

COUNTRY REPORT

IMMIGRATION DETENTION IN CANADA: PROGRESSIVE REFORMS AND MISSED OPPORTUNITIES

APRIL 2021



GLOBAL DETENTION PROJECT

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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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Front cover images: Protest signs are posted outside the Surrey Immigration Holding Centre calling for the release of immigration detainees during the COVID-19 pandemic, April 2020 © Twitter/ @pjdvancover

This report is also available online at www.globaldetentionproject.org

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GLOSSARY

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



KEY CONCERNS

- Canada uses both dedicated immigration detention centres and provincial prisons for immigration detention purposes, similar to the United States but in stark contrast to Europe, where specialised facilities are generally used.
- Shortly after the onset of the COVID-19 pandemic, the country reduced the number of immigration detainees held in provincial jails and dedicated holding centres by more than half, to less than 150 by mid-April 2021, with many detainees shifted to “alternatives to detention” programmes.
- Canada does not have a legal limit on the length of time individuals can spend in immigration detention. Courts, however, have held that the country’s statutory detention reviews framework legally fills this gap.
- Children may be “housed” in detention 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 psychological disorders can be placed in either immigration detention centres or maximum-security provincial jails, where they may have little or no access to mental health services.
- 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. INTRODUCTION¹

In recent years, Canada has adopted both progressive refugee policies and restrictive border control measures. Following his election in 2015, Prime Minister Justin Trudeau launched an ambitious refugee resettlement programme, vowing to accept 25,000 Syrian refugees by the end of the year (a figure that was met in March 2016).² In 2018, the country accepted the largest number of resettled refugees (28,100) worldwide.³ More recently, in October 2020, Canada's federal immigration minister announced plans to bring in more than 1.2 million immigrants within three years to fill the country's labour market and boost its economy, both of which were hard hit by the COVID-19 pandemic.⁴

At the same time however, authorities have sought to fortify Canada's borders and restrict access to protection procedures for certain groups. In April 2019, the government proposed changes to its refugee determination system in its Budget Implementation Bill (Bill C-97). The bill proposed the introduction of a new ground of ineligibility for refugee protection, blocking applicants who initially seek asylum in another country.⁵ The amendment was eventually approved in July 2019, but not before it received heavy criticism. The Canadian Refugee Council (CRC) said in a submission to the Standing Commission on Citizenship and Immigration that "the proposed changes would place many people at increased risk of being sent back to face persecution, in violation of the Canadian Charter of Rights and Freedoms and of Canada's international human rights obligations."

As of April 2021, people in immigration procedures could be detained in three dedicated immigration holding centres (IHCs)—the Laval IHC, the Toronto IHC, and the Surrey IHC (with a combined capacity of 362)⁶—in addition to provincial prisons and police stations across the country. However, the number of detainees significantly decreased during 2020, as a result of the COVID-19 pandemic. Acknowledging the risks that the virus posed to confined populations—as well as the impossibility of deportations while borders remained closed—the Canada Border Services Agency (CBSA) released more than half of its

¹ The Global Detention Project (GDP) would like to thank Stella Warnier for her assistance drafting this profile and Stephanie Silverman for reviewing an early version and providing comments and advice. Any errors in the profile are the responsibility of the GDP.

² The Guardian, "Canada Meets Target to Resettle 25,000 Syrian Refugees," 1 March 2016, <https://www.theguardian.com/world/2016/mar/01/canada-target-resettle-25000-syrian-refugees>

³ UN High Commissioner for Refugees, "Global Trends: Forced Displacement in 2018," 2019, <https://www.unhcr.org/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html>

⁴ K. Harris, "Federal Government Plans to Bring in More than 1.2m in Next 3 Years," *CBC*, 30 October 2020, <https://www.cbc.ca/news/politics/mendicino-immigration-pandemic-refugees-1.5782642>

⁵ Parliament of Canada, "Bill C-97, Statutes of Canada, Chapter 29," <https://parl.ca/DocumentViewer/en/42-1/bill/C-97/royal-assent>

⁶ Canada Border Services Agency (CBSA), "Immigration Holding Centres," https://www.cbsa-asfc.gc.ca/security-securite/ihc-csi-eng.html#_s3

detainee population, with many released into “alternatives to detention” (ATDs). The number of people in immigration detention fell from 353 non-nationals on 17 March to 147 by 19 April 2020.⁷ By November, only 138 people remained in detention.⁸

After the onset of the COVID-19 pandemic, the government further limited asylum seekers’ access to protection. In March 2020, authorities banned foreign nationals from entering the country from the United States to lodge an asylum request. Observers said that this violated international law.⁹

The [Safe Third Country Agreement](#) between Canada and the [United States](#) provides that people seeking asylum must make their protection claim in the first country where they arrive, which results in some asylum seekers being deported back to the United States. A July 2020 Federal Court ruling found that the agreement violated the Canadian Charter of Fundamental Rights and Freedoms because the United States could no longer be considered a safe country for refugees in light of the risk of detention and deportation they face there.¹⁰ Although the court gave the Canadian government six months to amend its legislation, the government requested a stay of the decision.¹¹ On 15 April 2021, the Federal Court’s 2020 decision was overturned by a Federal Court of Appeal, prompting rebuke from migrant-rights organisations.¹² At the time of this publication, advocates were considering a challenge to this latest ruling at the Canadian Supreme Court.

Canada’s immigration detention system has also attracted criticism, particularly regarding the persistent use of jails for immigration purposes. Observers have also pointed to the carceral environments of the country’s dedicated immigration detention centres, known as immigration holding centres (IHCs). Importantly, Canada, like other predominately English-language¹³ and Common Law countries, does not have a maximum time limit for immigration detention, leaving some detainees facing indefinite detention.

In 2014, the death of a Mexican detainee—Lucía Dominga Vega Jiménez—by suicide in the IHC at Vancouver Airport heightened concerns about Canada’s detention system. In the inquiry into Jiménez’s death, the coroner identified numerous problems at the Vancouver IHC, including a lack of suicide prevention and mental health training for private security

⁷ R. Brown, “Canada is Releasing Immigration Detainees at ‘Unprecedented’ Rates Amid COVID-19 Fears,” *Global News*, 25 April 2020, <https://globalnews.ca/news/6861756/canada-releasing-immigration-detainees-coronavirus-covid-19/>

⁸ L. Campbell (Canadian Border Services Agency), “Presentation: The Canada Border Services Agency,” UN Network on Migration, ATD Working Group, 17 November 2020.

⁹ Amnesty International, “Closing Canada’s Border to Refugee Claimants is Dangerous and Illegal, and Must be Reversed,” 30 March 2020, <https://www.amnesty.ca/news/closing-canada%E2%80%99s-border-refugee-claimants-dangerous-and-illegal-and-must-be-reversed>

¹⁰ Federal Court, “Canadian Council for Refugees v. Canada (Immigration, Refugees and Citizenship),” 22 July 2020, https://decisions.fct.gc.ca/fc-cf/decisions/en/item/482757/index.do#_Toc46131681

¹¹ Canadian Council for Refugees, “Court Must Reject Government’s Application to Stay the Safe Third Country Agreement Ruling,” 20 October 2020, <https://ccrweb.ca/en/media-release-stay-safe-third-country-agreement-ruling>

¹² Le Devoir, “*L’entente sur les tiers pays sûrs est maintenue*,” 16 April 2021, <https://www.ledevoir.com/politique/canada/598864/demandeurs-d-asile-l-entente-sur-les-tiers-pays-surs-est-constitutionnelle-dit-la-cour-d-appel-federale>

¹³ French is the primary language for nearly 25 percent of Canadians.

personnel staffing the facility; detainees' difficulties in accessing legal counsel, both in person and by phone; and inadequate conditions within the centre.¹⁴

In 2016, the Minister of Public Safety and Emergency Preparedness announced Canada's intention to "transform" its immigration detention system to "better align itself with international and domestic standards."¹⁵ The announcement came after a series of high profile incidents and reports about immigration detention in the country, including several hunger strikes by detainees, deaths in detention, a change in political parties at the federal level, a scathing official audit, in addition to evolving jurisprudence. CBSA subsequently implemented a new National Immigration Detention Framework (NIDF) in 2017, intended to "create a better, fairer immigration detention system that supports the humane and dignified treatment of individuals while protecting public safety."¹⁶

The reforms have had some notable results: the number of detainees held for three months or longer has declined consistently over the last five years, and the average length of detention has decreased from 26.3 days in Fiscal Year (FY) 2014-2015 to 13.9 days in FY 2019-2020. The use of provincial prisons for immigration detention has also dropped: falling from 20 percent of all detentions in FY 2017-2018 to 16 percent in FY 2018-2019.¹⁷

As part of the NIDF, the government pledged a 138 million CAD investment to improve immigration detention, primarily by expanding and renovating IHCs and implementing non-custodial "alternatives to detention."¹⁸ In March 2020, CBSA opened a new IHC in the Vancouver suburb of Surrey, British Columbia, replacing the Vancouver airport facility. Authorities stated that detainees would now have access to outdoor space, natural light, and proper ventilation, and be able to receive mental health services. The CBSA continues to contract guard services from private companies, despite recommendations to use CBSA staff.¹⁹

¹⁴ Ministry of Justice, Coroners Service, Province of British Columbia, "Verdict at Coroner's Inquest: Findings and Recommendations at the Result of the Coroner's Inquest Pursuant to Section 38 of the Coroner's Act, [SBC 2007] c 15, Into the Death of Lucia Dominga Vega Jimenez," 2014, <https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/inquest/2014/vega-jimenez-lucia-dominga-2013-0380-0004-verdict.pdf>

¹⁵ 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>

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

¹⁷ Canadian Border Services Agency (CBSA), "Annual Detention Statistics: 2012-2019," <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2012-2019-eng.html>

¹⁸ 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>

¹⁹ B. Mahichi, "CBSA Says New Holding Centre Promises Better Treatment for Detainees," *Vancouver Sun*, 10 June 2018, <https://vancouversun.com/news/local-news/cbsa-no-plans-in-future-to-stop-contracting-private-guards>; Ministry of Justice Coroner's Office, "Verdict at Coroner's Inquest: Findings and Recommendations as a Result of the Coroner's Inquest Pursuant to Section 38 of the Coroner's Act, [SBC 2007] c 15, Into the Death of Lucia Dominga Vega Jimenez," 2014, <https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/inquest/2014/vega-jimenez-lucia-dominga-2013-0380-0004-verdict.pdf>



2. LAWS, POLICIES, PRACTICES

2.1 Key norms

Core pieces of national legislation providing a framework for immigration detention

- Immigration and Refugee Protection Act (IRPA)
- Immigration and Refugee Protection Regulations (IRPR)

Canada's immigration detention legal framework is provided in two key pieces of legislation: the [Immigration and Refugee Protection Act](#) (IRPA) and the [Immigration and Refugee Protection Regulations](#) (IRPR). 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)—also include provisions regulating 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 2.3 Grounds for administrative migration-related detention). 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.”²⁰ 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.”²¹ 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.”²²

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.” More recently, Bill C- 97 (the Budget Implementation Bill) introduced a new amendment to the IRPA—providing a new ground for ineligibility for refugee protection. (For more information, see 2.3 Grounds for administrative migration-related detention).

