

**MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL
BC CORRECTIONS
INFORMATION BRIEFING NOTE**

PURPOSE: For **INFORMATION** for Mike Farnworth,
Minister of Public Safety and Solicitor General.

ISSUE:

Meeting request from Amnesty International and Human Rights Watch to discuss cancelling the arrangement between BC Corrections and Canada Border Service Agency (CBSA) to detain individuals subject to the *Immigration and Refugee Protection Act* (IRPA).

SUMMARY:

- The government of British Columbia (as represented by BC Corrections) has an arrangement with the Government of Canada (as represented by the CBSA) to hold immigration detainees in provincial correctional centres (Appendix A) at the request of CBSA and in accordance with the *Immigration and Refugee Protection Act* (IRPA).
- Amnesty International and Human Rights Watch has written to Premier Horgan and Minister Farnworth requesting a meeting to discuss the findings from their jointly published June 17, 2021 report titled "*I Didn't Feel Like a Human in There*": *Immigration Detention in Canada and its Impact on Mental Health*" (Appendix B) and to urge that the provincial government end their arrangement with CBSA.

BACKGROUND:

- BC Corrections and the CBSA have a long-standing arrangement to hold detainees in provincial correctional centres. The existing arrangement between BC Corrections and CBSA came into effect on September 12, 2017. ^{s.13}
- The daily rate charged in FY2020/21 by British Columbia for holding individuals subject to an immigration hold is \$253.00. Under the terms of the arrangement, the daily rate is adjusted each fiscal year based on the change in the BC Consumer Price Index as set by Statistics Canada.
- BC Corrections billed the Government of Canada for 4,464 total bed days in FY2020/21 and recovered \$1,132,618.00 (net of GST).
- On any given day in 2019, there were approximately 31 individuals subject to an immigration hold being detained in provincial correctional centres. This number has decreased to approximately 19 individuals in 2020, and to eight (8) individuals in 2021 (YTD as of September 15, 2021). This reduction in average daily count is due primarily to the opening of CBSA's detention facility in Surrey and the COVID-19 pandemic.

- While the opening of CBSA's detention centre has reduced the number of immigration detainees in BC Corrections' custody, individuals with complex needs and/or concurrent criminal court holds are still held by BC Corrections.

Amnesty International and Human Rights Watch Report

- The report suggests the following:
 - Immigration detainees are held on administrative grounds but Canada subjects them to restrictive conditions of confinement.
 - Immigration detainees held in provincial correctional centres remain within the legal jurisdiction of CBSA as the enforcement authority, but the agency relinquishes control over the conditions of detention to which immigration detainees are subjected.
 - Canada is among the few countries in the global north without a legal limit to the length of immigration detention.
 - Immigration detainees in provincial custody are sometimes housed with remanded or sentenced individuals.
 - Detention can exacerbate existing psychosocial disabilities and frequently triggers new ones, including depression, anxiety, and post-traumatic stress. Research shows that even brief periods of immigration detention can cause significant deterioration of mental health in refugee claimants.
 - Immigration detainees with mental health conditions face discrimination throughout the detention process. Authorities often view psychosocial disabilities as a risk factor; instead of receiving vital support, immigration detainees with psychosocial disabilities receive disproportionately coercive treatment.
 - Many former immigration detainees continue to live with symptoms of psychosocial disabilities they developed during incarceration, months and even years after release from detention. Immigration detention also has long-term consequences that ripple beyond immigration detainees and affect their children, loved ones, and communities.
 - Immigration detainees who are from communities of color, particularly detainees who are black, appear to be incarcerated for longer periods in immigration detention and they are often detained in provincial correctional centres rather than immigration holding centres.
- The report makes a number of recommendations, including that the federal government should abolish immigration detention and that Public Safety Canada, CBSA and the provinces should "end the use of provincial jails and other criminal incarceration facilities for immigration detention. Cancel all agreements and contracts between the federal and provincial governments in relation to detention of immigration detainees in provincial jails" (p.95).
- On October 14, 2021, Amnesty International and Human Rights Watch will launch a media campaign advocating for the cancellation of these arrangements.
- BC Corrections met with representatives of Amnesty International and Human Rights Watch on September 16, 2021 at their request to share details of their report.

