, Refugees and Citizenship Canada (IRCC)—previously Citizenship and Immigration Canada (CIC)—that relate to immigration detention.

The IRPA, which replaced the 1976 Immigration Act, provides the grounds for detaining foreign nationals and regulates the review of detention, conditions for release, and the detention of children (for more details, see “Grounds for Detention” below). While the IRPA came into force in 2002—soon after the 9/11 attacks—the legislation to create it had been in the works since the late 1990s. Nevertheless, the reforms provided in the act were promoted as an “important part of Canada’s much needed antiterrorist, national security arsenal.”<sup>12</sup> The IRPA has been criticised for its “negative stereotyping of new immigrants and refugees and its heavy enforcement emphasis, which, for example, expanded inadmissibility and exclusion provisions as well as powers of detention.”<sup>13</sup> Additionally, concerns have been raised over the framing of the legislation within the context of post-9/11 antiterrorism discourse. According to the [Canadian Council for Refugees](#) (CCR), “the Canadian government has used the broad powers of the IRPA to detain, arrest, and deport people based on mere suspicion or secret evidence.”<sup>14</sup>

The adoption in 2012 of anti-smuggling legislation [Bill C-31](#), also known as Protecting Canada’s Immigration System Act, introduced important amendments to the IRPA. In particular, it provides for mandatory detention without judicial review for the first 12 months for arriving non-citizens designated part of an “irregular arrival” (for more information, see “Grounds of Detention” below).

Supplementing these laws are several policy documents that provide guidelines for detention practices: the 2002 [Immigration Division Rules](#), which includes the rules

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<sup>12</sup> A. Pratt, *Securing Borders: Detention and Deportation in Canada*, Vancouver: University of British Columbia Press, 2005.

<sup>13</sup> A. Pratt, *Securing Borders: Detention and Deportation in Canada*, Vancouver: University of British Columbia Press, 2005.

<sup>14</sup> Canadian Council for Refugees (CCR), “Key Issues: Immigration and Refugee Protection,” March 2004, <http://www.ccrweb.ca/keyissues.htm>

applicable to detention reviews and admissibility hearings; the 2007 [Enforcement Manual on Detention](#), which covers the reasons for and length of detention, alternatives to detention, and the detention of children, and which was most recently updated in February 2018; and the 2013 [Chairperson Guideline on Detention](#), which provides guidance on the treatment of detained persons.

Some aspects of Canadian legislation resemble controversial Australian laws, particularly mandatory detention without judicial review. Canadian officials have cited [Australia's](#) response to irregular boat arrivals in their discussions on how to handle such arrivals,<sup>15</sup> in addition to consulting with counterparts in Europe and elsewhere in Asia.<sup>16</sup> In 2010, a Canadian immigration minister visited two Australian facilities—the [Maribyrnong Detention Centre](#) and the [Melbourne Immigration Transit Accommodation](#) facility—as part of broader discussions on strategies for confronting human smuggling.<sup>17</sup>

**2.2 Grounds for detention.** Provisions specific to immigration detention, including grounds for arrest and release, are provided in Subsections 55-60 of the IRPA, which are collectively organised under the heading “Division 6: Detention and Release,” as well as in Subsections 81-82, which concern detention stemming from the issuance of a security certificate.

Subsection 55(1) provides that “an officer may issue a warrant for the arrest and detention of a permanent resident or a foreign national who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, for an admissibility hearing, for removal from Canada or at a proceeding that could lead to the making of a removal order.”

Subsection 55(2) provides grounds for arrest or detention without a warrant for reasons similar to those provided in Subsection 55(1) as well as in order to verify identity.

Subsection 55(3) provides specific grounds for detention upon entry, including if it is deemed necessary to complete an examination as well as if the person is deemed “inadmissible on grounds of security, violating human or international rights, serious criminality, criminality or organized criminality.”

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<sup>15</sup> A. Bradimore and H. Bauder, “Mystery Ships and Risky Boats,” *Metropolis British Columbia Working Papers*, No. 11, 2 January 2011, <http://www.geography.ryerson.ca/hbauder/Immigrant%20Labour/WP11-02.pdf>

<sup>16</sup> Government of Canada, “Governments of Canada and Australia Working to Combat Human Smuggling,” (Archived) 19 September 2010, <https://www.canada.ca/en/news/archive/2010/09/governments-canada-australia-working-combat-human-smuggling.html>

<sup>17</sup> An official press release about the visit reported: “Minister Kenney noted that while it may not be possible to completely eliminate human smuggling, there are actions that can reduce its frequency. By looking closely at what other countries have done, ideas can be shared to better protect people from the danger of exploitation by human smugglers.” Government of Canada, “Governments of Canada and Australia Working to Combat Human Smuggling,” (Archived) 19 September 2010, <https://www.canada.ca/en/news/archive/2010/09/governments-canada-australia-working-combat-human-smuggling.html>

Subsection 55(3.1) provides “mandatory arrest and detention” stemming from the designation of a group of people as “irregular arrivals,” as this is set out in Subsection 20.1(1) of the IRPA, which concerns “human smuggling or other irregular arrival.” Grounds for designation include the need for additional time to complete an investigation; to establish identity; and if there “are reasonable grounds to suspect that, in relation to the arrival in Canada of the group, there has been, or will be, a contravention of subsection 117(1) for profit, or for the benefit of, at the direction of or in association with a criminal organization or terrorist group.” Subsection 55(3.1) states that, in all such cases, an officer “must”:

- (a) detain, on their entry into Canada, a foreign national who, as a result of the designation, is a designated foreign national and who is 16 years of age or older on the day of the arrival that is the subject of the designation; or
- (b) arrest and detain without a warrant—or issue a warrant for the arrest and detention of—a foreign national who, after their entry into Canada, becomes a designated foreign national as a result of the designation and who was 16 years of age or older on the day of the arrival that is the subject of the designation.

IRPR Sections 244-249 explain the factors that can lead authorities to conclude whether the person concerned represents a flight risk, constitutes a danger to the public, or is of unknown identity. These three circumstances are relevant to decisions ordering detention under Section 55 or reviewing detention (see “2.7 Procedural guarantees” below). Accordingly, the risk of absconding is to be assessed based on several factors, including being fugitive from a justice in a foreign country in relation to an act which constitutes offence under Canadian law, voluntary compliance with a previous deportation order or duty to appear at immigration or criminal proceedings, involvement in people smuggling or trafficking, or the existence of strong ties to a community in Canada. There are several offences leading to a determination of danger to the public, including people smuggling or trafficking, sexual offences, or offences involving violence or weapons. Finally, lack of established identity is determined based on such factors as destruction of the identity or travel documents, provision of contradictory information, the quality of the person’s cooperation with the authorities.

It is important to note that the terrorism and security-related grounds that lead to detention under Subsections 55(3) and 55(3.1) are not immigration related, thus they are coded as non-immigration-related grounds for immigration detention according to Global Detention Project coding rules. This coding is intended to highlight instances where a country uses immigration legislation as a convenience measure for holding people in administrative detention for reasons that are not related to immigration procedures. However, to date, the “irregular arrivals” designation has rarely been used (for more, see “2.3 Asylum seekers” below).

Subsection 60, concerning children, stipulates that “it is affirmed as a principle that a minor child shall be detained only as a measure of last resort, taking into account the other applicable grounds and criteria including the best interests of the child.”

Subsection 81 concerns detention related to the issuance of a security certificate, which the GDP also codes as a non-immigration-related ground for immigration detention. It provides that “the Minister and the Minister of Citizenship and Immigration may issue a warrant for the arrest and detention of a person who is named in a certificate if they have reasonable grounds to believe that the person is a danger to national security or to the safety of any person or is unlikely to appear at a proceeding or for removal.”

The “security certificate” provision in Subsection 81 has been particularly controversial in part because it appears unrelated to standard immigration procedures. In 2005, the UN Working Group on Arbitrary Detention said it had “grave concerns” about the security certificate process because it “allows the Government to detain aliens for years on the suspicion that they pose a security threat, without raising criminal charges. Judicial review of detention occurs at excessively long intervals and does not go to the merits of the need to maintain the individual in detention. The detainee’s ability to challenge detention is severely hampered by the fact that—in order to protect confidential information—he receives only a very superficial summary of the reasons for his detention.” The Working Group recommended that “terrorism suspects be detained in the criminal process, with the attached safeguards, and not under immigration laws.”<sup>18</sup>

In 2007, the Supreme Court of Canada ruled that the security certificate mechanism violated the country’s Charter of Rights and Freedoms because it allows individuals to be detained for excessively long periods (in the case of post-9/11 detainees, for several years) without a hearing and without the ability to review the evidence against them. However, the court upheld the “principle” of security certificates, and in 2007 a Conservative-led government introduced legislation aimed at providing minimal guarantees required by the court.<sup>19</sup>

Other provisions in the IRPA appear to be able to help lead to detention as a result of a determination of inadmissibility. “Division 4: Inadmissibility” (Subsections 33-43) provides numerous grounds for inadmissibility that are not stipulated in the detention-specific provisions of the law. For instance, Subsection 38 provides “health grounds” for concluding that a person is inadmissible.<sup>20</sup>

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<sup>18</sup> Working Group on Arbitrary Detention, “Report on the Working Group on Arbitrary Detention: Visit to Canada, E/CN.4/2006/Add.2,” 5 December 2005, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/165/34/PDF/G0516534.pdf?OpenElement>

<sup>19</sup> T. MacCharles and M. Shephard, “Ottawa Tackles Terror Laws,” *Toronto Star*, 23 October 2007, [https://www.thestar.com/news/canada/2007/10/23/ottawa\\_tackles\\_terror\\_laws.html](https://www.thestar.com/news/canada/2007/10/23/ottawa_tackles_terror_laws.html)

<sup>20</sup> IRPA Health grounds, Subsection 38, “Health Grounds”: (1) A foreign national is inadmissible on health grounds if their health condition (a) is likely to be a danger to public health; (b) is likely to be a danger to public safety; or (c) might reasonably be expected to cause excessive demand on health or social services.

There have been regional disparities with respect to which grounds for detention are most frequently used. A 2011 study found that detention for reasons of identity is considerably more prevalent in Quebec (38.6 percent) than in the Greater Toronto Area (GTA) (3.8 percent). On the other hand, risk of absconding is a more common reason in the GTA (94 percent) than in Quebec (55 percent).<sup>21</sup> The Canadian Council for Refugees criticised these variations, arguing that they raise questions regarding basic fairness.<sup>22</sup>

Grounds for removal are laid out in sections 44-45 of the IRPA. If a foreign national or permanent resident violates the conditions of the IRPA, they can be issued a removal order by the CBSA or the IRB's Immigration Division.<sup>23</sup> Asylum seekers whose refugee claims are rejected are issued a departure order, and must notify the CBSA and leave Canada within 30 days. If they do not meet this deadline, they are given a deportation order, normally reserved for those deemed inadmissible for reasons of criminality, and are barred from returning to Canada unless they receive written permission from the government (Subsection 52(1)). For less serious violations, an exclusion order is given whereby an individual is removed and cannot return for at least one year without written governmental permission.<sup>24</sup>

**2.3 Asylum seekers.** Under certain circumstances asylum seekers can be detained during the asylum procedure. In particular, this can be the case if they arrive as part of a designated group of "irregular arrivals" (see "2.2 Grounds for Detention" above). Other amendments adopted as a result of Bill C-31 have, according to some observers, made certain asylum seekers potentially more susceptible to detention.<sup>25</sup> In practice, however, asylum seekers appear to be only rarely detained upon arrival.