²⁰ A. Pratt, *Securing Borders: Detention and Deportation in Canada*, Vancouver: University of British Columbia Press, 2005.

²¹ A. Pratt, *Securing Borders: Detention and Deportation in Canada*, Vancouver: University of British Columbia Press, 2005.

²² Canadian Council for Refugees (CCR), “Key Issues: Immigration and Refugee Protection,” March 2004, <http://www.ccrweb.ca/keyissues.htm>

Supplementing these laws are several policy documents that provide guidelines for detention practices: the 2002 [Immigration Division Rules](#), which include the rules applicable to detention reviews and admissibility hearings; the 2007 [Enforcement Manual on Detention \(ENF 20\)](#), which covers the reasons for and length of detention, alternatives to detention, and the detention of children, and which was most recently updated in March 2020; and the 2010 [Chairperson Guideline on Detention \(most recently amended in April 2019\)](#), 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,²³ in addition to consulting with counterparts in Europe and elsewhere in Asia.²⁴ 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.²⁵

2.2 COVID-19 response

Did authorities issue a moratorium on new migrant detention orders?	No
Were immigration detainees released as a pandemic-related measure?	Yes
Were deportations temporarily ceased?	Yes

Soon after the onset of the COVID-19 pandemic, there were calls for releasing people in prisons and other detention settings. In mid-March, immigration detainees submitted an open letter to the Canada's Public Safety Minister demanding their release—pointing to the close quarters where they were held, the lack of medical checks for newly arriving detainees, and the frequent comings and goings of guards.²⁶ Shortly thereafter, detainees at the Laval IHC launched a hunger strike to highlight their fears that conditions in the facility would lead to a “coronavirus disaster.”²⁷ In April 2020, a large outbreak of COVID-19 at a

²³ 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>

²⁴ 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>

²⁵ 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>

²⁶ J. Kestler-D'Amours, “Immigration Detainees Are on a Hunger Strike Over Coronavirus Fears,” *Vice*, 26 March 2020, https://www.vice.com/en_ca/article/939v7v/laval-quebec-immigration-detainees-are-on-a-hunger-strike-over-coronavirus-fears

²⁷ J. Kestler-D'Amours, “Immigration Detainees Are on a Hunger Strike Over Coronavirus Fears,” *Vice*, 26 March 2020, https://www.vice.com/en_ca/article/939v7v/laval-quebec-immigration-detainees-are-on-a-hunger-strike-over-coronavirus-fears

medium security federal correctional facility in British Columbia highlighted the acute risks posed by the virus to people in detention settings.²⁸

According to data provided by the Canada Border Services Agency (CBSA), by 19 April the number of immigration detainees had been reduced by more than a half. Having recorded 353 foreign nationals in provincial jails and dedicated holding centres on 17 March, by 19 April the number of detainees had decreased to 147—117 of whom were being held in provincial jails.²⁹ By November 2020, 138 persons remained in detention.³⁰ Although this decrease was not the result of a general release policy (detainees were instead released following individualised detention review hearings), reports indicate that the threat of exposure to COVID-19 was factored into release decisions.³¹ In an analysis of 17 release decisions between mid-March and mid-May 2020 in Ontario and British Columbia, researchers Arbel and Joeck found that the Immigration Division of the Immigration and Refugee Board “recognized COVID-19 as a condition of detention relevant to the release analysis in sixteen cases. In eleven cases, the ID ordered release, at least in part on the basis of COVID-19.”³²

Despite a temporary halt in deportations,³³ released detainees were kept within deportation procedures, in the form of “alternatives to detention” (ATD) programmes. In particular, a number of people released from detention were required to wear electronic ankle monitors. This was described as a “temporary measure guiding the use of detention and the consideration of alternatives to detention” by the CBSA.³⁴ In May 2020, the agency reported that the Electronic Monitoring Program was being employed in the Greater Toronto Area and Quebec regions. Observers quickly condemned the programme: Montreal-based NGO Solidarity Across Borders said that it represented an “enormous expansion” in surveillance that would “never stand in any other context.”³⁵

Some people who remained in immigration detention centres, meanwhile, expressed frustrations and fears for their safety. In March 2021 it was reported that seven detainees

²⁸ E. Arbel and M. Joeck, “Immigration Detention in the Age of COVID-19,” in: *Research Handbook on the Law and Politics of Migration*, C. Dauvergne (ed.), Edward Elgar Press, 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3653452

²⁹ R. Brown, “Canada is Releasing Immigration Detainees at ‘Unprecedented’ Rates Amid COVID-19 Fears,” *Global News*, 25 April 2020, <https://globalnews.ca/news/6861756/canada-releasing-immigration-detainees-coronavirus-covid-19/>

³⁰ L. Campbell (Canadian Border Services Agency), “Presentation: The Canada Border Services Agency,” UN Network on Migration, ATD Working Group, 17 November 2020.

³¹ R. Brown, “Canada is Releasing Immigration Detainees at ‘Unprecedented’ Rates Amid COVID-19 Fears,” *Global News*, 25 April 2020, <https://globalnews.ca/news/6861756/canada-releasing-immigration-detainees-coronavirus-covid-19/>

³² E. Arbel and M. Joeck, “Immigration Detention in the Age of COVID-19,” in: *Research Handbook on the Law and Politics of Migration*, C. Dauvergne (ed.), Edward Elgar Press, 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3653452

³³ R. Ward, “Canadian Border Officials Halt Most Deportations In Face of COVID-19,” *CBC News*, 18 March 2020, <https://www.cbc.ca/news/canada/calgary/cbsa-refugees-immigrants-deportations-1.5501334>

³⁴ S. Ross, “Some Migrants Now Tracked With Ankle Bracelets As Pandemic ‘Temporary Measure’,” *CTV NEWS*, 28 May 2020, <https://montreal.ctvnews.ca/some-migrants-now-tracked-with-ankle-bracelets-as-pandemic-temporary-measure-1.4959851>

³⁵ S. Ross, “Some Migrants Now Tracked With Ankle Bracelets As Pandemic ‘Temporary Measure’,” *CTV NEWS*, 28 May 2020, <https://montreal.ctvnews.ca/some-migrants-now-tracked-with-ankle-bracelets-as-pandemic-temporary-measure-1.4959851>

had launched a hunger strike at Laval IHC to protest conditions, amidst reports from community advocates that detainees in the facility had contracted the virus.³⁶ While the CBSA reports that detainees who test positive are placed in solitary confinement, Solidarity Beyond Borders claimed that CBSA was holding all male detainees in solitary confinement (or “segregation”) as a virus containment measure.³⁷ A detainee at the facility told *The Concordian* that cleaning in some parts of the facility was little more than a wipe using a rag, that staff repeatedly took off their masks, and that in the washrooms “blood is smeared on the door from the inside, and mould grows on the shower curtains.”³⁸

On 12 August 2020, the CBSA reported that there had been ten confirmed cases of COVID-19 within immigration holding centres (IHCs). Although it did not clarify whether any immigration detainees in provincial facilities had contracted the virus, the CBSA noted that it “continues to work collaboratively with its provincial partners on measures aimed at ensuring the safety and security of CBSA detainees who are being detained in provincial facilities.”³⁹

In correspondence with the Global Detention Project (GDP) about whether COVID-related measures had been taken to safeguard immigration detainees in provincial prisons, the Office of the Correctional Investigator was unable to provide any details, stating that to get information about the treatment of immigration detainees in provincial prisons, it is necessary to request the information from “relevant provincial correctional authorities and/or from the provincial ombudsmen.”⁴⁰ An immigration lawyer in Canada told the GDP, “There is no publicly available information that would suggest special measures have been instituted for immigration detainees held in provincial jails.” She added that “once immigration detainees are transferred to provincial jails, they come under the jurisdiction of the jails and are generally treated like other inmates in those facilities.”⁴¹

Having initially stated that asylum seekers entering the country would be required to quarantine upon entry, on 20 March authorities shifted their stance and announced that “a foreign national is prohibited from entering Canada from the United States for the purpose of making a claim for refugee protection.”⁴² Several reports indicated that people attempting to seek asylum in Canada were returned to the United States, where they were arrested by US

³⁶ CTV News, “Advocates Say Seven Detainees on Hunger Strike Against Conditions in Laval Immigrant Holding Centre,” 5 March 2021, <https://montreal.ctvnews.ca/advocates-say-seven-detainees-on-hunger-strike-against-conditions-in-laval-immigrant-holding-centre-1.5335717>

³⁷ H. Alencar, “Community Groups Demand Release of Migrant Detainees Following a COVID-19 Outbreak at the Laval Immigration Holding Centre,” *The Concordian*, 2 March 2020, <http://theconcordian.com/2021/03/community-groups-demand-release-of-migrant-detainees-following-a-covid-19-outbreak-at-the-laval-immigration-holding-centre/>

³⁸ H. Alencar, “Community Groups Demand Release of Migrant Detainees Following a COVID-19 Outbreak at the Laval Immigration Holding Centre,” *The Concordian*, 2 March 2020, <http://theconcordian.com/2021/03/community-groups-demand-release-of-migrant-detainees-following-a-covid-19-outbreak-at-the-laval-immigration-holding-centre/>

³⁹ Public Safety Canada, “COVID-19 Measures at Immigration Holding Centres,” 12 August 2020, <https://www.publicsafety.gc.ca/cnt/trnsprnc/brfng-mtrls/prlmntry-bndrs/20201201/017/index-en.aspx>

⁴⁰ M.F. Kingsley (Office of the Correctional Investigator Canada), Email exchange with Katie Welsford (Global Detention Project), 29 April 2020.

⁴¹ Hanna Gros, Email to Michael Flynn (Global Detention Project), 29 April 2020.

⁴² Government of Canada, “Exposure to COVID-19 in Canada Order (Prohibition of Entry into Canada from the United States),” Order PC number 2020-0161, online <https://orders-in-council.canada.ca/attachment.php?attach=38958&lang=en>

Immigration and Customs Enforcement and placed in removal proceedings.⁴³ Amnesty International responded to these developments, saying in a statement, “Canadian government measures relating to the COVID-19 pandemic must respect human rights standards and obligations under Canadian law, as well as treaties to protect refugee claimants, allowing anyone who enters Canada, whether or not at an official port of entry, to apply for refugee protection.”⁴⁴

Although deportations were temporarily halted in March 2020, they were resumed on 30 November 2020—despite the dangers that removals continued to pose amidst the ongoing pandemic (at the time that they were resumed, Canada was in the midst of a deadly second wave).⁴⁵ According to a Reuters report, CBSA data seen by its journalists reveal that during 2020, 12,122 people were removed from the country—the highest number since 2015. (According to the CBSA, these numbers were high because they included people who decided to leave on their own accord.)⁴⁶

One particular case that attracted widespread criticism was that of Ebrahim Touré, who had previously spent five and a half years in detention until his release on bail in 2018. In November 2020 he was temporarily re-detained and informed of his pending deportation, facilitated by the use of—what transpired to be—a fraudulent passport and birth certificate obtained by a CBSA officer. However, following an investigation in Gambia, Gambian authorities confirmed that the passport had been fraudulently issued—prompting the CBSA to pause his deportation until an investigation into the issue had been concluded.⁴⁷

2.3 Grounds for administrative migration-related detention

Are grounds for administrative migration-related detention provided in law?	Yes
Are there reports of arbitrary migration-related detention?	Yes

Provisions specific to immigration detention, including grounds for arrest and release, are provided in Subsections 55-60 of the Immigration and Refugee Protection Act (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.