At this meeting BC Corrections was advised that advocacy to the provinces and territories was going to become a priority as there has been no result from their advocacy to Canada.

- The Heads of Corrections FPT committee was consulted to see if any jurisdictions were considering cancelling their agreements with the CBSA. s.13; s.16
s.13; s.16

INDIGENOUS PEOPLES CONSIDERATIONS:

- Indigenous peoples are over-represented in BC Corrections. As immigration detainees are held separately from the rest of the custodial population whenever possible, there are little to no direct impacts to the Indigenous peoples in custody.

OTHER MINISTRIES IMPACTED/CONSULTED:

- None

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ATTACHMENTS:

Appendix A:

The arrangement between BC Corrections and CBSA.



Arrangement - CBSA
& BC Corrections - 20

Appendix B:

I Didn't Feel Like a Human in There": Immigration Detention in Canada and its Impact on Mental Health".



"I Didn't Feel Like a
Human in There" Imm

UNCLASSIFIED

**An Arrangement respecting the detention of persons detained under the
*Immigration and Refugee Protection Act (IRPA)***

BETWEEN

**HER MAJESTY THE QUEEN
IN THE RIGHT OF CANADA**

as represented by the **CANADA BORDER SERVICES AGENCY**
(Herein referred to as "the CBSA")

AND

**HER MAJESTY THE QUEEN
IN THE RIGHT OF THE PROVINCE
OF BRITISH COLUMBIA**

as represented by the Ministry of Public Safety and Solicitor General,
Corrections Branch, Adult Custody Division
(Herein referred to as "Adult Custody Division")

Collectively referred to as the "Participants"

Effective Date:

PREAMBLE

Roles and Responsibilities:

WHEREAS the *Immigration and Refugee Protection Act* ("the IRPA") allows for or requires the detention of persons for administrative purposes;

WHEREAS the Canada Border Services Agency is responsible for the administration of Canada's immigration detention program;

WHEREAS Adult Custody Division is responsible for the operation of correctional centres for the safe, secure custody of persons awaiting trial or serving provincial sentences, or both, in the Province of British Columbia;

WHEREAS the Participants agree that persons subject to lawful detention pursuant to the IRPA can be detained in accordance with this Arrangement in correctional centres operated by the Province of British Columbia.

Purpose:

The purpose of this Arrangement is to document the terms and conditions whereby Adult Custody Division will, upon request by the CBSA, maintain custody of persons detained by the CBSA in accordance with the IRPA.

This Arrangement will also document the management and exchange of information between the Participants, in compliance with the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 (BC) and the *Privacy Act* of Canada.

THEREFORE the Participants intend as follows:

1. DEFINITIONS

"Arrangement" means this document as a whole, including any appended schedules, annexes, and amendments.

"Authority to Release from Detention" means a form issued under the IRPA that grants the authority to release a person from Immigration detention.

"Adult Custody Division" means one of three divisions within British Columbia Corrections.

"CBSA" means the Canada Border Services Agency or an agent acting on its behalf.

"CBSA Immigration Detainee Admission Protocol Agreement" refers to an agreement between the CBSA and Adult Custody Division for the acceptance of Immigration detainees on weekends and statutory holidays at participating correctional centres.

"Correctional centre" has the same meaning as in s. 1 of the *Correction Act, SBC 2004*.

"Emergency medical care" means urgent medical treatment that cannot be provided in a correctional centre and requires immediate transfer to a hospital.

"FoIPPA" means the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 (BC).