Since 2012, pursuant to Bill C-31, asylum claimants are divided into three categories: (1) Designated Countries of Origin; (2) Designated Foreign Nationals; and (3) Regular Refugee Claimants. Nationals of "Designated Countries of Origin" (DCO) have reduced rights in the refugee and asylum process on the presumption that countries designated as DCOs are "safe" countries that "do not normally produce refugees, have a robust human rights record, and offer strong state protection."<sup>26</sup> DCO nationals are also placed in an expedited review process: While "regular" refugee claimants are given a hearing within 60 days, nationals from a DCO

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<sup>21</sup> D. Nakache, "The Human and Financial Cost of Detention of Asylum-Seekers in Canada," December 2011, <http://www.refworld.org/docid/4fafc44c2.html>

<sup>22</sup> J. Bronskill, "Internal Federal Study Questions Millions Spent Jailing Refugees and Immigrants," *The Globe and Mail*, 31 January 2011, <https://www.theglobeandmail.com/news/politics/internal-federal-study-questions-millions-spent-jailing-refugees-and-immigrants/article1889444/>

<sup>23</sup> Government of Canada, "Immigration and Refugee Protection Act (IRPA), 2001, Sections 44-45," <http://laws.justice.gc.ca/eng/acts/i-2.5/page-10.html#h-24>

<sup>24</sup> Canada Border Services Agency (CBSA), "CBSA Detentions and Removals Programs - Evaluation Study," November 2010, <http://cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2010/dr-rd-eng.html>

<sup>25</sup> S. Silverman, "In the Wake of Irregular Arrivals: Changes to the Canadian Immigration Detention System," *Refuge*, 30(2), 2014, <https://refuge.journals.yorku.ca/index.php/refuge/article/viewFile/39616/35895>

<sup>26</sup> S. Silverman, "In the Wake of Irregular Arrivals: Changes to the Canadian Immigration Detention System," *Refuge*, 30(2), 2014, <https://refuge.journals.yorku.ca/index.php/refuge/article/viewFile/39616/35895>



are given a hearing within 30-45 days. The expedited timeline and obstacles to obtaining legal representation make it difficult for nationals of DCOs to file claims.

Bill C-31 also provides that groups (two or more people) of asylum claimants can be designated as “irregular arrivals” at the discretion of the Minister of Public Safety on the grounds that the group cannot be examined in a timely manner or are suspected of having used smugglers to enter the country. Such “irregular arrivals,” classified as “Designated Foreign Nationals” (DFNs), are subject to mandatory detention (if above the age of 16).

This provision does not appear to be used, even if officials have at times promoted it as a tool for deporting asylum seekers who irregularly enter in large groups across land borders. It seems to have only been used in one case from 2012, not long after C-31 became law, when a group of Romanian asylum seekers who had crossed into Canada from the United States were arrested and designated as “irregular arrivals.”<sup>27</sup>

Commenting on C-31, Human Rights Watch wrote in a letter to Canadian authorities: “Using detention to penalize refugees for irregular entry into a country contravenes Canada’s obligations under Article 31 (2) of the *Convention Relating to the Status of Refugees* (the “Convention”). Article 31 prohibits imposing penalties on refugees on account of their illegal entry or presence without authorization.”<sup>28</sup>

An asylum claimant who, according to the Minister of Public Safety, is not from a DCO or who is not a DFN, is categorised as a “Regular Refugee Claimant.”<sup>29</sup>

**2.4 Children.** There are several provisions that regulate the detention of children. Under Section 60 of the IRPA, children are only to be detained as a last resort, while taking their best interests into account. Bill C-31 also provides explicitly for the mandatory detention of children over the age of 16 who are designated as being part of an “irregular arrival.”

Immigration, Refugees and Citizenship Canada’s (IRCC) enforcement manual states that the IRPA does not allow for children to be detained for their protection, and lists a number of factors to be considered if detention is used, including the availability of alternative arrangements, the type of detention facility, and the availability of services in detention, such as education and recreational activities.<sup>30</sup> According to the CBSA operational manual, where safety or security is not an issue, the detention of minor children is to be avoided.

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<sup>27</sup> D. LeBlanc, “Ottawa Gets Tough with Romanian Asylum Seekers,” *The Globe and Mail*, 5 December 2012, <https://www.theglobeandmail.com/news/politics/ottawa-gets-tough-with-romanian-asylum-seekers/article5992117/>

<sup>28</sup> Human Rights Watch, “Letter to Canadian MP’s on C-31 Law,” 16 March 2012, <https://www.hrw.org/news/2012/03/16/letter-canadian-mps-c-31-law>

<sup>29</sup> Faithful Companions of Jesus (FCJ) Refugee Center, “Claiming Refugee Protection Under the New System: A Basic Overview,” 2012, <http://www.fcjrefugeecentre.org/wp-content/uploads/2012/12/Claiming-Refugee-Protection-Under-the-New-System-.pdf>

<sup>30</sup> Immigration, Refugees and Citizenship Canada, “ENF 20: Detention,” 2007, <https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf20-eng.pdf>



Official CBSA statistics show that the number of detained children has fallen from 807 in Financial Year (FY) 2007-2008, to 232 in FY 2014-2015, to 162 in FY 2016-2017.<sup>31</sup> According to CBSA statistics, the vast majority of detained minors (220 in FY 2014-2015 and 151 in FY 2016-2017) accompany their detained parent or guardian.<sup>32</sup> Children may be detained for several weeks, mostly for reasons of identity or because they are considered a "flight risk" by the government.<sup>33</sup> In other cases, children may be separated from detained parents and placed in foster care.

Even when there are no grounds for detention, children may be "housed" in detention in order to avoid the separation of families.<sup>34</sup> Yet family separation is not entirely preventable, as children must live separately from their fathers because family rooms are restricted to mothers and children.<sup>35</sup> Fathers are detained separately in the section for adult males, and are only allowed to see other family members for brief periods during the day.

These *de facto* child detainees are subject to the same detention conditions as those under formal detention orders. However, often resembling medium security prisons, detention facilities have been described by numerous rights groups as "woefully inadequate and unsuited for children."<sup>36</sup>

Children in detention with their parents have been "invisible" to the law as they are not officially considered detained and thus cannot benefit from detention review hearings.<sup>37</sup> The only path for considering the best interests of the child in these situations is through review hearings of their parents. However, until the important 2016 ruling in the case of *BB and Justice for Children and Youth v. Minister of Citizenship and Immigration (BB & JFCY)*, immigration officials refused to recognize

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<sup>31</sup> Canada Border Services Agency (CBSA), "Detentions at a Glance," 2011; Canada Border Services Agency (CBSA), "Annual Detention Statistics - 2012-2017," (Archived) 2017, <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2012-2017-eng.html>

<sup>32</sup> (As accompanied minors are not always personally under a detention order and thus may not show up in CBSA statistics, it is possible that these numbers may be much higher.) Canada Border Services Agency (CBSA), "Annual Detention Statistics - 2012-2017," (Archived) 2017, <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2012-2017-eng.html>

<sup>33</sup> Canadian Council for Refugees, "Detention and Best Interests of the Child: Report Summary," January 2010, <http://ccrweb.ca/files/detentionchildrensummary.pdf>

<sup>34</sup> Canada Border Services Agency (CBSA), "National Standards & Monitoring Plan."

<sup>35</sup> International Human Rights Program (University of Toronto's Faculty of Law), Amnesty International, Justice for Children and Youth *et al*, "Rights Violations Associated with Canada's Treatment of Vulnerable Persons in Immigration Detention: Joint Submission to the Working Group on Universal Periodic Review to Assist in its Review of Canada, 30<sup>th</sup> Session (April-May 2018)," 2017, [https://ihrp.law.utoronto.ca/utfl\\_file/count/media/Canada%20UPR%20Final.pdf](https://ihrp.law.utoronto.ca/utfl_file/count/media/Canada%20UPR%20Final.pdf)

<sup>36</sup> International Human Rights Program (University of Toronto's Faculty of Law), Amnesty International, Justice for Children and Youth *et al*, "Rights Violations Associated with Canada's Treatment of Vulnerable Persons in Immigration Detention: Joint Submission to the Working Group on Universal Periodic Review to Assist in its Review of Canada, 30<sup>th</sup> Session (April-May 2018)," 2017, [https://ihrp.law.utoronto.ca/utfl\\_file/count/media/Canada%20UPR%20Final.pdf](https://ihrp.law.utoronto.ca/utfl_file/count/media/Canada%20UPR%20Final.pdf)

<sup>37</sup> H. Gross, "Invisible Citizens: Canadian Children in Immigration Detention," *University of Toronto Faculty of Law/ International Human Rights Program*, 2017, [https://ihrp.law.utoronto.ca/utfl\\_file/count/PUBLICATIONS/Report-InvisibleCitizens.pdf](https://ihrp.law.utoronto.ca/utfl_file/count/PUBLICATIONS/Report-InvisibleCitizens.pdf)

a child's best interests because the issue is not explicitly listed in Section 248 of the detention regulations (IRPR), which covers "factors to be considered" when determining detention and release. In the *BB & JFCY* ruling, however, the Federal Court found that the Immigration Division has to take into consideration additional "relevant factors as determined by the facts of the specific case," including "the interests of a child who is housed in an Immigration Holding Centre at the request of the detained parent can be considered under other relevant factors."<sup>38</sup>

Commenting on the *BB & JFCY* ruling, the 2017 joint civil society submission to the UN Universal Periodic Review called it a "crucial step toward making Canadian children 'visible' in immigration detention law." However, the submission cautioned that the standard set in the judgment falls short of what is provided in international human rights law, namely the Convention on the Rights of the Child, which stipulates that in all circumstances the best interests of the child must be a primary consideration. "As it stands, while *BB & JFCY* puts the best interests of the child on the map, it remains only one of several factors that Immigration Division adjudicators are required to consider—instead of a primary consideration, as mandated by the CRC." Among its recommendations, the submission called for revising Section 60 of the IRPA (see "Grounds for Detention" above) "to clarify that the best interests of the child should be a primary consideration in all decisions concerning children."<sup>39</sup>

Placing children in detention with their parents is contrary to recent findings of key international human rights bodies. In their 2017 [joint general comment](#) on "State obligations regarding the human rights of children in the context of international migration," the UN Committee on the Rights of the Child and the UN Committee on Migrant Workers concluded: "When children are accompanied, the need to keep the family together is not a valid reason to justify the deprivation of liberty of a child. When the child's best interests require keeping the family together, the imperative requirement not to deprive the child of liberty extends to the child's parents and requires the authorities to choose non-custodial solutions for the entire family."<sup>40</sup>

The immigration detention of children has been a key focus of advocacy in Canada. For instance, according to one report, "since October 2016, more than 50 leading Canadian medical, legal and human rights organisations have signed a statement

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<sup>38</sup> For a discussion of this issue, see: International Human Rights Program (University of Toronto's Faculty of Law), Amnesty International, Justice for Children and Youth *et al*, "Rights Violations Associated with Canada's Treatment of Vulnerable Persons in Immigration Detention: Joint Submission to the Working Group on Universal Periodic Review to Assist in its Review of Canada, 30<sup>th</sup> Session (April-May 2018)," 2017, [https://ihrp.law.utoronto.ca/utfl\\_file/count/media/Canada%20UPR%20Final.pdf](https://ihrp.law.utoronto.ca/utfl_file/count/media/Canada%20UPR%20Final.pdf)

<sup>39</sup> International Human Rights Program (University of Toronto's Faculty of Law), Amnesty International, Justice for Children and Youth *et al*, "Rights Violations Associated with Canada's Treatment of Vulnerable Persons in Immigration Detention: Joint Submission to the Working Group on Universal Periodic Review to Assist in its Review of Canada, 30<sup>th</sup> Session (April-May 2018)," 2017, [https://ihrp.law.utoronto.ca/utfl\\_file/count/media/Canada%20UPR%20Final.pdf](https://ihrp.law.utoronto.ca/utfl_file/count/media/Canada%20UPR%20Final.pdf)

<sup>40</sup> UN Committee on the Rights of the Child and the UN Committee on Migrant Workers, "Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return," 16 November 2017, <http://www.refworld.org/docid/5a12942a2b.html>

calling for an end both to immigration detention of children and to separation of children from their detained parents.”<sup>41</sup> The public pressure appears to have prompted a number of official statements and directives concerning the detention of children, including a November 2017 “Ministerial Direction” issued by the Minister of Public Safety reiterating the CBSA’s stated objective of minimising the use of immigration detention for children and making “clear that the Best Interests of the Child must be given primary consideration.”<sup>42</sup>

**2.5 Other vulnerable groups.** While Canadian law is silent on protections for many vulnerable groups, in 2017, the CBSA established some broad guidelines for the detention of such persons in its “New National Immigration Detention Framework.” According to the CBSA, the following categories of people are considered “vulnerable”: “pregnant women and nursing mothers; minors (under 18 years of age); elderly persons; persons suffering from a severe medical condition or disability; persons suffering from restricted mobility; persons with suspected or known mental illness and victims of human trafficking.”<sup>43</sup> According to the CBSA’s new guidelines, every effort should be made to “reduce to the greatest extent possible” the number of vulnerable persons placed in detention.<sup>44</sup> However, the framework, which “is not a concrete plan as much as it is a general set of intentions,”<sup>45</sup> stops short of specifying precisely how the government plans on achieving this goal.