⁴³ See for example, A. Coletta, “Canada is Turning Asylum Seekers Away at the Border. In the U.S., They Face Deportation,” *Washington Post*, 29 December 2020, https://www.washingtonpost.com/world/the_americas/canada-asylum-coronavirus-border-deportation/2020/12/28/28a8c588-40cc-11eb-9453-fc36ba051781_story.html

⁴⁴ Amnesty International, “Closing Canada’s Border to Refugee Claimants is Dangerous and Illegal, and Must be Reversed,” 30 March 2020, <https://www.amnesty.ca/news/closing-canada%E2%80%99s-border-refugee-claimants-dangerous-and-illegal-and-must-be-reversed>

⁴⁵ See, for example: UN Network on Migration, “Forced Returns of Migrants Must be Suspended in Times of COVID-19,” 13 May 2020, <https://www.iom.int/news/forced-returns-migrants-must-be-suspended-times-covid-19>

⁴⁶ Reuters, “Exclusive: Canada Deporting Thousands Even as Pandemic Rages,” 22 January 2021, <https://www.reuters.com/article/us-health-coronavirus-canada-deportation-idUSKBN29R1EL>

⁴⁷ S. Wallace, “Deleted Emails, Fraudulent Documents, and Maximum-Security Prisons: A Canadian Case Shows the Illiberalism of Deportation,” *Border Criminologies*, 14 December 2020, <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2020/12/deleted-emails>

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.”

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.

Sections 244-249 of the Immigration and Refugee Protection Regulations (IRPR) 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 of the IRPA or reviewing detention (see 2.9 Procedural standards, below). Accordingly, the risk of absconding is to be assessed based on several factors, including being a 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, and 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) of the IRPA 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 2.5 Asylum seekers below).

Subsection 60, which concerns 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.” The Working Group recommended that “terrorism suspects be detained in the criminal process, with the attached safeguards, and not under immigration laws.”⁴⁸ More recently, in 2018 the UN Committee against Torture noted similar concerns, including the fact that people can be “detained in proceedings that deny them access to the full evidence against them, including intelligence information from foreign countries.” The committee concluded that “the application of the security certificate procedure may therefore result in breaches of the Convention, including indefinite detention.”⁴⁹

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.⁵⁰ In a more recent judgement in 2014 (*Canada (Citizenship and Immigration) v Harkat*) the Supreme Court upheld the security certificate regime.

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

⁴⁸ 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>

⁴⁹ UN Committee against Torture (CAT), “Concluding Observations on the Seventh Periodic Report of Canada, CAT/C/CAN/CO/7,” 21 December 2018, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/C/CAN/CO/7&Lang=En

⁵⁰ 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

provisions of the law. For instance, Subsection 38 provides “health grounds” for concluding that a person is inadmissible.⁵¹

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).⁵² The Canadian Council for Refugees criticised these variations, arguing that they raise questions regarding basic fairness.⁵³ More recently, regional variations were also reported in Immigration and Refugee Board’s (IRB) 2017/2018 external audit—although they appear to be less pronounced. This review found that in 2017 in Central Region, unlikely to appear or flight risk was a ground for detention in 85 percent of all decisions—compared to 77 percent nationally. That same year public danger was a ground in 15 percent of Eastern Region decisions, compared to 11 percent in Central Region and nine percent in Western Region.⁵⁴

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 Canada Border Services Agency (CBSA) or the IRB’s Immigration Division.⁵⁵ Asylum seekers whose refugee protection 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.⁵⁶

According to CBSA statistics, in FY 2019-2020 the vast majority of people were detained on the ground that they were “unlikely to appear” (7,509 people), followed by “identity” (564 people) and “unlikely to appear/danger to the public” (525 people). The CBSA also reports that no-one has been detained on “security certificate” grounds since FY 2012-2013.⁵⁷

⁵¹ 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.

⁵² D. Nakache, “The Human and Financial Cost of Detention of Asylum-Seekers in Canada,” December 2011, <https://www.refworld.org/docid/4fafc44c2.html>

⁵³ 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/>

⁵⁴ Immigration and Refugee Board, “Report of the 2017/2018 External Audit (Detention Review),” 2018, <https://irb.gc.ca/en/transparency/reviews-audit-evaluations/Pages/ID-external-audit-1718.aspx>

⁵⁵ 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>

⁵⁶ 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>

⁵⁷ Canada Border Services Agency (CBSA), “Annual Detention, Fiscal Year 2019 to 2020,” <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2019-2020-eng.html>

2.4 Criminalisation

Does the country use criminal facilities to confine immigration detainees?	Yes
Can people be sentenced to prison for immigration status-related violations?	No
Are people incarcerated in practice?	Yes

The Canadian immigration enforcement system, like the [United States](#) system, is closely linked to the criminal justice system, as exemplified by the country's use of prisons to confine immigration detainees. In recent years, the percentage of detainees held in criminal facilities has slowly fallen: from 43 percent in FY 2014-2015 to 32 percent in FY 2019-2020.⁵⁸ It is worth noting, however, that during the COVID-19 pandemic, the proportion of detainees held in criminal facilities appeared to increase: on 19 April, 147 people were reported to be in immigration detention, 117 of whom were being held in provincial jails.⁵⁹

According to Immigration, Refugees and Citizenship Canada's (IRCC) [Enforcement Manual on Detention](#) (ENF 20), "The [Immigration Holding Centre] IHC should always be the default detention facility if risk can be mitigated, in regions where those facilities are available." A points-based system—called the National Risk Assessment for Detention (NRAD)—is used to determine if an individual can be confined in a criminal establishment: individuals who score 0 to 4 points are to be placed in an Immigration Holding Centre (IHC) when available, while those who score 5 to 9 points could be placed in a provincial correctional facility if the risk cannot be mitigated in an IHC. Finally, individuals with 10 points or more should automatically be placed in a provincial correctional facility.⁶⁰

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 industrialised countries. The country's continued use of jails and prisons has been subject to repeated criticisms. For example, in 2018 the UN Committee against Torture (CAT) highlighted the practice as cause for concern.⁶¹

2.5 Asylum seekers

Is the detention of asylum seekers provided in law?	Yes
Are asylum seekers detained in practice?	Rarely

⁵⁸ Canada Border Services Agency (CBSA), "Annual Detention, Fiscal Year 2019 to 2020," <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2019-2020-eng.html>

⁵⁹ R. Brown, "Canada is Releasing Immigration Detainees at 'Unprecedented' Rates Amid COVID-19 Fears," *Global News*, 25 April 2020, <https://globalnews.ca/news/6861756/canada-releasing-immigration-detainees-coronavirus-covid-19/>

⁶⁰ Immigration, Refugees and Citizenship Canada, "ENF 20 Detention," Updated on 23 March 2020, <https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf20-det-en.pdf>; for more about NRAD, see: S. Silverman and E. Kaytaz, "Examining the 'National Risk Assessment for Detention' Process: An Intersectional Analysis of Detaining 'Dangerousness' in Canada," *Journal of Ethnic and Migration Studies*, 10 November 2020, <https://www.tandfonline.com/doi/abs/10.1080/1369183X.2020.1841613?journalCode=cjms201>

⁶¹ UN Committee against Torture, "Concluding Observations on the Seventh Periodic Report of Canada, CAT/C/CAN/CO/7," 21 December 2018, <https://undocs.org/en/CAT/C/CAN/CO/7>

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 2.3 Grounds for administrative migration-related detention). Other amendments adopted as a result of Bill C-31 have, according to some observers, made certain asylum seekers potentially more susceptible to detention.⁶² In practice, however, it appears that asylum seekers are only rarely detained upon arrival.

Since 2012, pursuant to Bill C-31, arriving 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.”⁶³ 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 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. In May 2019, however, Canada effectively suspended its DCO policy when it removed all countries from the DCO list. Announcing this change, the government stated, “Removing all countries from the DCO list is a Canadian policy change, not a reflection of a change in country conditions in any of the countries previously on the list.”⁶⁴

IRPA Section 20.1(2) / 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 for a minimum of two weeks (if they are over the age of 16). If authorities cannot establish individuals’ identities within two weeks, they will be detained for an additional six months—with the potential for another six months after that, with no judicial review.⁶⁵ This provision does not appear to be regularly 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.”⁶⁶ The Canadian Association of Refugee Lawyers has argued that the DFN designation is unconstitutional; at the time of this publication it had not yet been challenged in court.

⁶² 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>

⁶³ 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>

⁶⁴ Government of Canada, “Canada Ends the Designated Country of Origin Practice,” 17 May 2019, <https://www.canada.ca/en/immigration-refugees-citizenship/news/2019/05/canada-ends-the-designated-country-of-origin-practice.html>

⁶⁵ Canadian Association of Refugee Lawyers, “Designated Foreign Nationals Regime,” <https://carl-acaadr.ca/designated-foreign-nationals-regime/>

⁶⁶ 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/>

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.”⁶⁷

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.”⁶⁸ In 2019, Canada denied access to a full refugee hearing before an independent decision tribunal to anyone who had ever claimed protection in the United States, the United Kingdom, Australia, or New Zealand—the countries with whom Canada shares the Five Eyes intelligence agreement—and instead relegates the claimant to a paper review by an immigration officer.⁶⁹

2.6 Children

Is the detention of unaccompanied children provided in law?	Yes
Is the detention of accompanied children provided in law?	Yes
Number of detained children	138 (FY 2019-2020)

Children can be detained in Canada for reasons related to their migration status. They can be detained for several weeks for reasons of identity or because they are considered a “flight risk.”⁷⁰ In some cases, children may be separated from detained parents and placed in foster care. Even when there are no grounds for detention, children may still be “housed” in detention alongside their parents or guardian in order to avoid the separation of families—a practice that amounts to *de facto* detention.

Several provisions regulate the detention of children. Under Section 60 of the Immigration and Refugee Protection Act (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

⁶⁷ Human Rights Watch, “Letter to Canadian MPs on C-31 Law,” 16 March 2012, <https://www.hrw.org/news/2012/03/16/letter-canadian-mps-c-31-law>

⁶⁸ 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>

⁶⁹ A. Macklin and J. Blum, “Country Fiche – Canada,” January 2021, https://www.asileproject.eu/wp-content/uploads/2021/03/Country-Fiche_CANADA_Final_Pub.pdf

⁷⁰ Canadian Council for Refugees, “Detention and Best Interests of the Child: Report Summary,” January 2010, <http://ccrweb.ca/files/detentionchildrensummary.pdf>

as education and recreational activities.⁷¹ According to the Canada Border Services Agency (CBSA) operational manual, where safety or security is not an issue, the detention of minor children is to be avoided.

Children may be “housed” in detention in order to avoid the separation of families⁷²—a practice that amounts to *de facto* detention. Yet family separation is not entirely preventable, as children must live separately from their fathers because family rooms are restricted to mothers and children in the IHCs.⁷³ 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.”⁷⁴

Not officially considered detained, and unable to benefit from detention review hearings, children detained alongside their parents have been “invisible” to the law.⁷⁵ 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 recognise 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.”⁷⁶

Commenting on the *BB & JFCY* ruling, a 2017 joint civil society submission to the UN Universal Periodic Review called it a “crucial step toward making Canadian children ‘visible’

⁷¹ 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>

⁷² Canada Border Services Agency (CBSA), “National Standards & Monitoring Plan.”