"Immigration detainee" or "detainee" means a person who has attained the age of majority pursuant to the *Age of Majority Act*, RSBC 1987, c. 7 (BC), is a permanent resident or a foreign national who may be, is required to be, or has been detained by the CBSA under the IRPA, including an Individual subject of a security certificate.

"Individual subject of a security certificate" means a person who has attained the age of majority pursuant to the *Age of Majority Act*, RSBC 1987, c. 7 (BC) who has been detained under the authority of a security certificate issued under Section 77 of the IRPA.

"IRPA" means the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

"Order for Detention" means a written order issued under the IRPA that grants the authority to detain a person with respect to whom the order was made.

"Order of the Canada Border Services Agency to Deliver Inmate" means a written order issued under the IRPA that requires the person in charge of the institution to deliver an inmate to an immigration officer at the end of the inmate's period of detention in the institution.

"Participant(s)" refers to representatives of the CBSA or Adult Custody Division, or both, as applicable.

"Per diem" means the amount payable per day for each immigration detainee detained in a correctional centre.

"Specialty medical care" means medical treatment other than emergency medical care or care that should only be provided in a psychiatric facility as defined by the *Mental Health Act*, (RSBC 1996, Part 3) (BC) that cannot be provided in a correctional centre and requires transfer to a clinic, hospital, doctor's office or other health facility.

2. DETENTION AND TRANSFER OF IMMIGRATION DETAINEES

2.1 Persons detained pursuant to this Arrangement may be detained in any correctional centre operated by Adult Custody Division.

2.2 Adult Custody Division will not refuse to detain an immigration detainee except for reasons of operational necessity, if the person is not sufficiently medically fit, or if there is insufficient documentation provided to satisfy Adult Custody Division that there is authority to detain the person in a correctional centre. Where Adult Custody Division refuses to detain an immigration detainee, Adult Custody Division will provide the CBSA with written reasons for that refusal.

2.3 At the written request of the CBSA and upon receipt of an Order for Detention, Adult Custody Division will detain persons in accordance with the terms of this Arrangement.

2.4 Transfer of an immigration detainee, from the CBSA to Adult Custody Division, will occur when the detainee is delivered by the CBSA to a BC correctional centre and responsibility for safe, secure custody is transferred to Adult Custody Division.

2.5 The transfer from a BC correctional centre to the CBSA will occur when the CBSA retrieves the immigration detainee. Once the transfer has officially taken place, the responsibility for the safe and secure custody will become the responsibility of the CBSA.

2.6 The CBSA will be responsible for the delivery, and removal, of immigration detainees from any correctional centre when the CBSA has requested that Adult Custody Division detain them. The CBSA will provide Adult Custody Division with an Order for Detention prior to delivering the detainee to Adult Custody Division. The CBSA will provide Adult Custody Division with as much advance notice as possible when a detained person is scheduled for release, removal from Canada, or is required to attend any proceeding under the IRPA.

2.7 Subject to any other provision of this Arrangement, the CBSA will provide transportation for immigration detainees to and from the correctional centre when any immigration proceeding is conducted outside of the correctional centre.

2.8 Notwithstanding Section 2.7, Adult Custody Division is responsible for transporting and monitoring those immigration detainees being held on a concurrent criminal court warrant during an absence from a correctional centre for the purpose of attending an immigration hearing. Those held on a concurrent criminal court warrant will only be scheduled to attend an immigration hearing in exceptional circumstances.

2.9 Admission and release to and from any correctional centre, will be in accordance with this Arrangement and Adult Custody Division's policies and procedures. Admission and release will normally occur during Adult Custody Division operating hours and in accordance with the CBSA

Immigration Detainee Admission Protocol Agreements. However, the correctional facility's operational manager may authorize admission and release of immigration detainees at other times.

2.10 When an immigration detainee requires emergency medical care requiring transfer to a hospital, Adult Custody Division will transfer the person and will immediately notify the CBSA of the transfer as outlined in Annex D.