According to the 2017 joint civil society submission to the UN Universal Periodic Review, “Canada has begun to make progress in its treatment of immigration detainees, and demonstrated a willingness to address deeply embedded issues within the immigration detention system. Nevertheless, Canada’s treatment of vulnerable individuals in immigration detention—including children and persons with psychosocial disabilities or mental health conditions—continues to violate binding international law.” They point in particular to the routine detention of non-citizens with psychosocial disabilities or mental health conditions in maximum-security provincial jails where mental health care is “woefully inadequate.”<sup>46</sup> Although the CBSA justifies

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<sup>41</sup> H. Gross, “Invisible Citizens: Canadian Children in Immigration Detention,” *University of Toronto Faculty of Law/ International Human Rights Program*, 2017, [https://ihrp.law.utoronto.ca/utfl\\_file/count/PUBLICATIONS/Report-InvisibleCitizens.pdf](https://ihrp.law.utoronto.ca/utfl_file/count/PUBLICATIONS/Report-InvisibleCitizens.pdf)

<sup>42</sup> Canada Border Services Agency (CBSA), “Minister Goodale issues new direction on keeping children out of Canada’s immigration detention system and keeping families together,” 6 November 2017.

<sup>43</sup> Canada Border Services Agency (CBSA), “National Immigration Detention Framework,” March 2018, <https://www.cbsa-asfc.gc.ca/security-securite/detent/nidf-cndi-eng.html>

<sup>44</sup> Canada Border Services Agency (CBSA), “Archived - CBSA’s New National Immigration Detention Framework: A Summary Report of the Framework and Stakeholder Roundtable Discussions (August - December 2016),” (Archived) January 2017, <https://www.cbsa-asfc.gc.ca/agency-agence/consult/consultations/nidf-cnmdi/menu-eng.html>

<sup>45</sup> B. Kennedy, “Ottawa is Rethinking its Approach to Immigration Detention,” *The Star*, 9 April 2017, <https://www.thestar.com/news/canada/2017/04/09/federal-government-exploring-ways-to-reduce-immigration-detention.html>

<sup>46</sup> International Human Rights Program (University of Toronto’s Faculty of Law), Amnesty International, Justice for Children and Youth *et al*, “Rights Violations Associated with Canada’s Treatment of Vulnerable Persons in Immigration Detention: Joint Submission to the Working Group on Universal Periodic Review to Assist in its Review of Canada, 30<sup>th</sup> Session (April-May 2018),” 2017, [https://ihrp.law.utoronto.ca/utfl\\_file/count/media/Canada%20UPR%20Final.pdf](https://ihrp.law.utoronto.ca/utfl_file/count/media/Canada%20UPR%20Final.pdf)

the placement of detainees in provincial jails to improve access to mental health services, "those who suffer from depression, post-traumatic stress disorder, or anxiety often do not receive any treatment at all."<sup>47</sup>

**2.6 Length of detention.** Canada does not provide a maximum length of time for how long people can remain in immigration detention, similar to common law countries like the [United States](#), the [United Kingdom](#), and [Australia](#).

According to the CBSA, the average length of immigration detention was 19.5 days in FY 2016-2017,<sup>48</sup> situating Canada towards the median with respect to other key destination countries (six months in Australia, 35 days in the United States, and 10 days in France).

The policy of indefinite detention has led to several cases of extraordinarily lengthy detentions. The longest known instance is the case of Michael Mvogo, a homeless undocumented migrant from Cameroon, who languished in immigration detention for nearly nine years after being arrested for possession of a controlled substance before being deported back to Cameroon in 2015.<sup>49</sup> More recently, as of early 2017, a Ghanaian immigrant named Kashif Ali had been detained for more than seven years in a maximum-security jail "because Canada can't deport him." The then-longest currently serving immigration detainee, he had been trying to leave Canada but was barred from doing so because he lacked proof of citizenship and the receiving country refused to issue a one-way travel document.<sup>50</sup>

Once a foreign national or permanent resident is detained on immigration-related grounds, the CBSA must notify the IRB. Initial detention can last up to 48 hours, after which a detention review hearing must be carried out by the IRB's Immigration Division. If the IRB member decides to extend detention at the hearing, the case must be reviewed again in seven days, and every 30 days thereafter. However, all detainees have the right to request an early detention review any time new information on their case is collected.<sup>51</sup>

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<sup>47</sup> International Human Rights Program (University of Toronto's Faculty of Law), Amnesty International, Justice for Children and Youth *et al*, "Rights Violations Associated with Canada's Treatment of Vulnerable Persons in Immigration Detention: Joint Submission to the Working Group on Universal Periodic Review to Assist in its Review of Canada, 30<sup>th</sup> Session (April-May 2018)," 2017, [https://ihrp.law.utoronto.ca/utfl\\_file/count/media/Canada%20UPR%20Final.pdf](https://ihrp.law.utoronto.ca/utfl_file/count/media/Canada%20UPR%20Final.pdf)

<sup>48</sup> Canada Border Services Agency (CBSA), "Annual Detention Statistics - 2012-2017," (Archived) 2017, <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2012-2017-eng.html>

<sup>49</sup> Nick Jordan, "'Man with no name' detainee deported from Canada," Global News, 26 August 2015, <https://globalnews.ca/news/2185233/man-with-no-name-detainee-deported-from-canada-source/>

<sup>50</sup> B. Kennedy, "Caged by Canada," *Toronto Star*, 17 March 2017, <https://www.thestar.com/projects/short/2017/03/17/caged-by-canada.html>

<sup>51</sup> Government of Canada, "Immigration and Refugee Protection Act (IRPA), 2001, Section 57," <http://laws.justice.gc.ca/eng/acts/i-2.5/page-11.html#h-30>; Immigration and Refugee Board of Canada, "Detention Review Process," 14 August 2015, <http://www.irb-cisr.gc.ca/Eng/BoaCom/references/procedures/Pages/ProcessRevMot.aspx>; Immigration and Refugee Board, "Detention Review Hearings," May 2006, <http://publications.gc.ca/Collection/MQ21-33-2006E.pdf>

CBSA officers have the ability to release detainees (not including “security certificate” detainees) during the first 48 hours after arrest, prior to the IRB detention review hearing. According to a 2010 CBSA report, officers tend to release foreign nationals on terms and conditions prior to the IRB hearing in the Atlantic, Prairie, and Pacific regions, while in Toronto, those arriving at Pearson International Airport in an irregular manner are generally detained, with decisions on release and terms and conditions deferred to the IRB.<sup>52</sup>

Numerous court rulings have addressed the issue of the permitted length of detention without review. In the case of *Adil Charkaoui*, a Moroccan-born permanent resident arrested on a security certificate in 2003, the Supreme Court ruled that detention without review for 120 days breached Sections 9 (arbitrary detention) and 10 (legal rights upon arrest or detention) of the Charter of Rights and Freedoms.<sup>53</sup> This decision became particularly relevant in the wake of Bill C-31, which provides for mandatory detention of anyone designated part of a “smuggling activity” for one year without review.

More recently, in 2015, the Ontario Court of Appeal accepted a habeas corpus application in the case of *Chaudhary v. Canada (Minister of Public Safety and Emergency Preparedness)*, in which several defendants in immigration detention for periods of between two and eight years argued that their detention had “become illegal because of its length and the uncertainty of its continued duration.”<sup>54</sup> The court found that “the immigration detention review system provided for in the Immigration and Refugee Protection Act (IRPA) does not provide an effective forum for detainees to challenge their continued detention” and that detainees must be allowed to apply for habeas corpus challenges to detentions.<sup>55</sup>

**2.7 Procedural guarantees.** Pursuant to Section 57 of the IRPA, within 48 hours after a non-citizen is taken into detention, the Immigration Division must hold a review hearing to examine the reasons for continued detention. These reasons must be reviewed again within seven days of the initial review, then at least once during each subsequent 30-day period. By law, the non-citizen must be present at each hearing.<sup>56</sup>

However, as the *Toronto Star* reported in a three-part report “Caged by Canada” in 2017, in practice, the hearings (often held by teleconference) are “fundamentally unfair, particularly for long-term detentions.” Lawyers interviewed for the series

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<sup>52</sup> Canada Border Services Agency (CBSA), “CBSA Detentions and Removals Programs - Evaluation Study,” November 2010, <http://cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2010/dr-rd-eng.html>

<sup>53</sup> *Charkaoui v. Canada*, Supreme Court of Canada, 1 S.C.R. 350, 2007 SCC, p. 8, <https://www.canlii.org/en/ca/scc/doc/2007/2007scc9/2007scc9.pdf>

<sup>54</sup> *Chaudhary v. Canada (Minister of Public Safety and Emergency Preparedness)*, <http://www.ontariocourts.ca/decisions/2015/2015ONCA0700.htm>

<sup>55</sup> Steven Meurnnes, “Court of Appeal for Ontario: federal immigration detention review system is an ineffective forum for detainees to challenge their continued detention,” Policy Options, 21 October 2015, <http://policyoptions.irpp.org/2015/10/21/immigration-detainees-granted-access-to-habeas-corpus/>

<sup>56</sup> Government of Canada, “Immigration and Refugee Protection Act (IRPA), 2001, Section 57,” <http://laws.justice.gc.ca/eng/acts/i-2.5/page-11.html#h-30>



described the hearings as “Kafkaesque,” telling the newspaper: “Detainees are often unrepresented, the government’s evidence is not tested as it would be in criminal court and the longer someone is in detention the less likely it is that they will be released because [government bureaucrats] say they must have ‘clear and compelling’ reasons to depart from a previous member’s decision.”<sup>57</sup> An expert in Canada consulted for this report told the Global Detention Project, “More specifically: the government’s case generally relies exclusively on hearsay evidence. Written reports by CBSA agents are filed as evidence, but the CBSA agent does not appear before the tribunal and therefore cannot be cross-examined regarding the truth of his/her assertions (e.g., the assertion that a detainee is ‘not collaborating’ to establish his identity).”<sup>58</sup>

A 2014 report by the migrant-advocacy group [No One Is Illegal](#) said that “after six months in detention, the likelihood of release shrinks to about 1 per cent.”<sup>59</sup> According to the *Toronto Star*, many Canadian immigration lawyers have abandoned the administrative review hearings altogether, instead pursuing release for their clients through habeas corpus application in the courts. However, according to the Canadian source consulted for this report, “Refugee lawyers continue to go to the detention review hearings before the Immigration and Refugee Board, but since the 2015 *Chaudhary* decision [cited above in the section on Length of Detention] they have started to make habeas corpus applications to the courts as well (mostly in the case of very lengthy detentions).”<sup>60</sup>

Appeal procedures have also long been a source of criticism in Canada. Until 2010, the IRB did not have an appeals mechanism in place, even though such a mechanism had been provided for in Section 63 of the IRPA since 2001.<sup>61</sup> In 2010, with the passage of Bill C-11, a Refugee Appeal Division (RAD) was officially mandated. Pursuant to Bill C-11, failed refugee claimants have 15 days in which to file and complete their application for an appeal to the RAD. This procedure has spurred considerable criticism, in part because it does not give claimants enough time to adequately organise their appeal, a situation that negatively impacts “the most vulnerable refugees, including survivors of torture, children and youth, refugees who don’t speak English or French, women with children, and people suffering from Post-Traumatic Stress Disorder.”<sup>62</sup> Once an application has been submitted, the RAD has 120 days to make a decision, or 30 days if the claimant comes from a “Designated Country of Origin” or if their claim is deemed manifestly unfounded.