⁷³ 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, 30th Session (April-May 2018),” 2017, https://ihrp.law.utoronto.ca/utfl_file/count/media/Canada%20UPR%20Final.pdf

⁷⁴ 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, 30th Session (April-May 2018),” 2017, https://ihrp.law.utoronto.ca/utfl_file/count/media/Canada%20UPR%20Final.pdf

⁷⁵ 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

⁷⁶ 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, 30th Session (April-May 2018),” 2017, https://ihrp.law.utoronto.ca/utfl_file/count/media/Canada%20UPR%20Final.pdf

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 2.3 Grounds for administrative migration-related detention) “to clarify that the best interests of the child should be a primary consideration in all decisions concerning children.”⁷⁷

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.”⁷⁸ More recently, the UN Special Rapporteur on the Human Rights of Migrants highlighted concerns regarding the *de facto* detention of children alongside their parents, noting that “this practice makes detained migrant children invisible.”⁷⁹

Official CBSA statistics reveal that the number of detained children fell from 807 in Fiscal Year (FY) 2007-2008, to 232 in FY 2014-2015; 162 in FY 2016-2017; and 118 in FY 2018-2019.⁸⁰ In FY 2019-2020, the number of detained minors increased to 138—the majority of whom were detained in the Quebec region.⁸¹ In 2018-2019, children were detained for an average of 18.6 days⁸², but this average dropped by four days in 2019-2020.⁸³ According to

⁷⁷ 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, 30th Session (April-May 2018),” 2017, https://ihrp.law.utoronto.ca/utfl_file/count/media/Canada%20UPR%20Final.pdf

⁷⁸ 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>

⁷⁹ UN Special Rapporteur on the Human Rights of Migrants, “Ending Immigration Detention of Children and Providing Adequate Care and Reception for Them, A/75/183,” 20 July 2020, <https://undocs.org/A/75/183>

⁸⁰ 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>

⁸¹ Canada Border Services Agency (CBSA), “Annual Detention Statistics – 2019-2020,” <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2019-2020-eng.html>

⁸² Canadian Council for Refugees, “The CCR Calls on Canada to End the Immigration Detention of Children,” 26 August 2019, <https://ccrweb.ca/en/media/end-detention-children-2019>

⁸³ Canada Border Services Agency (CBSA), “Annual Detention Statistics – 2019-2020,” <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2019-2020-eng.html>

CBSA statistics, the vast majority of detained minors are “housed” rather than “detained”: in 2019-2020, 136 of the 138 detained minors were “housed.”⁸⁴

2.7 Other vulnerable groups

<p>Does the country class any groups of people as “vulnerable”?</p>	<p>Yes:</p> <ul style="list-style-type: none"> • Pregnant women and nursing mothers • Minors • Elderly persons • Persons suffering from a severe medical condition or disability • Persons suffering from restricted mobility • Persons with a suspected or known mental illness • Victims of trafficking
<p>Are these groups protected from detention?</p>	<p>No</p>

While the Canada Border Services Agency (CBSA) has identified several categories of vulnerable persons, legislation does not prevent the detention of such groups. In 2017, the CBSA established some broad guidelines for the detention of certain groups in its “National Immigration Detention Framework.” (NIDF). The CBSA considers the following categories of people to be “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.”⁸⁵ The NIDF explains that every effort should be made to “reduce to the greatest extent possible” the number of vulnerable persons placed in detention.⁸⁶ However, the framework, which “is not a concrete plan as much as it is a general set of intentions,”⁸⁷ stops short of specifying precisely how the government plans on achieving this goal.

According to a 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

⁸⁴ Canada Border Services Agency (CBSA), “Annual Detention Statistics – 2019-2020,” <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2019-2020-eng.html>

⁸⁵ Canada Border Services Agency (CBSA), “National Immigration Detention Framework,” March 2018, <https://www.cbsa-asfc.gc.ca/security-securite/detent/nidf-cndi-eng.html>

⁸⁶ 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>

⁸⁷ 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>

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.”⁸⁸ Although the CBSA justifies 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.”⁸⁹

2.8 Length of detention

Maximum length for administrative immigration detention in law	Indefinite
Average length of detention	13.9 days (FY 2019-2020)

Immigration detainees can be confined indefinitely in Canada, despite numerous efforts to challenge the legality of long-term detention. Canadian courts have held that the statutory detention reviews framework legally addresses the issue of indefinite detention.⁹⁰

People generally remain in detention for less than three weeks. According to Canada Border Services Agency (CBSA) statistics, the average length of immigration detention in FY 2019-2020 was 13.9 days. This represents a significant decrease since 2014-2015, when detainees were confined for an average of 26.3 days. In 2019-2020, 241 people—or three percent of detainees—were confined for more than 99 days, compared to 527 (6.5 percent) in 2015-2016, and 629 (8.8 percent) in 2014-2015.⁹¹

However, there have been several long-term detention cases that have led to critical scrutiny of Canada’s indefinite detention system. The longest known case is that of Michael Mvogo, a 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 2015.⁹² In 2017, a Ghanaian immigrant named Kashif Ali was released after being detained for more than seven years in a maximum-security jail “because Canada can’t deport him.” Kashif Ali had sought 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

⁸⁸ 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, 30th Session (April-May 2018),” 2017, https://ihrp.law.utoronto.ca/utf1_file/count/media/Canada%20UPR%20Final.pdf

⁸⁹ 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, 30th Session (April-May 2018),” 2017, https://ihrp.law.utoronto.ca/utf1_file/count/media/Canada%20UPR%20Final.pdf

⁹⁰ S. Shillingford, “Canada v Chhina: Should Habeas Corpus be Available to Immigration Detainees?” 11 February 2020, <http://www.thecourt.ca/canada-v-chhina/>

⁹¹ Canada Border Services Agency, “Annual Detention, Fiscal Year 2019 to 2020,” <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2019-2020-eng.html>

⁹² N. 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/>

document.⁹³ And in 2018, Ebrahim Toure, a stateless person, was released from detention after 6 years, more than four of which were spent in a high security prison.⁹⁴

Once a foreign national or permanent resident is detained on immigration-related grounds, the CBSA must notify the independent decision-makers at the Immigration Division (ID) of the Immigration and Refugee Board of Canada (IRB) tribunal. Initial detention can last up to 48 hours, after which an ID member must carry out a detention review. CBSA officers have the authority to release detainees (not including “security certificate” detainees) during the first 48 hours after arrest, prior to the IRB detention review hearing. If the IRB decides to extend detention at the hearing, the case must be reviewed again in seven days, and every 30 days thereafter until release or removal. All detainees have the right to request an early detention review any time new information on their case is collected.⁹⁵ Since they are civil servants, ID decision-makers need not have legal expertise in immigration.⁹⁶ (For more on challenges to Canada’s detention review systems, see the section below on “Procedural guarantees.”)

2.9 Procedural standards

What basic procedural standards are required by law?

- Review of reasons for continued detention
- Information pertaining to the reasons for detention
- Legal counsel
- Free interpretation services

The Canadian Charter of Rights and Freedoms guarantees all people who are arrested or detained access to several key safeguards, including: (a) information pertaining to the reasons for detention; (b) to retain legal counsel; (b) free interpretation services; and (c) the right to contest detention. However, courts have repeatedly held that rights enshrined in the Charter are not applicable to immigration detainees “on the premise that the legal regime already in place for them is ‘separate but equal’” (the so-called “Peiroo exception”).⁹⁷ This regime relies on the controversial Immigration and Refugee Board’s Canada (IRB) administrative hearings. As a result of the 2015 *Chaudhary* decision (described below), there

⁹³ B. Kennedy, “Caged by Canada,” *Toronto Star*, 17 March 2017, <https://www.thestar.com/projects/short/2017/03/17/caged-by-canada.html>

⁹⁴ L. Cecco, “Canada: Man Freed from Indefinite Immigration Detention After Six Years,” *The Guardian*, 3 October 2018, <https://www.theguardian.com/world/2018/oct/03/cananda-ebrahim-toure-immigration-detention>

⁹⁵ 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>

⁹⁶ L. Cecco, “Canada: Man Freed from Indefinite Immigration Detention After Six Years,” *The Guardian*, 3 October 2018, <https://www.theguardian.com/world/2018/oct/03/cananda-ebrahim-toure-immigration-detention>

⁹⁷ S. Shillingford, “Canada v Chhina: Should Habeas Corpus be Available to Immigration Detainees?” 11 February 2020, <http://www.thecourt.ca/canada-v-chhina/>

is a difference of views between the Federal Court and Ontario, where *habeas corpus* is a possible remedy against indefinite detention.⁹⁸

IRPA Section 57 legislates that a member of the Immigration and Refugee Board's (IRB) Immigration Division must hold a review hearing to examine the reasons for continued detention after 48 hours from arrest. Under a quasi-de novo administrative tribunal system, a member reviews the detention reasons within seven days of the initial review, and then at least once during each subsequent 30-day period. By law, the person must be present at each hearing either in-person or via remote videoconferencing.⁹⁹

However, the IRB detention reviews have been challenged for many years. A key case is *Chaudhary v. Canada*, which was brought by four long-term detainees, including Mr. Mvogo, brought the case, in October 2015. The decision restored access to writs of habeas corpus for immigration detainees in the Central Region (Ontario minus Ottawa and Kingston). 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.¹⁰⁰ Following *Chaudhary*, Ontario courts decided a number of other detainee rights cases, including *Toure v. Canada 2018*, *Ali v. Canada 2017*, *Brown v. Canada 2017*, and *Scotland v. Canada (Attorney General) 2017*. In 2019, in considering the 13-month detention of Mr. Tusif Ur Chhina in the province of Alberta, the Supreme Court reinstated access to habeas corpus applications for all detainees across Canada

However, according to the Canadian source who spoke with the GDP, "Refugee lawyers continue to go to the detention review hearings before the Immigration and Refugee Board, but since the 2015 *Chaudhary* decision they have started to make *habeas corpus* applications to the courts as well (mostly in the case of very lengthy detentions)."¹⁰¹

An internal audit of detention hearings commissioned by the IRB, which was eventually publicly released in 2018, recommended several reforms in this review process. The audit recommended improving access to legal aid services for detainees, providing immediate reviews of long-term detention files, and completing release assessment forms.¹⁰² This audit was cited in the 2019 case of *Canada (Public Safety and Emergency Preparedness) v. Chhina*, in which the Supreme Court similarly concluded that immigration legislation leaves some gaps in protection for immigration detainees and confirmed the right for immigration detainees to challenge unlawful immigration detention through *habeas corpus*.¹⁰³ The court pointed to the audit's finding that detainees were not receiving the full benefit of the review

⁹⁸ 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

⁹⁹ 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>

¹⁰⁰ S. Meurnes, "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/>

¹⁰¹ Janet Cleveland (McGill University), Email to Michael Flynn (Global Detention Project), 8 June 2018.