2.11 **In cases where there is grievous bodily harm or death**, Adult Custody Division will immediately notify the CBSA Detentions Manager or the Assistant Director as outlined in Annex D. Outside of regular business hours (08:00 to 16:00hrs), Adult Custody Division will use the CBSA's After Hours Contact Information and ask to speak to the Duty Manager. Adult Custody Division will report the particulars of the situation to the Duty Manager and will ask to speak directly with the Detentions Manager or the Assistant Director.

2.12 If a detainee in the care of Adult Custody Division is transferred to hospital, Adult Custody Division will be responsible for the custody of the detainee while in hospital. In the event of a prolonged stay, the CBSA will assume responsibility for the custody of the detainee while in hospital.

2.13 When an immigration detainee requires a specialty medical care appointment, Adult Custody Division will notify the CBSA. Adult Custody Division will provide all necessary supervision and transportation to the place where the specialty medical care appointment will be provided and for the return of the immigration detainee to the correctional centre.

2.14 Adult Custody Division will provide as much advance notification as possible to the CBSA of any transfers of an immigration detainee from one institution to another.

2.15 The conditions of detention and the treatment and privileges of immigration detainees will be as specified by the *Correction Act* (SBC 2004, c. 46) and *Correction Act Regulation* and the policies and procedures of Adult Custody Division, as amended from time to time.

2.16 The Participants will meet on an annual basis to review this Arrangement and the policies, procedures and guidelines required to deliver immigration detention service.

2.17 Adult Custody Division will release an immigration detainee if:

- The detainee is ordered released from custody pursuant to an order lawfully made under the provisions of the IRPA, or, in the case of a security certificate, by an Order of the Federal Court of Canada;
- The detainee is released from custody by a CBSA officer who is executing a removal order; or
- This Arrangement is terminated.

2.18 Adult Custody Division will not release an inmate detained under an Act of Parliament at the end of that inmate's period of detention if a warrant for the arrest and detention of that inmate

has been issued under the IRPA and if that warrant takes effect no later than the end of that inmate's period of detention. The CBSA will set out such information in an Order of the Canada Border Services Agency to Deliver Inmate form (BSF498), which it will deliver in advance to Adult Custody Division along with an Order for Detention. Adult Custody Division will notify the CBSA via email to the designated agreed upon mailbox as outlined in Annex D as soon as possible once a detainee's criminal matters have concluded in order for the CBSA to initiate processes pursuant to statutory requirements under the IRPA.

2.19 Notwithstanding clause 2.17, Adult Custody Division will only continue the detention of an immigration detainee upon receipt of an Order for Detention.

3. TERMS AND CONDITIONS OF DETENTION

3.1 Adult Custody Division will treat immigration detainees in a lawful, responsible, just and humane manner that recognizes their inherent dignity as human beings.

3.2 Adult Custody Division will ensure that all immigration detainees have access to free privileged calls to legal counsel, consulate officials and other agencies according to Annex A. Adult Custody Division will display specific CBSA information to detainees, including but not limited to: CBSA and non-governmental organization telephone numbers in a location that is visible to all detainees when using the telephone. Adult Custody Division will also allow detainees to retain their CBSA Orientation Guide throughout their detention.

3.3 Adult Custody Division will advise the CBSA if they are unable to communicate or provide services in the official language (English or French) desired by an immigration detainee.

3.4 Adult Custody Division will also advise the CBSA if they are unable to communicate or provide services in the language of the detainee. Once provided with the appropriate information by the CBSA, Adult Custody Division will utilize the services of an interpreter during the intake and assessment process. Where the CBSA contacts an external interpreter on behalf of Adult Custody Division, the CBSA will cover the cost of the interpretation services.

4. COMMINGLING

4.1 The Participants recognize that:

- The primary population of the correctional centres are persons subject to criminal process; and,
- Immigration detention is administrative in nature.