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<sup>57</sup> B. Kennedy, “Caged by Canada,” *Toronto Star*, 17 March 2017, <https://www.thestar.com/projects/short/2017/03/17/caged-by-canada.html>

<sup>58</sup> Janet Cleveland (McGill University), Email to Michael Flynn (Global Detention Project), 8 June 2018.

<sup>59</sup> B. Kennedy, “Caged by Canada,” *Toronto Star*, 17 March 2017, <https://www.thestar.com/projects/short/2017/03/17/caged-by-canada.html>

<sup>60</sup> Janet Cleveland (McGill University), Email to Michael Flynn (Global Detention Project), 8 June 2018.

<sup>61</sup> Government of Canada, “Immigration and Refugee Protection Act (IRPA), 2001, Section 63(2),” <http://laws.justice.gc.ca/eng/acts/i-2.5/page-12.html#h-31>

<sup>62</sup> Canadian Council for Refugees, “C-11 Regulatory Amendments,” 18 April 2011, [http://ccrweb.ca/files/commentesc-11regs\\_april-2011.pdf](http://ccrweb.ca/files/commentesc-11regs_april-2011.pdf)



Under the Canadian Charter of Rights and Freedoms, detainees are guaranteed access to (a) information pertaining to the reasons for their detention, (b) legal counsel, and (c) free interpretation services. However, observers say that in practice these guarantees are not always fulfilled and that there is no formal mechanism for immigration detainees to lodge complaints about the conditions of detention. Courts have also repeatedly held that rights enshrined in the Charter are inapplicable to immigration detainees “on the premise that the legal regime already in place for them is ‘separate but equal,’” meaning the IRB’s rubber stamp administrative hearings are considered to be equivalent to judicial review in federal court. However, as a result of the *Chaudhary* decision, a divide has opened between the Federal Court, which still holds to this view, and Ontario, where habeas corpus is now a possible remedy against indefinite detention.<sup>63</sup>

**2.8 Detaining authorities and institutions.** Canada’s immigration and detention policies are overseen by several different agencies. Immigration, Refugees and Citizenship Canada (IRCC) maintains overall responsibility for administering IRPA, and also selects Convention refugees for resettlement from overseas. Officials with the CBSA are responsible for making arrests and detaining individuals, as well as carrying out removals. The Ministry of Public Safety, meanwhile, acts as an administrative body.<sup>64</sup>

The Immigration and Refugee Board of Canada (IRB) decides who merits refugee protection, hears appeals on immigration matters, and also conducts admissibility hearings and detention reviews. It is comprised of an Immigration Division, a Refugee Protection Division, an Immigration Appeal Division, as well as a Refugee Appeal Division. While the board reports to Parliament through IRCC, it is officially an independent administrative tribunal.<sup>65</sup>

**2.9 Non-custodial measures.** “Alternatives to detention” are a formal part of Canadian immigration detention procedures. The Immigration and Refugee Protection Regulations (Section 248) stipulates that “the existence of alternatives to detention” must be “considered before a decision is made on detention or release.” Additionally, Section 56(1) of the IRPA provides a number of measures (“conditions”) that an immigration officer who orders the release of a detainee “may impose,” including the “payment of a deposit or the posting of a guarantee for compliance with the conditions.” Some conditions are mandatory, such as providing an address where an individual will live and can be contacted by immigration authorities. Other conditions include “periodic reporting, confinement to a particular location or

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<sup>63</sup> S. Anstis, J. Blum, and J. Will, “Separate but Unequal: Immigration Detention in Canada and the Great Writ of Liberty,” *McGill Law Journal*, 63(1), 2017, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3080550](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3080550)

<sup>64</sup> Government of Canada, “Immigration and Refugee Protection Act (IRPA), 2001, Section 4(2),” <http://laws.justice.gc.ca/eng/acts/i-2.5/page-1.html#h-4>

<sup>65</sup> Immigration and Refugee Board of Canada, “About the Board,” December 2016, <http://www.irb-cisr.gc.ca/Eng/BoaCom/Pages/index.aspx>

geographic area,” or “detention in a form that could be less restrictive to the individual.”<sup>66</sup>

Nevertheless, there are several barriers that make release difficult. Those asylum seekers who are detained for identity reasons, reportedly few in number, are at a greater risk of prolonged detention, which some observers consider to be particularly worrisome due to the use of provincial prisons.<sup>67</sup> Several NGOs have also raised concerns over asylum seekers having to remain in detention due to difficulties in finding an address, as well as those who cannot afford to make bond payments because of a lack of family or friends in the community.<sup>68</sup>

The Toronto Bail Program (TBP) was created in 1996 to address this last issue, providing assistance to those who cannot afford the bond payment for their release, while also helping individuals to find a lawyer and housing. Detainees must go through a screening and assessment process before being accepted, which includes having their identity verified by IRCC.<sup>69</sup> While in the programme, clients must abide by strict requirements, including reporting to TBP offices twice weekly, social counselling, and frequent, unannounced visits to their designated address. Violating any of these conditions results in re-detention.<sup>70</sup>

The TBP can take on up to 230 cases at a time. There were 338 supervised cases during FY 2008-2009.<sup>71</sup> According to a 2011 International Detention Coalition report, detainees with TBP-supported applications are rarely refused release.<sup>72</sup> While the programme originally mainly assisted asylum seekers released from a minimum

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<sup>66</sup> Immigration and Refugee Board of Canada, “Chairperson Guideline 2: Detention,” <http://www.irb-cisr.gc.ca/Eng/BoaCom/references/pol/GuiDir/Pages/GuideDir02.aspx>; O. Field, “Alternatives to Detention of Asylum Seekers and Refugees,” United Nations High Commissioner for Refugees, April 2006, <http://www.unhcr.org/protection/globalconsult/4474140a2/11-alternatives-detention-asylum-seekers-refugees-ophelia-field.html>

<sup>67</sup> J. Cleveland, “Detention of Refugee Claimants: Comments on the CBSA Detention and Removal Programs Evaluation Report,” Hans & Tamar Oppenheimer Chair in Public International Law, McGill University, 22 February, 2011.

<sup>68</sup> O. Field, “Alternatives to Detention of Asylum Seekers and Refugees,” United Nations High Commissioner for Refugees, April 2006, <http://www.unhcr.org/protection/globalconsult/4474140a2/11-alternatives-detention-asylum-seekers-refugees-ophelia-field.html>

<sup>69</sup> International Detention Coalition (IDC), “There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention,” 2011, <https://idcoalition.org/publication/there-are-alternatives-revised-edition/>; O. Field, “Alternatives to Detention of Asylum Seekers and Refugees,” United Nations High Commissioner for Refugees, April 2006, <http://www.unhcr.org/protection/globalconsult/4474140a2/11-alternatives-detention-asylum-seekers-refugees-ophelia-field.html>

<sup>70</sup> O. Field, “Alternatives to Detention of Asylum Seekers and Refugees,” United Nations High Commissioner for Refugees, April 2006, <http://www.unhcr.org/protection/globalconsult/4474140a2/11-alternatives-detention-asylum-seekers-refugees-ophelia-field.html>

<sup>71</sup> Canada Border Services Agency (CBSA), “CBSA Detentions and Removals Programs – Evaluation Study,” November 2010, <http://cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2010/dr-rd-eng.html>

<sup>72</sup> International Detention Coalition (IDC), “There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention,” 2011, <https://idcoalition.org/publication/there-are-alternatives-revised-edition/>

security detention centre in Toronto, it has increasingly worked with foreign nationals with criminal backgrounds, as well as overstayers released from provincial prisons.<sup>73</sup>

Observers have criticised the TBP for being too strict in some cases when verifying an individual's identity, and for taking too long in securing release from detention.<sup>74</sup> Nevertheless, rights actors have praised the programme as a less restrictive "alternative to detention." It is also much less expensive, with daily costs per person ranging between 12 CAD and 16 CAD, compared to 112 CAD at the [Toronto Immigration Holding Centre](#) (TIHC) and 175 CAD at provincial prisons.<sup>75</sup> With a compliance rate of 96.35 percent during FY 2009-2010,<sup>76</sup> and addressing specific needs related to addiction and mental health issues, the programme has been recommended as a possible model for other regions that have high numbers of detainees.<sup>77</sup>

As part of the new National Immigration Detention Framework (NIDF) initiative, the CBSA has negotiated with the Salvation Army, the John Howard Society of Canada, and the Toronto Bail Program to provide "supervision and case management services to individuals released to the community, starting in spring 2018." According to the CBSA, "this work contributes to Canada's commitment to the UNHCR's Global Detention Strategy Guidelines to ensure that ATDs [Alternatives to Detention] are considered in all cases prior to detention."<sup>78</sup>

While electronic monitoring has previously been rare in Canada due to both its cost—approximately 204,400 CAD per year—and the intrusive nature of this kind of monitoring,<sup>79</sup> the new NIDF initiative seeks "expanded electronic supervision tools such as the use of GPS Electronic Monitoring on a pilot basis."<sup>80</sup> Importantly, the UNCHR's "[Detention Guidelines](#)" exclude GPS electronic monitoring devices such as ankle bracelets from its catalogue of acceptable measures. Rather than minimising unnecessary restrictions, mandatory participation in such electronic monitoring programmes has widely been criticised for increasing the level of supervision imposed on non-citizens who are already eligible for release. According to UNHCR,

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<sup>73</sup> O. Field, "Alternatives to Detention of Asylum Seekers and Refugees," United Nations High Commissioner for Refugees, April 2006, <http://www.unhcr.org/protection/globalconsult/4474140a2/11-alternatives-detention-asylum-seekers-refugees-ophelia-field.html>

<sup>74</sup> O. Field, "Alternatives to Detention of Asylum Seekers and Refugees," United Nations High Commissioner for Refugees, April 2006, <http://www.unhcr.org/protection/globalconsult/4474140a2/11-alternatives-detention-asylum-seekers-refugees-ophelia-field.html>

<sup>75</sup> Canada Border Services Agency (CBSA), "CBSA Detentions and Removals Programs - Evaluation Study," November 2010, <http://cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2010/dr-rd-eng.html>

<sup>76</sup> International Detention Coalition (IDC), "There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention," 2011, <https://idcoalition.org/publication/there-are-alternatives-revised-edition/>

<sup>77</sup> Canada Border Services Agency (CBSA), "CBSA Detentions and Removals Programs - Evaluation Study," November 2010, <http://cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2010/dr-rd-eng.html>

<sup>78</sup> Canadian Border Services Agency (CBSA), "National Immigration Detention Framework," 16 March 2018, <https://www.cbsa-asfc.gc.ca/security-securite/detent/nidf-cndi-eng.html>

<sup>79</sup> Canada Border Services Agency (CBSA), "CBSA Detentions and Removals Programs - Evaluation Study," November 2010, <http://cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2010/dr-rd-eng.html>

<sup>80</sup> Canadian Border Services Agency (CBSA), "National Immigration Detention Framework," 16 March 2018, <https://www.cbsa-asfc.gc.ca/security-securite/detent/nidf-cndi-eng.html>

“electronic monitoring—such as wrist or ankle bracelets—are considered harsh... and should as far as possible be avoided.”<sup>81</sup>

**2.10 Regulation of detention conditions.** The main set of rules concerning conditions of detention are set out in the IRCC’s [Enforcement Manual on Detention](#) (ENF 20), last updated in February 2018. It outlines the non-binding principles that govern the treatment of persons detained under the IRPA, including: treating detainees with dignity and respect, ensuring a safe and secure detention environment, conducting operations in a transparent manner, informing detainees of their legal rights, ensuring detainees have access to a feedback process, and ensuring that the CBSA complies with these standards through regular monitoring and evaluation by an external agency. Despite these principles, the CBSA’s operations continue to be characterised by a lack of transparency (see sections on “Domestic monitoring,” “International monitoring,” and “Transparency and access to information”).