¹⁰² Immigration and Refugee Board of Canada, "Report of the 2017/2018 External Audit (Detention Review)," <https://irb-cisr.gc.ca/en/transparency/reviews-audit-evaluations/Pages/ID-external-audit-1718.aspx>

¹⁰³ Supreme Court of Canada, "Canada (Public Safety and Emergency Preparedness) v. Chhina," 10 May 2019, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17759/index.do>

system, in part because while “the Immigration Division should place the onus on the Minister to continue detention, in practice they often fail to do so.” The court also noted that while the Immigration Division should be impartial and independent from the Canada Border Services Agency (CBSA), it tends to overly defer to the CBSA’s submissions.¹⁰⁴ Nonetheless, the *Chhina* decision affirmed the detention reviews statutory system as procedurally fair overall.

Appeal procedures, for both asylum claims and detention decisions, have also long been criticised. Until 2010, the IRB did not have an asylum appeals mechanism in place, even though such a mechanism had been provided for in Section 63 of the IRPA since 2001.¹⁰⁵ 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 been subject to considerable criticism, in part because it does not give claimants sufficient 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.”¹⁰⁶ 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.

Canadian law holds that detainees can use the administrative process of judicial review at the Federal Court to challenge the procedural fairness of ID decisions, including detention. However, the Federal Court will only hear cases to which it grants leave and, should a case be denied leave, the detainee has no more options for appeal at that court. Unless an Immigration Division adjudicator releases them in the meantime, detainees remain incarcerated while awaiting notification on the judicial review process. Since Canada does not provide lawyers to detainees, however, many either do not know or do not have capacity to pursue this option, and few are successful.¹⁰⁷

¹⁰⁴ Supreme Court of Canada, “Canada (Public Safety and Emergency Preparedness) v. Chhina,” 10 May 2019, para. 63, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17759/index.do>

¹⁰⁵ 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>

¹⁰⁶ Canadian Council for Refugees, “C-11 Regulatory Amendments,” 18 April 2011, http://ccrweb.ca/files/commentesc-11regs_april-2011.pdf

¹⁰⁷ S. Silverman, “Springing Amir,” *Migration and Society*, 4(1), 2021, <https://www.berghahnjournals.com/view/journals/migration-and-society/4/1/arms040116.xml>

2.10 Detaining authorities and institutions

What authorities are responsible for detention and other migration-control measures?	<ul style="list-style-type: none">• Immigration, Refugees and Citizenship Canada (IRCC)• Canada Border Services Agency (CBSA)• Ministry of Public Safety and Emergency Preparedness• Immigration and Refugee Board of Canada (IRB)• Royal Canadian Mounted Police (RCMP)• Ministry of Border Security and Organized Crime Reduction• Provincial correctional authorities
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Canada's immigration and detention policies are overseen by several different agencies. Immigration, Refugees and Citizenship Canada (IRCC) maintains overall responsibility for administering the Immigration and Refugee Protection Act (IRPA). The Canada Border Services Agency (CBSA), which is part of the Ministry of Public Safety and Emergency Preparedness, is responsible for making arrests and holds detaining authority and carries out removals.¹⁰⁸

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.¹⁰⁹

2.11 Non-custodial measures

Does the law require consideration of non-custodial measures as part of detention procedures?	Yes
Are non-custodial measures used in practice?	Yes

"Alternatives to detention" are a formal part of Canadian immigration detention procedures. The Immigration and Refugee Protection Regulations (IRPR) (Section 248) stipulate 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 Immigration and Refugee Protection Act (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,

¹⁰⁸ 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>

¹⁰⁹ Immigration and Refugee Board of Canada, "About the Board," December 2016, <http://www.irb-cisr.gc.ca/Eng/BoaCom/Pages/index.aspx>

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 geographic area,” or “detention in a form that could be less restrictive to the individual.”¹¹⁰

There continue to be barriers to the application of ATDs, particularly for asylum seekers, and the use of electronic monitoring as ATDs remains an important focus of criticism. 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, “electronic monitoring—such as wrist or ankle bracelets—are considered harsh... and should as far as possible be avoided.”¹¹¹

After onset of the COVID-19 pandemic, electronic monitoring was used for some immigration detainees released during the early months of the crisis. Described as a “temporary measure guiding the use of detention and the consideration of alternatives to detention” by the Canada Border Services Agency (CBSA),¹¹² the agency reported in May 2020 that the Electronic Monitoring Program was being employed in the Greater Toronto Area and Quebec regions. Observers quickly moved to condemn the programme: Montreal-based Solidarity Across Borders denounced the measure, stating that it represented an “enormous expansion” in surveillance that would “never stand in any other context.”¹¹³

Asylum seekers who are detained for identity reasons, reportedly few in number, are at a greater risk of prolonged detention without access to ATDs.¹¹⁴ Several NGOs have 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.¹¹⁵

An important early development of ATDs in Canada was the Toronto Bail Program (TBP), established in 1996 as a branch or offshoot of the criminal bail program. The TBP can provide assistance to detainees who cannot afford the bond payment for their releases,

¹¹⁰ 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>

¹¹¹ United Nations High Commissioner for Refugees (UNICEF) “Detention Guidelines,” 2012, <http://www.unhcr.org/505b10ee9.html>

¹¹² S. Ross, “Some Migrants Now Tracked With Ankle Bracelets As Pandemic 'Temporary Measure',” *CTV NEWS*, 28 May 2020, <https://montreal.ctvnews.ca/some-migrants-now-tracked-with-ankle-bracelets-as-pandemic-temporary-measure-1.4959851>

¹¹³ S. Ross, “Some Migrants Now Tracked With Ankle Bracelets As Pandemic 'Temporary Measure',” *CTV NEWS*, 28 May 2020, <https://montreal.ctvnews.ca/some-migrants-now-tracked-with-ankle-bracelets-as-pandemic-temporary-measure-1.4959851>

¹¹⁴ 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.

¹¹⁵ 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>

while also helping individuals to find a lawyer, social support, and housing. The TBP is available only to Toronto-based detainees and screens all applicants rigorously.¹¹⁶ While in the programme, clients must abide by strict requirements, which may include reporting to TBP offices twice weekly, social counselling, and unannounced visits to their designated address. Violating any of these conditions may result in re-detention.¹¹⁷ In 2020-2021, a total of 424 people were supervised by the programme—247 of whom had been held in jails, and 177 in holding centres. During the past ten years, the largest number of persons to have been supervised during one year was 493 in FY 2016-2017.¹¹⁸

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.¹¹⁹ The Canadian Council for Refugees has warned that the programme's demanding reporting requirements inherited from the criminal model are "inappropriate in the area of immigration detention." They add, "Release models for those detained on immigration grounds must not contribute to real or perceived criminalization of migrants."¹²⁰ Moreover, according to a 2013 report, "TBP staff visit the places of detention and conduct interviews with the detainee in order to determine whether to take him or her on as a client. Interviewees flagged up two issues regarding the fairness of the TBP interview process: the uncertainty around TBP selection criteria and processes, and the requirement that they agree in writing to leave Canada if so required by the authorities."¹²¹

Nevertheless, many rights actors have praised the programme as a less restrictive "alternative to detention." It is also much less expensive. In FY 2020-2021, the average daily cost per person was 9.81 CAD,¹²² compared to the 320 CAD that the CBSA estimates it cost to detain an individual for one day in 2019.¹²³ In FY 2020-2021, the TBP estimates that a total of 6,305,638.00 CHF cost avoidance savings were made by the programme. With a

¹¹⁶ 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>

¹¹⁷ 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>

¹¹⁸ Toronto Bail Program, "Fiscal 2020-2021 Caseload Summary."

¹¹⁹ 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>

¹²⁰ Canadian Council for Refugees, "Alternatives to Detention: CCR Comments Regarding the Toronto Bail Program," January 2015, <https://ccrweb.ca/en/alternatives-detention-comments-toronto-bail-program>

¹²¹ C. Costello and E. Kaytaz, "Building Empirical Research Into Alternatives to Detention: Perceptions of Asylum-Seekers and Refugees in Toronto and Geneva," *UNHCR Division of International Protection*, June 2013, <https://www.refworld.org/docid/51a6fec84.html>

¹²² Toronto Bail Program, "Fiscal 2020-2021 Caseload Summary."

¹²³ National Post, "Could be 48 Hours ... or Five Years': Five Things to Know About Canadian Immigration Detention Centres," 7 July 2019, <https://nationalpost.com/news/canada/five-things-to-know-about-canadian-immigration-detention-centres>

non-compliance rate of 9.43 percent during FY 2020-2021 (40 people out of the total 424),¹²⁴ it also addresses specific needs related to addiction and mental health issues.¹²⁵

The National Immigration Detention Framework (NIDF) allocated extra funding to develop additional Alternatives to Detention. The CBSA 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.”¹²⁶

The NIDF also introduced expanded voice reporting as well as electronic monitoring on a pilot basis in the Greater Toronto Area. In deploying electronic monitoring, the CBSA outsourced services to Correctional Services Canada (CSC): an individual’s GPS coordinates are collected and stored in software maintained by CSC, and if alerts occur on an individual CSC will contact them (reportedly, all alert information and CSC’s attempts to resolve alerts are provided to the CBSA).¹²⁷

2.12 Regulation of detention conditions and regimes

Does the country use prisons for immigration detention?	Yes
Does the country have regulations establishing minimum conditions and treatment in detention?	Yes

As well as employing dedicated immigration detention facilities, Canada also detains non-citizens in criminal facilities for reasons related to their migration status. 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 March 2020. This outlines the non-binding principles that govern the treatment of persons detained under the Immigration and Refugee Protection Act (IRPA) and thus covers persons in both dedicated detention facilities as well as those placed in provincial jails and prisons. Key principles include: 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 Canada Border Services Agency (CBSA) complies with these standards through regular monitoring and evaluation by an external agency. Several manuals published by Correctional Services Canada (CSC) also outline conditions in provincial prisons, and apply to all persons detained within such facilities.

¹²⁴ Toronto Bail Program, “Fiscal 2020-2021 Caseload Summary.”

¹²⁵ 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>

¹²⁶ 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>

¹²⁷ Canada Border Services Agency, “Alternatives to Detention Program,” <https://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/pia-efvp/atip-aiprp/atd-srd-eng.html>

2.13 Domestic monitoring

Do NGOs carry out visits?	Yes
Has the country established a National Preventive Mechanism (NPM)?	No

A number of civil society organisations have access to immigration detention centres. In Montreal, Action Réfugiés Montréal has an agreement with the Canada Border Services Agency (CBSA) allowing them to access the Laval Immigration Holding Centre to provide legal information and other basic assistance to detainees.¹²⁸ The Canadian Red Cross visits facilities in British Columbia, Ontario, Quebec, and Alberta through an agreement with the government of Canada. During its visits, the Red Cross monitors detention conditions to ensure rights are being upheld, as well as to hold private discussions with detainees. It also periodically releases reports to the public.¹²⁹

In 2019, CBSA published the Red Cross's 2017-2018 immigration detention monitoring program's annual report. According to the report, the Red Cross carried out 15 visits between December 2017 and March 2018. Among the concerns it reported were the use of correctional facilities to hold immigration detainees, who it said were treated in same manner as criminal detainees; the need to provide more information to detainees about their rights; difficulties in accessing medical and mental health care in correctional facilities; limitations in access to outdoor areas and recreational activities; and gaps in detainees' abilities to maintain contact with the outside world.¹³⁰

As noted in the section below on "International monitoring," Canada's failure to ratify (as of April 2021) the [Optional Protocol to the Convention against Torture \(OPCAT\)](#), can lead to a detention monitoring gap as the OPCAT would require it to set up a National Preventive Mechanism whose mandate would include visiting all sites of detention. While Canada's Office of the Correctional Investigator monitors conditions of detention in correctional facilities, this office has no jurisdiction over immigration detainees held in CBSA or provincial facilities, and no jurisdiction over people held by the CBSA on national security grounds.¹³¹ Likewise, the Canadian Human Rights Commission, established in 1977, does not have a mandate to visit places of detention, although detention monitoring is widely viewed as a core protection issue for independent national human rights institutions.¹³²

¹²⁸ Action Réfugiés Montréal, "Detention Program," accessed 4 March 2021, <https://actionr.org/im-a-refugeed-person/detention-program/>

¹²⁹ 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>

¹³⁰ Canadian Red Cross, "Immigration Detention Monitoring Program (IDMP) Annual Monitoring Activity Report: Monitoring Period - September 2017 to March 2018," <https://www.cbsa-asfc.gc.ca/security-securite/detent/idmp-pscd-eng.html>

¹³¹ 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>

¹³² United Nations Office of the High Commissioner for Human Rights, "Survey of National Human Rights Institutions," July 2009.