4.2 The Participants will, individually and jointly, follow the principles laid out in the *U.N. Standard Minimum Rules for the Treatment of Prisoners* and, wherever possible, prevent the

mingling of immigration detainees with the regular prison population. There will be separation of detainees from inmates to the greatest extent possible and where operationally feasible.

4.3 Notwithstanding clause 4.2, immigration detainees will be allowed to participate in, to the greatest extent possible, available program opportunities consistent with section 4.2.

5. QUALITY ASSURANCE and ACCESS

5.1 Adult Custody Division will grant CBSA officers access to correctional centres where immigration detainees are held for the purpose of liaising with immigration detainees and to carry out their enforcement functions under the IRPA.

5.2 Persons entering BC correctional centres may be subject to a criminal records check before access can be granted. CBSA officers are exempt as identified in section 5.1.

5.3 Canada has established a formal relationship with the Canadian Red Cross ("the CRC"), whereby the CRC monitors the conditions of detention. The CRC may meet with immigration detainees and provide confidential reports of their findings to Adult Custody Division management and the CBSA. Following reasonable notice from the CRC, Adult Custody Division will allow representatives, identified by the CBSA, access to correctional centres in order to carry out their monitoring activities.

5.4 Canada is a Party to the United Nations' High Commissioner for Refugees' (UNHCR) 1952 *Convention Relating to the Status of Refugees* (the Convention) and 1967 *Protocol*. Under section 35 of the Convention, Canada is committed to cooperating with the UNHCR in exercising its functions and, specifically, to facilitating the functions related to monitoring the application of the Convention's provisions. Accordingly, the CBSA authorizes the UNHCR representatives to meet with refugee status claimants. Following a reasonable notice from the UNHCR, Adult Custody Division will allow representatives, identified by the CBSA, access to correctional centres on the grounds of Canada's commitment under the Convention.

5.5 When an immigration detainee has entitlements under the *Vienna Convention on Consular Relations*, Adult Custody Division will facilitate meeting those entitlements. These entitlements include:

- a. Communication with and access to consular officers;
- b. Having any communication addressed to the relevant consular post forwarded to that consular post without delay; and
- c. Receiving visits from consular officers at a correctional centre

6. DOCUMENTATION

6.1 The CBSA will provide Adult Custody Division with an Order for Detention for all immigration detainees to be detained by Adult Custody Division. These documents must direct that the person in charge of the correctional centre hold the immigration detainees in a correctional centre.

6.2 The CBSA will provide Adult Custody Division with all relevant information and documentation, including personal effects and information on any known medical/mental health condition that may be necessary to maintain safe, secure custody of the individual.

6.3 Adult Custody Division will provide the CBSA with the health, safety and security information regarding the detainee related to the term of custody authorized by the IRPA. This information will include medical, mental health, contacts, no contacts, behaviour, alerts and security concerns. Medical information will be provided to the designated CBSA medical professional.

6.4 Sensitive personal and legal electronic information will be accessed or transferred in a secure manner in accordance with federal and provincial information and privacy requirements.

6.5 The CBSA will provide Adult Custody Division with an Authority to Release from Detention form for all detainees to be released by Adult Custody Division. Subject to any other Act of Canada's Parliament or Statute of British Columbia which requires that British Columbia incarcerate an immigration detainee, Adult Custody Division will accept this form as sufficient authority to effect release of any immigration detainee detained pursuant to this Arrangement, provided there are no other reasons for continued detention.

7. ACCESS TO PREMISES

7.1 Immigration detainees will be allowed to meet with their legal counsel and a representative designated by the Immigration and Refugee Board of Canada; the meetings will be conducted in accordance with BC Correction's policies and procedures governing visits by professionals.

8. FINANCIAL ARRANGEMENTS

8.1 The CBSA will pay Adult Custody Division a daily rate (the "*per diem* rate"), for each day an immigration detainee is detained pursuant to this Arrangement. The daily rate will be in effect for the fiscal year starting April 1 and ending March 31.