**2.11 Domestic monitoring.** A number of civil society organisations have access to immigration detention centres. In Montreal, Action Réfugiés Montréal has an agreement with CBSA allowing them to access the Laval Immigration Holding Centre to provide legal information and other basic assistance to detainees. In Toronto, TRAC has an office inside the Toronto Immigration Holding Centre, as does the Refugee Law Office.

In addition, the Canadian Red Cross (CRC) visits facilities in British Columbia, Ontario, Quebec, and Alberta through an agreement with the government of Canada. During its visits, the CRC monitors detention conditions to ensure rights are being upheld, as well as to hold private discussions with detainees. However, while its findings are orally discussed with the CBSA, they are not made public,<sup>82</sup> which limits the potential impact of their visits. For example, in May 2008, the Auditor General’s Report to Parliament raised concerns over whether standards of treatment were consistently met despite regular visits by the CRC. The report remarked that “while the CRC has provided some oral reports to CBSA officials on the conditions at the facilities, the CBSA has not monitored the extent to which the facilities meet its standards at a national level.”<sup>83</sup>

A 2005-2006 report by the Correctional Investigator noted that that CRC’s role does not amount to independent oversight of the conditions in immigration detention, stating: “The Red Cross, a non-government organization, has no enabling legislation

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<sup>81</sup> United Nations High Commissioner for Refugees (UNICEF) “Detention Guidelines,” 2012, <http://www.unhcr.org/505b10ee9.html>

<sup>82</sup> Canadian Red Cross, “Monitoring Detention Centres,” <http://www.redcross.ca/how-we-help/migrant-and-refugee-services/promoting-the-rights-of-immigration-detainees/monitoring-detention-centres>

<sup>83</sup> Office of the Auditor General of Canada, “2008 May Report of the Auditor General of Canada. Chapter 7 - Detention and Removal of Individuals - Canada Border Services Agency,” [http://www.oag-bvg.gc.ca/internet/English/parl\\_oag\\_200805\\_07\\_e\\_30703.html](http://www.oag-bvg.gc.ca/internet/English/parl_oag_200805_07_e_30703.html)

to carry out a role as an oversight body.”<sup>84</sup> The CRC notes that its monitoring activities do not “preclude nor replace the role of any public ombudsman with legal jurisdiction over immigration detention facilities in Canada.”<sup>85</sup>

In mid-2017, the CBSA signed a new two-year contract with the CRC with the aim of increasing the number of detainee visits to 87 annually. According to CBC News, “as part of the new agreement, the CRC’s annual report on its monitoring activities will be published, alongside an action plan from the CBSA to respond to its recommendations.”<sup>86</sup>

Canada’s Office of the Correctional Investigator monitors conditions of detention in correctional facilities and it is mandated to receive complaints from criminal detainees. However the office has no jurisdiction over immigration detainees held in CBSA or provincial facilities, and no jurisdiction over those held by the CBSA on national security grounds.<sup>87</sup> Likewise, the Canadian Human Rights Commission, established in 1977, does not have a mandate to visit places of detention, although detention monitoring is a recognised core protection issue for independent national human rights institutions.<sup>88</sup>

**2.12 International monitoring.** As of May 2018, Canada had not ratified the Optional Protocol to the Convention against Torture, which seeks to “establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty,”<sup>89</sup> including immigration detention. However, in May 2016, the Trudeau government declared that it would take “the first steps towards doing so by beginning formal consultations on the optional protocol with provincial and territorial governments.”<sup>90</sup>

Nevertheless, Canada’s immigration detention laws and practices have been the subject of review by international human rights mechanisms. In particular, in 2005, the UN Working Group on Arbitrary Detention (WGAD) assessed Canada’s security certificate procedure, provided in the IRPA, which the WGAD found to have

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<sup>84</sup> Office of the Correctional Investigator, “Annual Report of the Office of the Correctional Investigator 2005-2006,” 30 June 2006, <http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20052006-eng.pdf>

<sup>85</sup> Canadian Red Cross, “Monitoring Detention Centres,” <http://www.redcross.ca/how-we-help/migrant-and-refugee-services/promoting-the-rights-of-immigration-detainees/monitoring-detention-centres>

<sup>86</sup> L. Sevunts, “Red Cross to Monitor Canada’s Immigration Detention Centres,” *CBC News*, 28 July 2017, <http://www.cbc.ca/news/politics/red-cross-cbsa-immigration-detention-1.4226095>

<sup>87</sup> I. Zinger (Office of the Correctional Investigator, Government of Canada), email correspondence with Mariette Grange (Global Detention Project), 12 January 2012; see also, Office of the Correctional Investigator, “Annual Report of the Office of the Correctional Investigator 2005-2006,” 30 June 2006, <http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20052006-eng.pdf>

<sup>88</sup> United Nations Office of the High Commissioner for Human Rights, “Survey of National Human Rights Institutions,” July 2009.

<sup>89</sup> United Nations Office of the High Commissioner for Human Rights, “Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,” <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>

<sup>90</sup> The Canadian Press, “Canada to Sign UN’s Anti-Torture Protocol After Years of Delay,” 2 May 2016, [https://www.huffingtonpost.ca/2016/05/02/dion-official-canada-to-join-un-anti-torture-protocol-after-years-of-delay\\_n\\_9824796.html](https://www.huffingtonpost.ca/2016/05/02/dion-official-canada-to-join-un-anti-torture-protocol-after-years-of-delay_n_9824796.html)



numerous problematic features, highlighting the fact that it allowed for the detention of “aliens for years on the suspicion that they pose a security threat, without raising criminal charges” (see “Grounds of Detention” above). The WGAD recommended that “terrorism suspects be detained in the criminal process, with the attached safeguards, and not under immigration laws.”<sup>91</sup>

**2.13 Criminalisation.** The Canadian immigration enforcement system, like the [United States](#), is closely linked to the criminal justice system, as exemplified by the country’s use of jails and prisons to confine immigration detainees. Between 2012 and 2017, 36-40 percent of all immigration detainees were held in provincial criminal jails and prisons rather than in designated immigration facilities, while nearly all long-term detainees were placed in criminal facilities. Canada is one of the few countries in the world that utilises criminal facilities for immigration-related purposes, a practice which has largely been banned in most major industrialized countries.

Since 2016, the CBSA has demonstrated its commitment to “alleviating some reliance on provincial correctional facilities” by renovating and expanding its three dedicated IHCs in Laval, British Columbia, and Toronto (which currently have a detention capacity of 229 total places, see section on “Detention infrastructure” below). The major renovations, however, are not expected to reach completion until 2028.

**2.14 Privatisation.** Canada’s three dedicated immigration holding facilities are managed by the CBSA. However, private companies provide many of the day-to-day services, including security. For instance, the multinational security firm G4S provides security at the Toronto Immigration Holding Centre, which has been managed by Corbel Management Corporation since 2003. According to *The Guardian*, “government records show the [Corbel] contract to have been worth more than \$19m between 2004 and 2008.”<sup>92</sup>

In its 2010 evaluation report, the CBSA suggested using private corrections companies to operate its centres.<sup>93</sup> Since at least 2012, Serco, “one of the biggest players in the immigration detention business worldwide” has been “lobbying Ottawa on the subject of immigration service delivery.”<sup>94</sup> In March of 2012, the Canadian parliamentary secretary to the immigration minister met with Serco executives from the UK “to see if there’s a way in which somewhere down-the-line they could assist the Canadian government” in immigration detention services.<sup>95</sup> Moreover, given

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<sup>91</sup> Working Group on Arbitrary Detention, “Report on the Working Group on Arbitrary Detention: Visit to Canada, E/CN.4/2006/Add.2,” 5 December 2005, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/165/34/PDF/G0516534.pdf?OpenElement>

<sup>92</sup> B. Poynter, “Private Prison Firms Look to Cash in on Canada Asylum Crackdown,” 29 November 2012, <https://www.theguardian.com/world/2012/nov/29/canada-asylum-seekers-private-prison-companies>

<sup>93</sup> Canada Border Services Agency (CBSA), “CBSA Detentions and Removals Programs - Evaluation Study,” November 2010, <http://cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2010/dr-rd-eng.html>

<sup>94</sup> B. Poynter, “Private Prison Firms Look to Cash in on Canada Asylum Crackdown,” 29 November 2012, <https://www.theguardian.com/world/2012/nov/29/canada-asylum-seekers-private-prison-companies>

<sup>95</sup> B. Poynter, “Private Prison Firms Look to Cash in on Canada Asylum Crackdown,” 29 November 2012, <https://www.theguardian.com/world/2012/nov/29/canada-asylum-seekers-private-prison-companies>



Canada's reliance on provincial prisons to house approximately 30 percent of its immigration detainee population, the government's consideration of contracting out provincial prison services to U.S. private prison corporations such as GEO Group has also been of concern.<sup>96</sup> The controversial U.S. company has been at the centre of numerous class-action lawsuits alleging of labour violations and sexual abuse in its detention facilities.