2.14 International monitoring

Has the country ratified the Optional Protocol to the Convention against Torture (OPCAT)?	No
Does the country receive visits from the Subcommittee on Prevention of Torture (SPT)?	No
Has the country received comments from international human rights mechanisms regarding its immigration detention practices?	Yes

As of April 2021, Canada had not ratified the [Optional Protocol to the Convention against Torture](#) (OPCAT), which establishes “a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty,”¹³³ including immigration detention. As such, the country does not have an independent National Preventive Mechanism authorised to make visits to all sites of detention nor does it invite visits by the Subcommittee on Prevention of Torture (SPT), set up under OPCAT.

Canadian authorities have pledged to ratify OPCAT on numerous occasions—for example, in 2006 during the country’s candidacy for the UN Human Rights Council, and in May 2016 when 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.”¹³⁴ In September 2018, following a recommendation to ratify the OPCAT during the country’s third cycle of the Universal Periodic Review, Canada reported back to the UN Human Rights Council that “a decision on Canada’s accession has not yet been determined.”¹³⁵

The country’s immigration detention laws and practices have, however, been the subject of review by international human rights mechanisms. Most recently, in 2018 the UN Committee against Torture (CAT) noted several concerns, including mandatory detention of “irregular arrivals,” the lack of an effective mechanism to review the lawfulness of detention, inadequate mental and physical health care services in federal immigration detention centres, the use of provisional correctional facilities to detain non-nationals for reasons related to their immigration status, the detention of children, and the continued practice of issuing “security certificates.”¹³⁶

During its third Universal Periodic Review in 2018, Canada also received numerous recommendations related to its immigration detention practices, including regarding the lack of a detention time limit (“142.266 Give attention to the issue of immigration detention for an indefinite period and seek to amend legislation to set a time limit for detention (Costa Rica)”), and the detention of children. In addition, states also urged Canada to ratify international human rights instruments which it is not yet a party including the International Convention on

¹³³ 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>

¹³⁴ 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

¹³⁵ Canada OPCAT Project, “Canadian Correctional Investigator – When Will Canada Sign the Optional Protocol to the Convention against Torture?,” 11 January 2019, <https://canadaopcatproject.ca/2019/01/11/correctional-investigator-canada-sign-opcat/>

¹³⁶ UN Committee against Torture, “Concluding Observations on the Seventh Periodic Report of Canada, CAT/C/CAN/CO/7,” 21 December 2018, <https://undocs.org/en/CAT/C/CAN/CO/7>

the Protection of the Rights of All Migrant Workers and Members of Their Families (Paraguay) (Egypt) (Uruguay) (Philippines) (Algeria) (Benin) (para. 142.6).¹³⁷

2.15 Privatisation

Is detention centre management privatised?	No
Are private companies involved in the provision of services within detention centres?	Yes

Private actor involvement in Canada's immigration detention system dates back nearly two decades. The issue appears to have gained particular momentum in 2010, when the Canada Border Services Agency (CBSA) issued an evaluation report that advocated using private corrections companies to operate its centres.¹³⁸ While CBSA currently manages Canada's three dedicated immigration holding centres, private companies provide day-to-day services, including security.

The multinational security firm G4S provides security at the Toronto Immigration Holding Centre, which has also been administered 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."¹³⁹

Serco, "one of the biggest players in the immigration detention business worldwide," has also lobbied "Ottawa on the subject of immigration service delivery."¹⁴⁰ In March 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.¹⁴¹ The government has also considered contracting out services at provincial prisons, which hold a significant percentage of CBSA detainees, to U.S. private prison corporations such as GEO Group.¹⁴²

The role of private actors in immigration detention centres came under scrutiny in the wake of the 2013 suicide of Mexican detainee—Lucía Dominga Vega Jiménez—at the Immigration Holding Centre at Vancouver Airport. The coroner found a lack of suicide prevention and

¹³⁷ UN Human Rights Council, "Report of the Working Group of the Universal Periodic Review, Canada, A/HRC/39/11," 11 July 2018, https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/11

¹³⁸ 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>

¹³⁹ 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>

¹⁴⁰ 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>

¹⁴¹ 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>

¹⁴² 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

mental health training for private security personnel staffing the IHC.¹⁴³ The incident helped spur the opening, in 2020, of a new detention centre in nearby Surrey to replace the Vancouver airport centre. The Canada Border Services Agency (CBSA), however, insisted that it would continue to contract guard services from private companies, despite recommendations to use CBSA staff.¹⁴⁴

The privatisation of immigration detention has found particularly strong footholds in several predominately English-language countries, including 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.¹⁴⁵

2.16 Cost of detention

Daily detention cost (per person)	320 CAD (2019)
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In 2019, the Canada Border Services Agency (CBSA) estimated that it cost 320 CAD (252 USD) to detain an individual for one day—which adds up to 116,800 CAD per detainee per year (it is unclear if these numbers include costs for detainees confined only at dedicated centres or also those at provincial prisons).¹⁴⁶ Previously, in 2017 immigration detention was found to cost Canadian taxpayers 250 CAD (196 USD) per detainee per day.¹⁴⁷

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 1997-1996.¹⁴⁸ 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, these costs were largely centred

¹⁴³ Ministry of Justice, Coroners Service, Province of British Columbia, "Verdict at Coroner's Inquest: Findings and Recommendations at the Result of the Coroner's Inquest Pursuant to Section 38 of the Coroner's Act, [SBC 2007] c 15, Into the Death of Lucia Dominga Vega Jimenez," 2014, <https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/inquest/2014/vega-jimenez-lucia-dominga-2013-0380-0004-verdict.pdf>

¹⁴⁴ B. Mahichi, "CBSA Says New Holding Centre Promises Better Treatment for Detainees," *Vancouver Sun*, 10 June 2018, <https://vancouversun.com/news/local-news/cbsa-no-plans-in-future-to-stop-contracting-private-guards>

¹⁴⁵ 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

¹⁴⁶ National Post, "Could be 48 Hours ... or Five Years': Five Things to Know About Canadian Immigration Detention Centres," 7 July 2019, <https://nationalpost.com/news/canada/five-things-to-know-about-canadian-immigration-detention-centres>

¹⁴⁷ 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>

¹⁴⁸ A. Pratt, *Securing Borders: Detention and Deportation in Canada*, Vancouver: University of British Columbia Press, 2005.

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.¹⁴⁹ According to *The Toronto Star*, federal payments to Ontario 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.”¹⁵⁰

As part of the National Immigration Detention Framework, the Minister of Public Safety and Emergency Preparedness pledged an additional 138 million CAD (108.5 million USD) investment to “expand and improve” the detention facilities.¹⁵¹ Authorities used funds from this to help open a new facility in March 2020 (Surrey Immigration Holding Centre), replacing the Vancouver airport facility.¹⁵²

2.17 Transparency and access to information

Is data pertaining to immigration detention readily available?

Partial

In its National Immigration Detention Framework, the Canada Border Services Agency (CBSA) cites transparency as one of its four “pillars” and voiced its intentions to make the Canadian Red Cross’ monitoring reports available to the public. However, compared to the United States and many countries in Europe, Canada continues to have important shortcomings in its public provision of information concerning immigration detention data. This is particularly the case with respect to the use of provincial prisons for immigration purposes as the country appears to lack an updated, publicly accessible account of which facilities are being used at any given time. The lack of independent national and international oversight bodies may have helped encourage this gap in transparency.

According to one expert consulted for this report, an important gap in Canada is that it does not have an easily accessible detainee locator system, like the online system provided by the U.S. Immigration and Customs Enforcement (ICE).¹⁵³ What data is available, she said, is “not disaggregated by race” and fails to account for children who are “housed” in detention with their parents, which makes it “hard to know how many kids are being held.” Also, “people’s time is divided into chunks and those detained less than 48 hours are not included, so it is hard to get a picture of how long people are being held. Part of the problem is that CBSA does not have up-to-date software and the system is estimated to cost +10 million

¹⁴⁹ 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>

¹⁵⁰ 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>

¹⁵¹ 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>

¹⁵² On-Site, “Construction Contract Awarded for B.C. Immigration Holding Centre,” 3 January 2018, <https://www.on-sitemag.com/construction/government-canada-awards-construction-contract-new-immigration-holding-centre-surrey-b-c/1003958014/>

¹⁵³ ICE, “Online Detainee Locator System,” <https://locator.ice.gov/odls/>

CAD to build and thus detainees' files continue to be on paper and are transferred like that.”¹⁵⁴

The GDP has had mixed results in its official requests for information from government agencies in Canada. In 2013, CBSA, responding to a freedom of information request issued by the GDP and Access Info Europe, released a substantive amount of data concerning use of provincial correctional facilities and detention centres during the period 2010-2012.¹⁵⁵ An assessment of this data, as well as a comparison of Canada's transparency levels vis-a-vis European countries, was provided in the GDP-Access Info report “[The Uncounted](#)” (2015).¹⁵⁶

More recently, in developing data and information to complete this report on Canada, the GDP sent information requests to six government bodies and representatives (including the CBSA) in July 2020—requesting up-to-date information on which provincial prisons are being used to detain non-nationals, and data concerning the number of immigration detainees confined in such facilities. As of this report's publication in April 2021, the GDP had received responses with full information from just two bodies—Quebec's Ministry of Public Security and Manitoba Justice.

2.18 Trends and statistics

Immigration detainee population	6,268 (FY 2019-2020)
Average length of detention	13.9 days (FY 2019-2020)
Number of removals	11,313 (FY 2019-2020)
Number of asylum applications	23,900 (2020)

Between 2012 and 2017, Canada's immigration detainee population steadily decreased, from 8,742 in FY 2012-2013, to 6,268 in FY 2016-2017. However, since then the population has been rising: 8,355 in FY 2017-2018; 8,781 in FY 2018-2019; and 8,825 in FY 2019-2020. The Canada Border Services Agency (CBSA) attributes this increase in detainee numbers to “the constant surge of Mexican travellers since the visa requirement was lifted in December 2016, as well as to the persistent influx of irregular arrivals.”¹⁵⁷

The number of detained children fell from 807 in FY 2007-2008, to 232 in FY 2014-2015; 162 in FY 2016-2017; and 118 in FY 2018-2019.¹⁵⁸ In FY 2019-2020, the number of detained minors increased to 138—the majority of whom were detained in the Quebec

¹⁵⁴ S. Silverman, Communication with M. Flynn (Global Detention Project), April 2021.