8.2 The daily rate for each fiscal year will be based on the daily rate for the preceding fiscal year, adjusted for the annual percent change in the BC Consumer Price Index for the preceding calendar year. In the initial fiscal year of this Arrangement (2017/18) the daily rate will be \$228.00. Adult Custody Division will provide written notification to the CBSA by April 15th of each fiscal

year or within three weeks after the BC Consumer Price Index is published by BC Statistics, of the daily rate for that fiscal year.

8.3 The CBSA will pay Adult Custody Division the daily rate from the day of admission up to but not including the day of release from a correctional centre.

8.4 The CBSA will pay Adult Custody Division any additional costs that are incurred to detain persons under the IRPA. This will include arrangements for special holding and office facilities, medical expenses, extraordinary staffing costs, special dietary, and handling and equipment costs. Adult Custody Division will consult with the CBSA prior to initiating these additional costs.

8.5 Any additional charges in special circumstances incurred as a result of the detention of an immigration detainee will be supported by an invoice for payment made by the Participants with acceptable details and justification. Payments received for additional charges for services provided in special circumstances are not to be included as eligible operating expenditures used in the calculation of the per diem for the next fiscal year.

8.6 Adult Custody Division will provide to the CBSA, on a monthly basis, an invoice comprising a statement for the previous month which identifies the immigration detainees, the number of detention days for each detainee, the total number of detention days for the month, the daily rate, any additional costs under section 8.4 and the total amount payable by the CBSA under this Arrangement and as determined in an annual letter of agreement.

8.7 The CBSA will pay Adult Custody Division the amount payable in each monthly statement, within sixty (60) days of receipt of an invoice, subject to, and in accordance with, procedures specified in the federal *Financial Administration Act*, R.S.C., 1985, c. F-11 (Canada).

8.8 Pursuant to paragraphs 2.10 to 2.12 of this Arrangement, medical treatment or health care services not covered by the Medical Services Plan (MSP) of British Columbia or included in the per diem, will be billed directly to the Interim Federal Health Program service provider or to the CBSA.

8.9 When an immigration detainee is away from the correctional centre in which he or she has been detained but is under the control and supervision of Adult Custody Division, that person will, for the purposes of this Arrangement, be considered to be in the care and custody of the correctional centre.

9. EXCHANGE OF INFORMATION

The information sharing described in this Arrangement is authorized pursuant to:

Authorization to collect Detainees' personal information:

The CBSA

Sections 4 and 5 of the *Privacy Act*, R.S.C. 1985, c. P-21

Adult Custody Division
Section 26(c) of FoIPPA
Section 27(1)(c)(iv) of FoIPPA

Authorization to use Detainees' personal information:

The CBSA
Section 7 of the *Privacy Act*, R.S.C. 1985, c. P-21

Adult Custody Division
Section 32(a) of FoIPPA

Authorization to disclose Detainees' personal information:

CBSA
Section 8(1) and 8(2)(a) of the *Privacy Act*, R.S.C. 1985, c. P-21

Adult Custody Division
Section 33.2(a) of FoIPPA

9.1 Adult Custody Division will disclose to the CBSA personal information of immigration detainees specific to security, alerts, behaviour, discipline and physical and mental health concerns that may impact ongoing care, risk and needs assessment. These events include but are not limited to:

- Health care referral;
- Hunger strikes or fasting;
- Assaults or fights;
- Escorts to hospitals or other medical emergencies;
- Scheduled medical appointments;
- Transfers between correctional centres;
- Diagnosis of a contagious disease, or
- Significant and/or unexpected change in healthcare status, either physically or mentally;
- Serious non-cooperation or violence toward others, including correctional staff; or
- Other behavioral concerns that may impact the proper care and management of the detainee.