The privatisation of immigration detention is a growing phenomenon, particularly in English-speaking countries such as the [United States](#), [Australia](#), the [United Kingdom](#), and [South Africa](#). It has generated serious concerns regarding the impact of profit-driven motives and potential lack of accountability.<sup>97</sup>

**2.15 Cost of detention.** In 2017, immigration detention was found to cost Canadian taxpayers as much as 250 CAD (196 USD) per detainee per day, which adds up to 90,000 CAD (70,803 USD) per detainee per year.<sup>98</sup> According to The Star, federal payments to Ontario alone for FY 2016-2017 were “projected to be a little over \$13 million [\$10.2 million USD], after three years in which annual payments averaged \$21 million [\$16.5 million USD].” Additionally, the federal government also pays the provinces a “20 percent premium on top of the per capita costs. In Ontario last year, immigration detention cost the federal government \$258.83 CAD (\$203.50 USD) per detainee per day, according to figures provided by Ontario's Ministry of Corrections.”<sup>99</sup> As part of the new National Immigration Detention Framework, the Minister of Public Safety pledged an additional 138 million CAD (108.5 million USD) investment in expanding and upgrading the country's federal detention facilities.<sup>100</sup>

The overall cost of detention has skyrocketed since the mid-1990s. In FY 1994-1995, the Canadian government spent 21.1 million CAD (16.7 million USD) on immigration detention, followed by 23.4 million CAD (18.5 million USD) in FY 1995-1996. In response to this increase, Canada capped its budget on detention at 19.8 million CAD (15.6 million USD) in FY 1997-1996.<sup>101</sup> However, by FY 2008-2009, immigration detention costs totalled over 45.7 million CAD (36.2 million USD), a 17 percent increase from FY 2005-2006. Like the country's overall detention population,

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<sup>96</sup> D. Tencer, “Prison Privatization: Canada Mulls Contracting Services to Companies Lobbying for Correctional Work,” 13 July 2012, [https://www.huffingtonpost.ca/2012/07/13/prison-privatization-canada\\_n\\_1670755.html](https://www.huffingtonpost.ca/2012/07/13/prison-privatization-canada_n_1670755.html)

<sup>97</sup> J. Cleveland, “Detention of Refugee Claimants: Comments on the CBSA Detention and Removal Programs Evaluation Report,” Hans & Tamar Oppenheimer Chair in Public International Law, McGill University, 22 February, 2011; M. Flynn and C. Cannon, “The Privatization of Immigration Detention: Towards a Global View,” September 2013, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2344196](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2344196)

<sup>98</sup> Gerami Law PC, “The Cost of Canada's Indefinite Immigration Detention Time,” 3 April 2017, <https://www.geramilaw.com/blog/the-cost-of-canadas-indefinite-immigration-detention-time.html>

<sup>99</sup> B. Kennedy, “Ottawa is Rethinking Its Approach to Immigration Detention,” 9 April 2017, <https://www.thestar.com/news/canada/2017/04/09/federal-government-exploring-ways-to-reduce-immigration-detention.html>

<sup>100</sup> Canadian Border Services Agency (CBSA), “National Immigration Detention Framework,” 16 March 2018, <https://www.cbsa-asfc.gc.ca/security-securite/detent/nidf-cndi-eng.html>

<sup>101</sup> A. Pratt, *Securing Borders: Detention and Deportation in Canada*, Vancouver: University of British Columbia Press, 2005.

these costs were largely centred in Ontario, where 70.5 percent of expenditures took place, followed by Québec at 17.7 percent, and the Pacific Region at 9.2 percent.<sup>102</sup>

**2.16 Transparency and access to information.** The lack of independent national and international oversight bodies significantly contributes to the culture of secrecy surrounding the Canadian immigration detention system. The CBSA's new National Immigration Detention Framework cites transparency as one of its four "pillars" and has voiced its intentions to make the CRC's monitoring reports available to the public. There remain critical gaps in public information, including concerning which prisons are in use at any given time for immigration-related reasons.

**2.17 Trends and statistics.** The total detainee population has steadily decreased over the past decade, from 9,500 during FY 2009-2010, to 8,739 in FY 2012-2013, to 6,768 in FY 2014-2015, and to 6,251 in FY 2016-2017.<sup>103</sup> The total number of detained minors has also decreased from 232 in FY 2014-2015, to 201 in FY 2015-2016, and to 162 in FY 2016-2017. Despite some fluctuations, the average length of detention in Canada has also decreased over the past several years from 23 days in FY 2013-2014, to 19.5 days in FY 2016-2017 for adults, and from 20 days in FY 2015-2016, to 11 days in FY 2016-2017 for minors.<sup>104</sup>

Despite the CBSA's announcement in 2016 of its intentions to decrease reliance on criminal facilities, the trend toward detaining individuals in provincial prisons has continued, even when non-citizens are considered low-risk. According to the CBSA, the use of non-CBSA facilities for immigration detention has risen in recent years to over 35 percent of all detainees in FY 2010-2011 and over 38 per cent in FY 2016-2017.<sup>105</sup>

The number of removals from Canada has mostly increased over the past decade. In FY 2008-2009, 13,249 individuals were removed from the country, 73 percent (or 9,672) of whom were failed refugee claimants. This is compared to 12,636 removals in FY 2006-2007 and 8,683 in FY 2002-2003.<sup>106</sup> However, according to the CBSA, in FY 2016-2017 the number of removals decreased to 7,500.<sup>107</sup>

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<sup>102</sup> Canada Border Services Agency (CBSA), "CBSA Detentions and Removals Programs - Evaluation Study," November 2010, <http://cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2010/dr-rd-eng.html>

<sup>103</sup> Canada Border Services Agency (CBSA), "Arrests, Detentions and Removals: Annual Detention Statistics - 2012-2017," 22 March 2018, <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2012-2017-eng.html>

<sup>104</sup> Canada Border Services Agency, "Arrests, Detentions and Removals: Annual Detention Statistics - 2012-2017," 22 March 2018, <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2012-2017-eng.html>

<sup>105</sup> Canada Border Services Agency (CBSA), "Detentions at a Glance," 2011; Canada Border Services Agency (CBSA), "Annual Detention Statistics - 2012-2017," (Archived) 2017, <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2012-2017-eng.html>

<sup>106</sup> Canada Border Services Agency (CBSA), "CBSA Detentions and Removals Programs - Evaluation Study," November 2010, <http://cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2010/dr-rd-eng.html>; Office of the Auditor General of Canada, "2008 May Report of the Auditor General of Canada. Chapter 7 - Detention and Removal of Individuals - Canada Border Services Agency," [http://www.oag-bvg.gc.ca/internet/English/parl\\_oag\\_200805\\_07\\_e\\_30703.html](http://www.oag-bvg.gc.ca/internet/English/parl_oag_200805_07_e_30703.html)

<sup>107</sup> Canada Border Services Agency (CBSA), "2016-17 Departmental Results Reports," <https://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/dpr-rmr/2016-2017/report-rapport-eng.html>

Canada received 23,160 asylum applications in 2010, a dramatic drop from previous highs of 33,250 in 2009 and 36,900 in 2008. The decrease has been linked to the 2009 visa requirements placed on Mexico and the Czech Republic. Between 2009 and 2010, Mexican asylum claims dropped by 6,300 (84 percent), while Czech claims fell from more than 2,000 to virtually zero. The top five countries of origin among asylum applicants in 2010 were Hungary (2,321), China (1,582), Colombia (1,354), Sri Lanka (1,203), and Mexico (1,198).<sup>108</sup> This trend in decreasing asylum applications continued through 2015, with 25,315 asylum applications in 2011, 20,475 asylum applications in 2012, 10,375 asylum applications in 2013, 13,455 asylum applications in 2014, and 16,120 asylum applications in 2015. In 2017, however, asylum applications dramatically rose, reaching a high of 50,405.<sup>109</sup>

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<sup>108</sup> United Nations High Commissioner for Refugees (UNHCR), "Asylum Level and Trends in Industrialized Countries: 2010," 28 March 2011, <http://www.unhcr.org/4d8c5b109.html>

<sup>109</sup> Government of Canada, "Asylum Claimants Processed by Canada Border Services Agency (CBSA) and Immigration, Refugees, and Citizenship Canada (IRCC) Offices, January 2011 - February 2018," <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/asylum-claims/processed-claims.html>



### 3. DETENTION INFRASTRUCTURE

**3.1 Summary.** With only three dedicated immigration holding facilities, Canada has a comparatively small immigration detention infrastructure. However, like the United States, Canada makes widespread use of criminal correctional facilities to hold immigration detainees, a practice it also shares with other federal states like [Switzerland](#). According to information received by the Global Detention Project in 2012, Canada has used 43 provincial prisons since 2010 (this figure does not include prisons used to hold immigration detainees for very short periods of time before transfer to other facilities). Prisons tend to be used in situations where there is no dedicated immigration facility in the region or dedicated facilities are overcrowded, as well as for high-risk detainees (e.g. those deemed to pose a threat to public safety or who are detained for reasons of criminality).

Central to Canada's new National Immigration Detention Framework (NIDF) are plans to improve its immigration holding centres throughout the country, including "minimizing the institutional look of facilities, making available translation and legal support services, a resource centre and educational facility, enabling movement of detainees throughout the facility, and more." Primary goals of the initiative are to improve detention conditions and increase the detention capacity of the dedicated Immigration Holding Centres (IHCs) in order to reduce reliance on provincial prisons.<sup>110</sup>

**3.2 Detention facilities.** Canada's three CBSA-operated dedicated IHCs are located in Toronto, Montréal (Laval), and Vancouver (British Columbia). As of 2011, they had a total capacity of 299 detainees.<sup>111</sup> However, this capacity is set to increase with the renovation and expansion of the three dedicated IHCs, which began in 2017 as part of the CBSA's new NIDF. Because of their locations at the main points of entry into the country, these centres hold a majority of immigration detainees (61.5 percent as of FY 2016-2017).<sup>112</sup> The IHCs operate as medium-security prisons, with fences

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<sup>110</sup> Canadian Border Services Agency (CBSA), "National Immigration Detention Framework," 16 March 2018, <https://www.cbsa-asfc.gc.ca/security-securite/detent/nidf-cndi-eng.html>

<sup>111</sup> Canada Border Services Agency (CBSA), "CBSA Detentions and Removals Programs - Evaluation Study," November 2010, <http://cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2010/dr-rd-eng.html>; D. Nakache, "The Human and Financial Cost of Detention of Asylum-Seekers in Canada," December 2011, <http://www.refworld.org/docid/4fafc44c2.html>

<sup>112</sup> Canada Border Services Agency (CBSA), "Arrests, Detentions and Removals: Annual Detention Statistics - 2012-2017," 22 March 2018, <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2012-2017-eng.html>

equipped with razor wire, central locking door systems, security guards, and surveillance cameras.<sup>113</sup>

According to the CBSA, “moving forward, the Government of Canada will significantly improve” the infrastructure of its three IHCs, including “a new Crown-built IHC in Quebec (Greater Montreal Area), a refurbished Crown-owned IHC in British Columbia (Surrey) and an enhanced IHC in Toronto.” As a result of these improvements, the CBSA aims to “see an important reduction in the use of provincial correctional facilities, improved national standards and improved detainee well-being.”<sup>114</sup>

**Toronto Immigration Holding Centre (TIHC).** The TIHC, which opened in 2004, is a three-story building located approximately eight kilometres from Toronto’s Pearson International Airport and has a capacity to hold up to 125 low-risk detainees. The top floor is devoted solely to men, while the second floor is divided into two wings, one for men and one for women. The first floor is reserved for mothers and their children. Outside, there is a recreation space with a children’s play area. The CBSA outsources the provision of services within the centre, including management, meal preparation, cleaning, and building maintenance to the private company Corbel Management Corporation.<sup>115</sup>

There are numerous security cameras and guards, and detainees may not circulate between different sections unless authorised and accompanied by a guard. Each section includes a common room where detainees spend the day. At night, detainees sleep in private or semi-private rooms. Upon arrival, most personal possessions are confiscated, including mobile phones and personal toiletries. Rigid rules regulate daily activities, including meal times and wake-up time. There are few activities available, other than the option to watch television. Detainees have access to public phones, but need phone cards to make long-distance calls. There is no internet access. Detainees may receive visitors at certain prescribed times, but they are separated from the visitor by a glass partition and communicate by interphone. Visitors are searched with a metal detector, and detainees are also searched after seeing a visitor.<sup>116</sup>

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<sup>113</sup> J. Cleveland, C. Rousseau, and R. Kronick, “Bill C-4: The Impact of Detention and Temporary Status on Asylum Seekers’ Mental Health: Brief for Submission to the House of Commons Committee on Bill C-4, the Preventing Human Smugglers from Abusing Canada’s Immigration System Act,” January 2012, [https://www.globaldetentionproject.org/wp-content/uploads/2016/06/Canada\\_cleveland.pdf](https://www.globaldetentionproject.org/wp-content/uploads/2016/06/Canada_cleveland.pdf)

<sup>114</sup> Canada Border Services Agency (CBSA), “Archived - CBSA’s New National Immigration Detention Framework: A Summary Report of the Framework and Stakeholder Roundtable Discussions (August - December 2016),” January 2017, <https://www.cbsa-asfc.gc.ca/agency-agence/consult/consultations/nidf-cnmdi/menu-eng.html>