¹⁵⁵ Canada Border Services Agency, Official Response to Access to Information Request, 18 April 2013, available at: <https://www.globaldetentionproject.org/canada-border-services-agency-access-to-information-requests-18-04-2013>

¹⁵⁶ Global Detention Project and Access Info, “The Uncounted: Detention of Migrants and Asylum Seekers in Europe,” 2015, <https://www.globaldetentionproject.org/wp-content/uploads/2015/12/The-Uncounted.pdf>

¹⁵⁷ Canada Border Services Agency (CBSA), “Annual Detention, Fiscal Year 2019 to 2020,” <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2019-2020-eng.html>

¹⁵⁸ 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>

region.¹⁵⁹ In 2018-2019, children were detained for an average of 18.6 days¹⁶⁰, but this average dropped by four days in 2019-2020.¹⁶¹ According to CBSA statistics, the vast majority of detained minors are “housed” alongside parents or guardians rather than “detained”: in 2019-2020, 136 of the 138 detained minors were “housed”¹⁶² (for more on “housing” children in detention, see 2.6 Children).

The average length of detention has decreased from 22.2 days in FY 2012-2013 (with 6.6 percent of detainees facing detention for more than 99 days), to 13.9 days in FY 2019-2020 (with three percent of detainees facing detention for more than 99 days). The vast majority of detainees have been held in Ontario (5,265 in FY 2019-2020), followed by Quebec (1,755 in FY 2019-2020) and British Columbia (1,470 in FY 2019-2020).¹⁶³

Since a CBSA announcement in 2016, the numbers of detainees placed in provincial correctional centres have gradually decreased—albeit in a fluctuating manner. In FY 2015-2016, 43 percent of immigration detainees were held in provincial prisons and “other” facilities (which include “other law enforcement agencies (i.e., Royal Canadian Mounted Police (RCMP) detachments, local and provincial police cells), CBSA ports of entry (POE) and inland enforcement (IE) cells”). In FY 2016-2017, 41 percent were held in criminal facilities, followed by 29 percent in FY 2017-2018; 31 percent in 2018-2019; and 32 percent in FY 2019-2020.¹⁶⁴

2.19 Externalisation, readmission, and third country agreements.

Signed in 2002 between Canada and the United States, the Safe Third Country Agreement (STCA) came into effect on December 29, 2004. Under this Agreement, asylum seekers (or “refugee claimants”) have to request refugee protection in the first safe country they arrive in. Asylum seekers cannot apply for refugee status when crossing the Canadian border from the United States. Exceptions to the STCA are family members, unaccompanied minors, document holders, and cases in the public interest.¹⁶⁵

In July 2020 the Federal Court of Canada ruled that the STCA infringes the rights of refugee claimants under section 7 of the Canadian Charter of Rights and Freedoms, citing in

¹⁵⁹ Canada Border Services Agency (CBSA), “Annual Detention Statistics – 2019-2020,” <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2019-2020-eng.html>

¹⁶⁰ Canadian Council for Refugees, “The CCR Calls on Canada to End the Immigration Detention of Children,” 26 August 2019, <https://ccrweb.ca/en/media/end-detention-children-2019>

¹⁶¹ Canada Border Services Agency (CBSA), “Annual Detention Statistics – 2019-2020,” <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2019-2020-eng.html>

¹⁶² Canada Border Services Agency (CBSA), “Annual Detention Statistics – 2019-2020,” <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2019-2020-eng.html>

¹⁶³ Canada Border Services Agency (CBSA), “Annual Detention, Fiscal Year 2019 to 2020,” <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2019-2020-eng.html>

¹⁶⁴ Canada Border Services Agency (CBSA), “Annual Detention, Fiscal Year 2019 to 2020,” <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2019-2020-eng.html>

¹⁶⁵ Public Safety Canada, “Government of Canada to appeal the Federal Court decision on the Safe Third Country Agreement,” 21 August 2020, <https://www.canada.ca/en/public-safety-canada/news/2020/08/government-of-canada-to-appeal-the-federal-court-decision-on-the-safe-third-country-agreement.html>

particular the use of immigration detention in the USA. The decision was suspended for six months to allow the Canadian Parliament to respond,¹⁶⁶ and was later stayed in October 2020, pending a decision from the Federal Court of Appeal.¹⁶⁷ On 15 April 2021, a Federal Court of Appeal overturned the July 2020 decision.¹⁶⁸ At the time of this publication, advocates were considering a challenge to this latest ruling at the Canadian Supreme Court.

¹⁶⁶ Reuters, “Canada Court Rules ‘Safe Third Country’ Pact with U.S. Invalid, Cites Detention Risk,” 22 July 2020, <https://www.reuters.com/article/us-canada-refugee-safethird-idUSKCN24N2B2>

¹⁶⁷ Federal Court of Appeal, “Canada (Citizenship and Immigration) v. Canadian Council for Refugees,” 26 October 2020, <https://decisions.fca-caf.gc.ca/fca-caf/decisions/en/item/487582/index.do>

¹⁶⁸ Le Devoir, “*L’entente sur les tiers pays sûrs est maintenue*,” 16 April 2021, <https://www.ledevoir.com/politique/canada/598864/demandeurs-d-asile-l-entente-sur-les-tiers-pays-surs-est-constitutionnelle-dit-la-cour-d-appel-federale>



3. DETENTION INFRASTRUCTURE

3.1 Summary

With only three dedicated immigration holding centres, 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](#). 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 (such as those deemed to pose a threat to public safety or who are detained for criminality reasons).

The Canada Border Services Agency (CBSA) reportedly had, as of 2020, bilateral agreements with four provincial governments to allow the use of provincial correctional facilities for the purpose of immigration detention: Alberta (2006), Ontario (2015), Quebec (2017) and British Columbia (2017).¹⁶⁹ However, according to information received by the GDP from an official in Manitoba, all six of that province's correctional facilities can be used for immigration detention.¹⁷⁰ Quebec reported that 17 correctional facilities have been used for confining immigration detainees since 2011. Of these 17 facilities, 12 had confined immigration detainees in FY 2019-2020.¹⁷¹ Previously, CBSA, responding to a freedom of information request issued by the GDP and Access Info Europe, released data revealing that between 2010-2012 Canada had used 43 provincial prisons (this figure did not include prisons used to hold immigration detainees for very short periods of time before transfer to other facilities).¹⁷²

Central to Canada's National Immigration Detention Framework (NIDF) have been plans to improve the country's immigration holding centres, 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

¹⁶⁹ Immigration, Refugees and Citizenship Canada, "ENF 20 Detention," Updated on 23 March 2020, <https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf20-det-en.pdf>

¹⁷⁰ Greg Skully (Executive Director, Custody Corrections, Manitoba Justice), Letter to Stella Warnier (Global Detention Project), 20 July 2020.

¹⁷¹ Geneviève Lamothe (Direction générale des affaires ministérielles, Quebec), Letter to Stella Warnier (Global Detention Project), 21 December 2020.

¹⁷² Canada Border Services Agency, Official Response to Access to Information Request, 18 April 2013, available at: <https://www.globaldetentionproject.org/canada-border-services-agency-access-to-information-requests-18-04-2013>

provincial prisons.¹⁷³ As part of the NIDF, authorities opened a new detention facility in March 2020—in the Vancouver suburb of Surrey, British Columbia—replacing the Vancouver airport facility.

3.2 Detention facilities.

According to CBSA, as of 2021 it was operating IHCs in Toronto, Montréal (Laval), and Surrey (British Columbia), which had a combined had capacity of 362.¹⁷⁴ They operate as medium-security prisons, with fences equipped with razor wire, central locking door systems, security guards, and surveillance cameras.¹⁷⁵ Refugee rights advocates have also reported to the GDP that the Vancouver Airport IHC remains operational as of April 2021 (to detain people immediately prior to their deportation), despite operations largely shifting to the nearby Surrey IHC in 2020.

3.2a Toronto Immigration Holding Centre. The IHC—referred to by the CBSA as the Greater Toronto Area (GTA) IHC—opened in 2004. It is a three-story building located approximately eight kilometres from Toronto’s Pearson International Airport and has a capacity to hold up to 183 detainees (making it the largest of Canada’s three IHCs). The top floor is devoted solely to men, while the middle floor is divided into two wings, one for men and one for women. The ground floor is reserved for mothers and their children. Outside, there are two recreational areas: one that can be used at different times of day by men and women, and another for families, which includes children’s play equipment. According to the CBSA, the facility also includes a library, exercise room, multi-faith prayer room, a dedicated room for NGOs and counsel to meet with detainees, a children’s schooling room, and medical facilities where nursing staff are present 24 hours a day.¹⁷⁶ 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.¹⁷⁷

There are numerous security cameras and guards, and detainees may not circulate amongst 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 times. 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.

¹⁷³ 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>

¹⁷⁴ Canada Border Services Agency (CBSA), “Immigration Holding Centres,” https://www.cbsa-asfc.gc.ca/security-securite/ihc-csi-eng.html#_s3

¹⁷⁵ 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

¹⁷⁶ Canada Border Services Agency (CBSA), “Immigration Holding Centres,” <https://www.cbsa-asfc.gc.ca/security-securite/ihc-csi-eng.html>

¹⁷⁷ 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>

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.¹⁷⁸

In 2018, renovations were begun at the IHC, which were reportedly still on-going in 2019. As of April 2021 the current status of these renovations remained unclear, especially in light of work stoppages related to the COVID-19 pandemic. The facility was “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.¹⁷⁹

3.2b Laval Immigration Holding Centre. Officially called *the Centre de surveillance de l’Immigration*, the Laval IHC facility is operated under a Memorandum of Understanding with the Correctional Services of Canada, who is the owner of the facility. Located approximately 30 kilometres from the Montréal-Trudeau International Airport, the centre can hold up to 109 detainees. Detainees are housed in two separate buildings, one for men and one for women and children, with a third building used for administration. There are three separate outdoor recreational spaces—men’s and women’s yards, and an area for families—and the centre also includes an exercise room, large common rooms within each living unit, a large cafeteria, a multi-faith prayer room, a visitation room, and a multi-purpose room for schooling children. The CBSA also reports that the facility includes medical facilities, where nursing staff are on site 24 hours a day.¹⁸⁰ Conditions appear to be broadly similar to those in the Toronto IHC except that detainees sleep in dorms and there is no glass partition in the visitor’s room at the Laval IHC.¹⁸¹

The IHC 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.”¹⁸²

As part of the National Immigration Detention Framework (NIDF), in 2016 authorities announced plans to open a new replacement facility on CSC grounds besides Leclerc Prison in Laval. According to Stop the Prison, this location was identified in 2017, but was an unpopular choice with CBSA which noted that “the close proximity of the site to the existing high security institution is not ideal as IHC should not be perceived to be associated with a