9.2 The CBSA will email Adult Custody Division Primary Assessment and Care (PAC) Help Desk at the designated agreed upon mailbox as outlined in Annex D prior, during or after the release from a correctional centre to request the detainee's medical records. The request will include the name of the designated CBSA medical professional. The PAC Help Desk will retrieve the medical information, password-protect the PDF file and email it to CBSA with the reminder that it is to be opened by a designated CBSA medical professional.

9.3 The Electronic Health Record (EHR) will contain the doctors' orders and recommendations for follow-up appointments or requirements to see specialists, etc. All possible or confirmed communicable diseases will be noted in the EHR.

9.4 The PAC Help desk will document release of medical information so there is full accountability and security of the file will be consistent.

9.5 The CBSA will provide Adult Custody Division with relevant information that directly impacts the supervision of the detainee and/or the safety and operation of correctional centres including:

- Scheduled immigration proceedings;
- Health, safety and security concerns, including medical and mental health assessments, contact concerns, and significant behaviours
- Any other information relevant to assessing risk; and
- When an adverse decision regarding the detainee's IRPA case has been rendered.

9.6 The CBSA email inbox as outlined in Annex D will serve as the single point of contact for all immigration detainee related communication between Adult Custody Division staff and the CBSA, including medical, behavioural and safety related information. In case of emergency, the CBSA can also be reached by phone as outlined in Annex D.

9.7 In cases **where there is grievous bodily harm or death**, Adult Custody Division will immediately notify the CBSA Detentions Manager or the Assistant Director as outlined in Annex D. Outside of regular business hours (08:00 to 16:00hrs), Adult Custody Division will use the CBSA After Hours Contact Information and ask to speak to the Duty Manager. Adult Custody Division will report the particulars of the situation to the Duty Manager and will ask to speak directly with the Detentions Manager or the Assistant Director. **Where a person detained dies** Adult Custody Division will immediately advise the CBSA of the death and share, in confidence and in a timely manner, pertinent incident-related information.

9.8 The CBSA will provide health related information to the admitting nurse and all other information to the classification officer at the correctional centre where the detainee is held.

9.9 All information and documentation provided to, collected by, delivered to or compiled by or on behalf of the Participants to this Arrangement in the performance of their duties and responsibilities will be dealt with subject to and in accordance with federal and provincial statutes, particularly the *Privacy Act*, R.S.C. 1985, c. P-21, the *Access to Information Act*, R.S.C. 1985, c. A-1, and the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165.

9.10 The Participants agree that for the purposes of section 13(1)(c) of the *Access to Information Act*, section 19(1)(c) of the *Privacy Act* and section 16(1)(b) of the *Freedom of Information and Protection of Privacy Act*, all information disclosed and received between the Participants under this Arrangement is disclosed and received in confidence.

9.11 Where a Participant receives a request under the *Access to Information Act*, the *Privacy Act*, or FoIPPA, or a Court order, summons or subpoena for disclosure of records relating to this Arrangement, that Participant will immediately consult the other Participant to this Arrangement before disclosing the records to the applicant.

9.12 The terms and conditions under which Adult Custody Division will provide the CBSA with access to personal information in the Corrections Network System (CORNET) is outlined in the established CORNET Electronic Access Agreement (see Annex B). The CBSA is responsible for the collection, use, disclosure and retention of all information obtained from CORNET in accordance with the *Privacy Act*.

10. CONFIDENTIALITY AND SECURITY OF INFORMATION

10.1 Both Participants will make every reasonable effort to ensure the personal information in their custody is accurate, complete and up-to-date.

10.2 Both Participants will make reasonable arrangements to maintain the security of the personal information in their custody, by protecting it against such risks as unauthorized access, collection, use, disclosure or disposal.

10.3 Participants will implement this Arrangement in conformity with their own government's Information Security Policy.

10.4 Both Participants will advise the other immediately of any circumstances, incidents or events which to its knowledge have jeopardized or may in future jeopardize:

- the privacy of individuals;
- the security of any computer system in its custody that is used to access the personal information.