<sup>115</sup> B. Kennedy, “Ottawa is Rethinking its Approach to Immigration Detention,” *The Star*, 9 April 2017, <https://www.thestar.com/news/canada/2017/04/09/federal-government-exploring-ways-to-reduce-immigration-detention.html>

<sup>116</sup> J. Cleveland, C. Rousseau, and R. Kronick, “Bill C-4: The Impact of Detention and Temporary Status on Asylum Seekers’ Mental Health: Brief for Submission to the House of Commons Committee on Bill C-4, the Preventing Human Smugglers from Abusing Canada’s Immigration System Act,” January 2012, [https://www.globaldetentionproject.org/wp-content/uploads/2016/06/Canada\\_cleveland.pdf](https://www.globaldetentionproject.org/wp-content/uploads/2016/06/Canada_cleveland.pdf)

As of May 2018, significant renovations are underway at the TIHC and are expected to reach completion in July 2018. The current facility, “is not designed or serviced to hold individuals who are considered to be a modestly higher risk (e.g., those with a non-violent criminal history.” However, the contract with Corbel was updated in 2017 to accommodate such “higher-risk detainees,” thereby decreasing the region’s reliance on provincial prisons to house such individuals.<sup>117</sup>

**Laval Immigration Holding Centre (LIHC).** Officially called in French the Centre de surveillance de l’Immigration, the LIHC is located on the grounds of Correctional Service Canada (CSC), approximately 30 minutes from Pierre Elliott Trudeau Airport and 40 minutes from downtown Montreal. It is the largest of Canada’s three IHCs in terms of capacity, holding up to 150 detainees. Detainees are housed in two separate buildings, one for men and one for women and children, with a third building used for administration. The outdoor recreation area is divided into a men’s and women’s section, the latter of which also has a children’s area. Services at the centre are provided by CSC, including meal preparation, cleaning, and building maintenance.<sup>118</sup> Conditions appear to be broadly similar to those in the TIHC except that detainees sleep in dorms and there is no glass partition in the visitor’s room at the LIHC.<sup>119</sup>

The LIHC facility, which was built in the mid-1950s and adapted for use by the CBSA, has deteriorated to a “state of disrepair and inadequate design,” that does “not comply with international norms for immigration detention.” The new, improved facility is currently under construction and is scheduled to open in 2021, upon which the current facility will be closed.<sup>120</sup>

**B.C. Immigration Holding Centre (BCIHC).** Unlike its counterparts in Toronto and Laval, the BCIHC is a short-term facility used to hold immigration detainees in the basement of Vancouver International Airport for up to 48 hours. It has a total of 24 beds, with men and women detained in separate rooms. Detained children are allowed to remain with their mothers, while unaccompanied minors are also housed separately. The rooms themselves have limited washroom facilities, although each common area has a full washroom and shower, as well as a television. There is one four-bedroom unit for families, as well as two extra rooms with two beds each.

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<sup>117</sup> Canada Border Services Agency (CBSA), “Archived - CBSA’s New National Immigration Detention Framework: A Summary Report of the Framework and Stakeholder Roundtable Discussions (August - December 2016),” January 2017, <https://www.cbsa-asfc.gc.ca/agency-agence/consult/consultations/nidf-cnmdi/menu-eng.html>

<sup>118</sup> Canada Border Services Agency (CBSA), “CBSA Detentions and Removals Programs - Evaluation Study,” November 2010, <http://cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2010/dr-rd-eng.html>

<sup>119</sup> J. Cleveland, C. Rousseau, and R. Kronick, “Bill C-4: The Impact of Detention and Temporary Status on Asylum Seekers’ Mental Health: Brief for Submission to the House of Commons Committee on Bill C-4, the Preventing Human Smugglers from Abusing Canada’s Immigration System Act,” January 2012, [https://www.globaldetentionproject.org/wp-content/uploads/2016/06/Canada\\_cleveland.pdf](https://www.globaldetentionproject.org/wp-content/uploads/2016/06/Canada_cleveland.pdf)

<sup>120</sup> Canadian Border Services Agency (CBSA), “National Immigration Detention Framework,” 16 March 2018, <https://www.cbsa-asfc.gc.ca/security-securite/detent/nidf-cndi-eng.html>



However, due to its location in the basement of the airport, there is no access to an outside area or to daylight.<sup>121</sup>

After 48 hours, asylum seekers are transferred to prisons in British Columbia (BC). Most male asylum seekers are detained at Fraser Regional Correctional Centre—a prison designed for sentenced male offenders—where they are subject to the same institutional rules as criminal detainees.<sup>122</sup>

Given the current state and design of the BCIHC, which do not comply with international norms for immigration detention, the facility will be replaced by a refurbished existing federal government building, formerly occupied by the Royal Canadian Mounted Police, in Surrey, BC. According to the CBSA, the new, renovated facility is on course to open in December 2018.<sup>123</sup>

Officially a fourth IHC, the **Kingston Immigration Holding Centre** was used to detain non-citizens “deemed to be threats to Canada’s national security under the IRPA security certificate mechanism,” until 2012, when it was permanently closed. While in operation, few people were detained at this facility.<sup>124</sup>

**Provincial Jails and Prisons.** The use of provincial jails and prisons for immigration detention purposes has steadily increased, even for those considered low-risk (see section on “Trends and statistics” above). A 2010 CBSA report raised a number of concerns regarding the increased use of prisons, including the fact that “facilities can change the number of detainees they take, move immigration detainees from one location to another, reduce operational hours, and restrict advocacy groups’ access to the facility to monitor the well-being of the detainees.”<sup>125</sup> To avoid the use of prisons, the report said detainees may be forced to stay in short-term holding cells at CBSA offices or airports that do not meet CBSA detention standards, or have to travel long distances for IRB hearings.<sup>126</sup> Refugee advocates have also expressed concern over the safety of detained asylum seekers, most of whom have likely never experienced a prison-like environment before and do not know how to defend themselves.<sup>127</sup>

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<sup>121</sup> Canada Border Services Agency (CBSA), “CBSA Detentions and Removals Programs - Evaluation Study,” November 2010, <http://cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2010/dr-rd-eng.html>; Canada Border Services Agency (CBSA), “Immigration Detention Within the Canadian Context,” 16 May 2005.

<sup>122</sup> D. Nakache, “The Human and Financial Cost of Detention of Asylum-Seekers in Canada,” December 2011, <http://www.refworld.org/docid/4fafc44c2.html>

<sup>123</sup> Canadian Border Services Agency (CBSA), “National Immigration Detention Framework,” 16 March 2018, <https://www.cbsa-asfc.gc.ca/security-securite/detent/nidf-cndi-eng.html>

<sup>124</sup> CTV News, “Kingston Penitentiary, Leclerc Institution to Be Closed,” 19 April 2012, <https://www.ctvnews.ca/kingston-penitentiary-leclerc-institution-to-be-closed-1.798727>

<sup>125</sup> Canada Border Services Agency (CBSA), “CBSA Detentions and Removals Programs - Evaluation Study,” November 2010, <http://cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2010/dr-rd-eng.html>

<sup>126</sup> Canada Border Services Agency (CBSA), “CBSA Detentions and Removals Programs - Evaluation Study,” November 2010, <http://cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2010/dr-rd-eng.html>

<sup>127</sup> Canada Border Services Agency (CBSA), “CBSA Detentions and Removals Programs - Evaluation Study,” November 2010, <http://cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2010/dr-rd-eng.html>; J. Cleveland, “Detention of Refugee Claimants: Comments on the CBSA Detention and Removal Programs Evaluation Report,” Hans & Tamar Oppenheimer Chair in Public International Law, McGill University, 22 February, 2011.

In **Ontario**, prior to 2013, the Ministry of Community Safety and Correctional Services (MCSCS) “accommodate[d] immigration detainees in provincial custody under an Agreement with Citizenship and Immigration Canada.”<sup>128</sup> MCSCS reports that immigration detainees at these centres are “housed within the general population of the institution.”<sup>129</sup> 16 prisons were used in Ontario during FY 2009-2010 to hold immigration detainees for an average of 91.4 days. The average daily count of detainees was 202, while the maximum count was 216. These numbers represent a slight decrease from the previous FY when the average length of detention was 114 days, and the average daily count was 223 with a high of 266 detainees.<sup>130</sup> In April 2013, a memorandum of understanding between Ontario and the federal government concerning the use of the province’s provincial jails for immigration-related purposes came into effect. Per the agreement, the CBSA agrees to pay Ontario a per diem rate to imprison migrants, plus an additional 20 percent of the per diem rate to “cover overhead and administration.”<sup>131</sup>

According to statistics obtained by the Vancouver Sun in 2014, 62 percent of detainees in **British Columbia** were housed in a criminal facility rather than in one of the CBSA's dedicated immigration facilities. (This is substantially higher than the national average [48 percent] or a region such as **Quebec** where 19 percent of detainees were housed in “non-CBSA facilities.”<sup>132</sup>) One of British Columbia's most infamous cases was that of the arrival of 491 Sri Lankan Tamil asylum seekers on MV Sun Sea in August 2010. All were detained in three British Columbia prisons: 380 men, including teenagers, were held at the maximum security Fraser Regional Correctional Centre, while women without children were detained at the Alouette Correctional Centre for Women and those with children were held at the Burnaby Youth Custody Services Centre.

At the Fraser Regional Correctional Centre, a prison designed for sentenced male offenders, asylum seekers are subject to the same institutional rules as criminal detainees. Thus, for example, they are required to wear prison uniforms, as opposed to their own clothing, which can stigmatise them as “criminals.” They are also subject to significant restrictions on incoming and outgoing telephone calls.<sup>133</sup> According to reports, guards in British Columbia prisons are not informed of the immigration status

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<sup>128</sup> S. Small (Ontario Ministry of Community Safety and Correctional Service), letter to Alex MacKinnon (Global Detention Project), 8 May 2009.

<sup>129</sup> S. Small (Ontario Ministry of Community Safety and Correctional Service), letter to Alex MacKinnon (Global Detention Project), 8 May 2009.

<sup>130</sup> S. Small (Ontario Ministry of Community Safety and Correctional Services), letter to Alex MacKinnon (Global Detention Project), 5 May 2011; S. Small (Ontario Ministry of Community Safety and Correctional Service), letter to Alex MacKinnon (Global Detention Project), 8 May 2009.

<sup>131</sup> End Immigration Detention Network, “Secretive Contract Reveals Ontario and Border Services Jointly Responsible For Detention Injustice,” 24 June 2015, <https://endimmigrationdetention.com/2015/06/24/secretive-contract-reveals-ontario-and-border-services-jointly-responsible-for-detention-injustice/>

<sup>132</sup> T. Carman, “Most B.C. Asylum Seekers Housed in Jail,” 18 June 2014, <http://www.vancouversun.com/life/most+asylum+seekers+housed+jail/9952360/story.html>

<sup>133</sup> D. Nakache, “The Human and Financial Cost of Detention of Asylum-Seekers in Canada,” December 2011, <http://www.refworld.org/docid/4fafc44c2.html>

of detainees and British Columbia Corrections does not distinguish between criminal remands, asylum seekers, and other classes of migrants. Thus, correctional authorities in British Columbia are apparently not aware of the proportion of inmates in their prisons who are asylum seekers.<sup>134</sup>

In **Quebec**, over the FYs 2008-2009, 2009-2010, and 2010-2011, there were 481 immigration detainees held in eight prisons. The vast majority of non-nationals have been accommodated in the prison Rivière-des-Prairies (175 in FY 2008-2009, 139 in FY 2009-2010; and 117 in FY 2010- 2011).<sup>135</sup>

In the **Prairie** and **Atlantic** regions, due to the lack of CBSA dedicated detention facilities, all immigration detainees are housed in jails.<sup>136</sup> The Prairie region consists of Alberta, Manitoba, and Saskatchewan, and the Atlantic region consists of New Brunswick, Prince Edward Island, and Nova Scotia.