¹⁷⁸ 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

¹⁷⁹ 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>

¹⁸⁰ Canada Border Services Agency (CBSA), “Immigration Holding Centres,” <https://www.cbsa-asfc.gc.ca/security-securite/ihc-csi-eng.html>

¹⁸¹ 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

¹⁸² 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>

correctional institution.”¹⁸³ Slated to open in 2021 (although no official timeline appears to have been made public), the new facility is anticipated to hold up to 158 immigration detainees.¹⁸⁴

3.2c Surrey Immigration Holding Centre (British Columbia). In March 2020, authorities opened the Surrey IHC—referred to by the CBSA as the British Columbia IHC, and as the Pacific IHC by the IRB—to replace the B.C. Immigration Holding Centre at Vancouver Airport (see B.C. Immigration Holding Centre). In announcing the new facility—the opening of which was financed as part of the National Immigration Detention Framework (NIDF)—authorities stated that detainees would have access to outdoor space, natural light, and proper ventilation; as well as the provision of mental health services—although the CBSA stated that it would continue to contract guard services to private staff, despite recommendations to use CBSA staff.¹⁸⁵

The two-storey facility can detain up to 70 people, and provides separate living areas for men, women, and families. According to the CBSA, it includes three outdoor recreational areas, a large service kitchen, common rooms within each living area, a multi-faith room, a library, an exercise room, visitation rooms, a dedicated room for NGOs and counsel to privately meet with detainees, medical facilities with nursing staff on site 24 hours a day, and a children’s playroom and schooling room.¹⁸⁶

3.2d B.C. Immigration Holding Centre. Prior to the opening of the Surrey IHC, Canada operated a short-term detention facility in the basement of Vancouver International Airport. It had a total of 24 beds, with men and women detained in separate rooms. Detained children were allowed to remain with their mothers, while unaccompanied minors were also housed separately. The rooms themselves had limited washroom facilities, although each common area had a full washroom and shower, as well as a television. There was one four-bedroom unit for families, as well as two extra rooms with two beds each. However, due to its location in the basement of the airport, there was no access to an outside area or to daylight.¹⁸⁷

After 48 hours, detainees were transferred to prisons in British Columbia (BC). Most male detainees were then detained at Fraser Regional Correctional Centre—a prison for sentenced male offenders—where they were subject to the same institutional rules as criminal prisoners.¹⁸⁸

¹⁸³ Stop the Prison, “Against Borders, Against Prisons. Stop the Laval Migrant Prison,” accessed 12 March 2021, <https://www.stopponslaprison.info/en/home/>

¹⁸⁴ Stop the Prison, “Against Borders, Against Prisons. Stop the Laval Migrant Prison,” accessed 12 March 2021, <https://www.stopponslaprison.info/en/home/>

¹⁸⁵ B. Mahichi, “CBSA Says New Holding Centre Promises Better Treatment for Detainees,” *Vancouver Sun*, 10 June 2018, <https://vancouversun.com/news/local-news/cbsa-no-plans-in-future-to-stop-contracting-private-guards>

¹⁸⁶ Canada Border Services Agency (CBSA), “Immigration Holding Centres,” <https://www.cbsa-asfc.gc.ca/security-securite/ihc-csi-eng.html>

¹⁸⁷ 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.

¹⁸⁸ D. Nakache, “The Human and Financial Cost of Detention of Asylum-Seekers in Canada,” December 2011, <http://www.refworld.org/docid/4fafc44c2.html>

Although the CBSA does not include the facility in its list of IHCs, Canadian refugee rights advocates have reported to the GDP that as of April 2021, the facility continues to be used—albeit minimally—to detain people immediately prior to their deportation.

3.2e Kingston Immigration Holding Centre. This was a cluster of trailers erected on the grounds of Millhaven Institution, a maximum-security criminal prison located in Bath, Ontario. The Kingston IHC was specifically designed and constructed to hold security certificate detainees. It closed in 2012. While in operation, few people were detained at this facility.¹⁸⁹

3.2f Provincial Correctional Centres. Since 2016, the numbers of detainees placed in jails and prisons has gradually decreased—albeit in a fluctuating manner. In FY 2015-2016, 43 percent of immigration detainees were held in provincial criminal facilities and “other” facilities (which include “other law enforcement agencies (i.e., RCMP detachments, local and provincial police cells), CBSA ports of entry (POE) and inland enforcement (IE) cells”). In FY 2016-2017, 41 percent were held in criminal facilities, followed by 29 percent in FY 2017-2018; 31 percent in 2018-2019; and 32 percent in FY 2019-2020.¹⁹⁰

Exact information regarding the correctional centres currently used to detain non-nationals, as well as the number of immigration detainees to be placed in each of these facilities, is difficult to acquire. In developing data and information to complete this report, the GDP sent information requests to six government bodies and representatives in July 2020. However, as of this report’s publication in April 2021, the GDP had received responses with full information from just two bodies—Quebec’s Ministry of Public Security and Manitoba Justice. Several pointed the GDP to the CBSA for this information, but to-date the GDP has not received a response from the body.

Observers have frequently criticised the country’s use of prisons to detain non-nationals, including international human rights monitors. In its 2018 Concluding Observations on the seventh periodic report of Canada, the UN Committee against Torture (CAT) noted its concerns regarding the country’s “reliance” upon provincial correctional facilities and urged authorities to cease such practice.¹⁹¹ 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.¹⁹²

¹⁸⁹ 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>; For more, see: M. Larsen and J. Piché, “Exceptional State, Pragmatic Bureaucracy, and Indefinite Detention: The Case of the Kingston Immigration Holding Centre,” *Canadian Journal of Law and Society*, 18 July 2014, <https://www.cambridge.org/core/journals/canadian-journal-of-law-and-society-la-revue-canadienne-droit-et-societe/article/abs/exceptional-state-pragmatic-bureaucracy-and-indefinite-detention-the-case-of-the-kingston-immigration-holding-centre/E5187A36707F614A9A68E07DB8BCB41B>

¹⁹⁰ Canada Border Services Agency (CBSA), “Annual Detention, Fiscal Year 2019 to 2020,” <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2019-2020-eng.html>

¹⁹¹ UN Committee against Torture, “Concluding Observations on the Seventh Periodic Report of Canada, CAT/C/CAN/CO/7,” 21 December 2018, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fCAN%2fCO%2f7&Lang=en

¹⁹² 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 (CSC) “accommodate[d] immigration detainees in provincial custody under an Agreement with Citizenship and Immigration Canada.”¹⁹³ CSC reports that immigration detainees at these centres are “housed within the general population of the institution.”¹⁹⁴ 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.¹⁹⁵ 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.”¹⁹⁶

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.”¹⁹⁷) 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.¹⁹⁸ According to reports, guards in British Columbia prisons are not informed of the immigration status of detainees and British Columbia Corrections does not distinguish between criminal remands, asylum seekers, and other

¹⁹³ S. Small (Ontario Ministry of Community Safety and Correctional Service), letter to Alex MacKinnon (Global Detention Project), 8 May 2009.

¹⁹⁴ S. Small (Ontario Ministry of Community Safety and Correctional Service), letter to Alex MacKinnon (Global Detention Project), 8 May 2009.

¹⁹⁵ 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.

¹⁹⁶ 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/>

¹⁹⁷ 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>

¹⁹⁸ D. Nakache, “The Human and Financial Cost of Detention of Asylum-Seekers in Canada,” December 2011, <http://www.refworld.org/docid/4fafc44c2.html>

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.¹⁹⁹

In **Quebec**, 17 prisons have been used to confine immigration detainees since 2011. These prisons are Amos, Baie-Comeau, Chicoutimi, Hull, Leclerc de Laval (femmes), Leclerc de Laval (hommes), Montréal, Québec (femmes), Québec (hommes), Rivière-des-Prairies, Roberval, Sept-Îles, Sherbrooke, Sorel, St-Jérôme, Tanguay, and Trois-Rivières. The vast majority of non-nationals have been held in the Rivière-des-Prairies Prison (1,529 people), followed by Montréal (756 people), and Sherbrooke (137 people). Between 2011 and 2020, 2,859 people were detained in prisons for immigration purposes: 328 in FY 2011-2012; 297 in 2012-2013; 344 in 2013-2014; 307 in 2014-2015; 324 in 2015-2016; 311 in 2016-2017; 307 in 2017-2018; 334 in 2018-2019; and 307 in 2019-2020.²⁰⁰

In the **Prairie** and **Atlantic** regions, due to the lack of CBSA dedicated detention facilities, all immigration detainees are housed in prisons.²⁰¹ 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.²⁰²

In **Manitoba**, the Corrections Division of the Manitoba Department of Justice has reported to the Global Detention Project that all six of the province's correctional facilities can accept immigration detainees, as of July 2020.²⁰³ The six prisons are: Brandon Correctional Centre, Headingley Correctional Centre, Milner Ridge Correctional Centre, The Pas Correctional Centre, Winnipeg Remand Centre, and Women's Correctional Centre.

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 Headingley. 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).²⁰⁴ During FY 2008-2009, Manitoba's seven prisons held a total of 62 immigration

¹⁹⁹ D. Nakache, "The Human and Financial Cost of Detention of Asylum-Seekers in Canada," December 2011, <http://www.refworld.org/docid/4fafc44c2.html>

²⁰⁰ Geneviève Lamothe (Direction générale des affaires ministérielles, Quebec), Letter to Stella Warnier (Global Detention Project), 21 December 2020.

²⁰¹ 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>

²⁰² F. Lavoy (Alberta Correctional Services Division), letter to Alex MacKinnon (Global Detention Project), 2 March 2011.

²⁰³ G. Skelly (Executive Director, Custody Corrections), letter to Stella Warnier (Global Detention Project), 20 July 2020.

²⁰⁴ 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.

detainees, with an average length of detention of nearly 60 days.²⁰⁵ In 2016, there were 56 immigration detainees in Manitoba jails, compared with 168 in 2014, and 144 in 2012.²⁰⁶

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.”²⁰⁷ 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.²⁰⁸

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 2010-11.²⁰⁹

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.²¹⁰ 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 2012.²¹¹ There have been no changes in Nova Scotia’s immigration detention system since 2009, according to the province’s Director of correctional services.²¹²

²⁰⁵ W. Carriere (Manitoba Department of Justice), letter to Alex MacKinnon (Global Detention Project), 7 May 2009.

²⁰⁶ 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>

²⁰⁷ J. Benjamin (Adult Corrections, Saskatchewan), email to Alex MacKinnon (Global Detention Project), 24 May 2011.

²⁰⁸ 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>

²⁰⁹ 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.

²¹⁰ A. Pottier (Manager, Policy and Programs, Nova Scotia Department of Justice), email message to A. MacKinnon (Global Detention Project), 9 March 2009.

²¹¹ G. Keagan (Manager, Policy and Programs, Nova Scotia Department of Justice, Correctional Services), email to Izabella Majcher (Global Detention Project), 12 March 2012.

²¹² J. Scoville (Director, Nova Scotia Department of Justice, Correctional Services), email to Stella Warnier (Global Detention Project), 9 July 2020.

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 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.²¹³

²¹³ R. Myers (CBSA Regional Programs, Atlantic), email to Alex MacKinnon (Global Detention Project), 1 June 2011.



www.globaldetentionproject.org