In **Alberta**, four prisons were used to hold a total of 257 immigration detainees in FY 2009-2010. One hundred and fifty were detained at the Calgary Remand Centre, 100 at the Edmonton Remand Centre, four at the Lethbridge Correctional Centre, and three at the Medicine Hat Remand Centre. Detainees came from a total of 81 countries and were detained for an average length of 25 days.<sup>137</sup>

In **Manitoba**, according to the Corrections Division of the Manitoba Department of Justice, all of the province's correctional facilities can accept immigration detainees.<sup>138</sup> In 2010, a total of 72 immigration detainees were held at either the Winnipeg Remand Centre or the Headingley Correctional Centre for an average of 54 days. According to the Manitoba Corrections Division, all detainees would have been held initially in Winnipeg and then possibly transferred to Headingly. At 15, the largest group of detainees came from the United States, followed by Somalia (7), Honduras (6), El Salvador (5), and the Philippines (4).<sup>139</sup> During FY 2008-2009, Manitoba's seven prisons held a total of 62 immigration detainees, with an average

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<sup>134</sup> D. Nakache, "The Human and Financial Cost of Detention of Asylum-Seekers in Canada," December 2011, <http://www.refworld.org/docid/4fafc44c2.html>

<sup>135</sup> T. Forget (Quebec, Ministère de la Sécurité publique), email to Alex MacKinnon (Global Detention Project), 15 February 2012.

<sup>136</sup> T. Carman, "Most B.C. Asylum Seekers Housed in Jail," 18 June 2014, <http://www.vancouversun.com/life/most+asylum+seekers+housed+jail/9952360/story.html>

<sup>137</sup> F. Lavoy (Alberta Correctional Services Division), letter to Alex MacKinnon (Global Detention Project), 2 March 2011.

<sup>138</sup> W. Carriere (Manitoba Department of Justice), letter to Alex MacKinnon (Global Detention Project), 7 May 2009.

<sup>139</sup> J. Gilchrist (Manitoba Corrections Divisions), email to Alex MacKinnon (Global Detention Project), 7 May 2011; J. Gilchrist (Manitoba Corrections Divisions), email to Alex MacKinnon (Global Detention Project), 27 May 2011.

length of detention of nearly 60 days.<sup>140</sup> In 2016, there were 56 immigration detainees in Manitoba jails, compared with 168 in 2014, and 144 in 2012.<sup>141</sup>

In **Saskatchewan**, a total of 28 immigration detainees were held in three provincial prisons in FY 2008-2009. The Saskatoon Correctional Centre detained 16 men, while the Regina Correctional Centre detained three. Nine women were detained at the Pine Grove Correctional Centre in Prince Albert. The average length of detention was 63.48 days with the longest period of detention lasting 433 days. Five detainees came from the United States, while two each came from Germany and Nigeria, as well as two labelled as "Arab".<sup>142</sup> Between July 2015 and July 2016, 33 immigration detainees were held in the general population of Saskatchewan jails. Between July 2016 and March 2017, there were 21 immigration detainees held in the general population of Saskatchewan jails for periods ranging from 48 hours to more than 700 days.<sup>143</sup>

In **New Brunswick**, 20 immigration detainees were held in three prisons over FY 2009-2010 and FY 2010-2011, respectively. The Saint John Regional Correctional Centre detained a total of 25, while the Moncton Detention Centre detained eight and the Madawaska Regional Correctional Centre in Saint-Hilaire detained seven. The average length of detention at these prisons was comparably lower than in other provinces, although it did increase from seven days in FY 2009-2010 to 18 days in FY 2010-11.<sup>144</sup>

In **Nova Scotia**, there are five adult facilities and one youth facility designated for immigration detention. In 2008, all immigration detainees in Nova Scotia were held at the Central Nova Scotia Correctional Facility (CNSCF) in Dartmouth. A total of six individuals were detained for an average length of 4.83 days.<sup>145</sup> As of early 2012, CNSCF remained the main facility used to hold CBSA detainees in Nova Scotia, with 35 persons detained between April 2011 and February 2012.<sup>146</sup>

In **Newfoundland and Labrador**, there were a total of 11 detainees over the course of FY 2009-2010 and FY 2010-2011, dispersed across two facilities: Her Majesty's

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<sup>140</sup> W. Carriere (Manitoba Department of Justice), letter to Alex MacKinnon (Global Detention Project), 7 May 2009.

<sup>141</sup> CTV News Winnipeg, "12 People Detained by Border Services in Manitoba Jails Since January," 12 March 2017, <https://winnipeg.ctvnews.ca/12-people-detained-by-border-services-in-manitoba-jails-since-january-1.3321858>

<sup>142</sup> J. Benjamin (Adult Corrections, Saskatchewan), email to Alex MacKinnon (Global Detention Project), 24 May 2011.

<sup>143</sup> T. James, "Why Are We Jailing Immigrants Without Charge?" 12 August 2017, <http://thestarphoenix.com/news/local-news/immigration-detainees-in-sask-held-in-remand-at-jails-with-or-without-charges>

<sup>144</sup> R. Clark-Wright (New Brunswick Community and Correctional Services), email to Alex MacKinnon (Global Detention Project), 24 May 2011; R. Clark-Wright (New Brunswick Community and Correctional Services), email to Alex MacKinnon (Global Detention Project), 1 June 2011.

<sup>145</sup> A. Pottier (Manager, Policy and Programs, Nova Scotia Department of Justice), email message to A. MacKinnon (Global Detention Project), 9 March 2009.

<sup>146</sup> G. Keagan (Manager, Policy and Programs, Nova Scotia Department of Justice, Correctional Services), email to Izabella Majcher (Global Detention Project), 12 March 2012.

Penitentiary in St. John's and the Royal Canadian Mounted Police detachment in Stephenville. Detainees were held for an average of 13.9 days. Six of the eleven detainees were asylum seekers.<sup>147</sup>

**3.3 Detention conditions.** Investigations into Canada's detention practices have raised concerns over the conditions at facilities and the treatment of detainees. In 2005, a report by the UN Working Group on Arbitrary Detention highlighted concerns over detention in Canadian facilities, including a lack of communication with detainees regarding the legal process of detention, inadequate access to interpreters, and poor communication between the federal and provincial levels of government on the needs of detainees.<sup>148</sup>

The CBSA's 2010 evaluation report highlighted not only regional variations in accessing care for mental health issues, but also revealed that the CBSA often fails to track detainees' health statistics.<sup>149</sup> The CBSA's 2010 report also highlighted staff requests for "better training on how to deal with persons with mental illness."<sup>150</sup>

All immigration detainees except minors and pregnant women are handcuffed—and sometimes shackled—during transportation to and from detention sites. This includes transportation to a hospital or clinic for specialised care. They remain in handcuffs and under guard in the waiting room, and are also chained to the bed if hospitalised. A 2012 [study](#) found that many detainees choose to forego medical treatment rather than face the public humiliation of being handcuffed in a hospital waiting room. In some cases, detainees may be chained during medical procedures. For example, a detained asylum seeker was chained to the dentist's chair during surgery for an abscessed tooth.<sup>151</sup>

The same study found that over three-quarters of detained asylum seekers are clinically depressed, about two-thirds are clinically anxious, and a third suffer from post-traumatic stress symptoms.<sup>152</sup> The prevalence of post-traumatic stress symptoms is almost twice as high as among non-detained asylum-seekers, while the

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<sup>147</sup> R. Myers (CBSA Regional Programs, Atlantic), email to Alex MacKinnon (Global Detention Project), 1 June 2011.

<sup>148</sup> Working Group on Arbitrary Detention, "Report on the Working Group on Arbitrary Detention: Visit to Canada, E/CN.4/2006/Add.2," 5 December 2005, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/165/34/PDF/G0516534.pdf?OpenElement>

<sup>149</sup> Canada Border Services Agency (CBSA), "CBSA Detentions and Removals Programs - Evaluation Study," November 2010, <http://cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2010/dr-rd-eng.html>

<sup>150</sup> Canada Border Services Agency (CBSA), "CBSA Detentions and Removals Programs - Evaluation Study," November 2010, <http://cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2010/dr-rd-eng.html>

<sup>151</sup> J. Cleveland, C. Rousseau, and R. Kronick, "Bill C-4: The Impact of Detention and Temporary Status on Asylum Seekers' Mental Health: Brief for Submission to the House of Commons Committee on Bill C-4, the Preventing Human Smugglers from Abusing Canada's Immigration System Act," January 2012, [https://www.globaldetentionproject.org/wp-content/uploads/2016/06/Canada\\_cleveland.pdf](https://www.globaldetentionproject.org/wp-content/uploads/2016/06/Canada_cleveland.pdf)

<sup>152</sup> See also, J. Cleveland, R. Kronick, H. Gros, and Cécile Rousseau, "Symbolic violence and disempowerment as factors in the adverse impact of immigration detention on adult asylum seekers' mental health," *Int J Public Health*. 2018 Jun 2, <https://link.springer.com/article/10.1007%2Fs00038-018-1121-7>



depression rate reaches 78 percent, compared to 52 percent among non-detained asylum seekers.<sup>153</sup>

In October 2017, a joint civil-society submission titled “Rights Violations Associated with Canada’s Treatment of Vulnerable Persons in Immigration Detention” was released to the UN Working Group on Universal Periodic Review for 2018. The joint submission by IHRP at Toronto University, Amnesty International, Justice for Children and Youth, Canadian Association of Refugee Lawyers, Canadian Civil Liberties Association, British Columbia Civil Liberties Association, and Refugee Law Office of Legal Aid Ontario welcomed the new National Immigration Detention Framework as a positive development in Canada’s immigration detention regime. However, despite these positive steps, the report voiced its continued concern that “immigration detainees continue to suffer significant human rights violations,” most notably “non-citizens with psychosocial disabilities or mental conditions are routinely held in maximum-security provincial jails, and children (including Canadians) continue to be detained or ‘housed’ in detention, or separated from their parents.”<sup>154</sup>

As of November 2017, at least 16 people have died in immigration detention while in CBSA custody since 2000. Persisting concerns over inadequate mental health services and obstacles to access to counsel, community support, and psycho-social counselling are some of the most commonly cited reasons for these avoidable deaths.<sup>155</sup>

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<sup>153</sup> J. Cleveland, C. Rousseau, and R. Kronick, “Bill C-4: The Impact of Detention and Temporary Status on Asylum Seekers’ Mental Health: Brief for Submission to the House of Commons Committee on Bill C-4, the Preventing Human Smugglers from Abusing Canada’s Immigration System Act,” January 2012, [https://www.globaldetentionproject.org/wp-content/uploads/2016/06/Canada\\_cleveland.pdf](https://www.globaldetentionproject.org/wp-content/uploads/2016/06/Canada_cleveland.pdf)

<sup>154</sup> International Human Rights Program (University of Toronto’s Faculty of Law), Amnesty International, Justice for Children and Youth *et al*, “Rights Violations Associated with Canada’s Treatment of Vulnerable Persons in Immigration Detention: Joint Submission to the Working Group on Universal Periodic Review to Assist in its Review of Canada, 30<sup>th</sup> Session (April-May 2018),” 2017, [https://ihrp.law.utoronto.ca/utfl\\_file/count/media/Canada%20UPR%20Final.pdf](https://ihrp.law.utoronto.ca/utfl_file/count/media/Canada%20UPR%20Final.pdf)

<sup>155</sup> P. Molnar and S. Silverman, “Migrants are dying in detention centres: When will Canada act?” 14 November 2017, <https://theconversation.com/migrants-are-dying-in-detention-centres-when-will-canada-act-87237>



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