10.5 Participants will maintain appropriate records concerning the transmission and receipt of information exchanged;

10.6 Participants will limit access to the personal information to employees whose duties require such access and who have the appropriate security clearance.

10.7 Participants will record and monitor access to the personal information in their custody, in order to establish a chain of responsibility.

10.8 Participants will investigate all reported cases of:

- unauthorized access to or modification of the personal information in its custody;
- unauthorized use of the personal information in its custody;
- unauthorized disclosure of the personal information in its custody; and

- breaches of privacy or security with respect to the personal information in its custody or with respect to any computer system in its custody that is used to access the personal information.

10.9 Participants will report to the other Participant the results of any such investigation and the steps taken to address any remaining issues or concerns about the security of the Personal Information or computer systems, or the privacy of individuals to whom the personal information relates.

11. ELECTRONIC COMMUNICATION

11.1 At the discretion of the CBSA, interviews with CBSA officers or legal counsel may be conducted by means of electronic communication such as videoconferencing or teleconferencing. Adult Custody Division will, upon request by the CBSA, facilitate the movement of the detainee and supervise the detainee during any electronic communication.

13. TERM, AMENDMENT and TERMINATION

13.1 This Arrangement comes into effect on the latest date of signing and remains in effect until terminated by either Participant in accordance with section 13.3 of this Arrangement.

13.2 The Participants may amend this Arrangement at any time, upon written mutual consent. For the purpose of this provision, the written consent may be affected by an exchange of letters between the Official Representatives identified in section 15 of this Arrangement.

13.3 This Arrangement may be terminated by either Participant, upon twelve (12) months written notice to the other Party. Termination of this Arrangement does not release a Participant from any undertaking which accrued while the Arrangement was in force.

13.4 For the purpose of ensuring the continued relevancy of this Arrangement, the Participants will, by their appointed representatives, review the Arrangement annually and will, as required, identify additional changes to the Arrangement in writing.

14. DISPUTE RESOLUTION

14.1 In the event of a dispute arising from the interpretation or operation of this Arrangement, it will be referred to the Official Representatives identified in section 15 who will use their best efforts to resolve the matter amicably and as practically as possible. If such negotiation fails, the Participants may refer the matter to the signatories for resolution.

15. OFFICIAL REPRESENTATIVES

The following officials are the Official Representatives for all purposes related to this Arrangement. Any policies required under this Arrangement will be delivered to:

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For The CBSA:

Director General
Enforcement and Intelligence Programs Directorate
100 Metcalfe Street, 10th Floor
Ottawa, Ontario
K1A 0L8

For Adult Custody Division:

Provincial Director,
BC Corrections
Ministry of Public Safety and Solicitor General
7th Floor, 1001 Douglas Street
Victoria, British Columbia
V8W 9J7

IN WITNESS THEREOF, this Arrangement, was signed in duplicate, each copy being equally authentic.

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SIGNED ON BEHALF OF THE CANADA BORDER SERVICES AGENCY
THIS 1 DAY OF August, 2017
BY: **Jennifer Lutfallah**

TITLE: Director General
Enforcement and Intelligence Directorate
Programs Branch
Canada Border Services Agency


Signature

SIGNED ON BEHALF OF ADULT CUSTODY DIVISION,
THIS 12th DAY OF September, 2017
BY:

TITLE: Provincial Director
BC Corrections Branch
Ministry of Public Safety and Solicitor General, British Columbia


Signature



“I Didn’t Feel Like a Human in There”

Immigration Detention in Canada and its Impact on Mental Health

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INTERNATIONAL**



“I Didn’t Feel Like a Human in There”

Immigration Detention in Canada
and its Impact on Mental Health

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**MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL
BC CORRECTIONS
INFORMATION BRIEFING NOTE**

PURPOSE: For **INFORMATION** for Mike Farnworth,
Minister of Public Safety and Solicitor General.

ISSUE:

Meeting request from Amnesty International and Human Rights Watch to discuss cancelling the arrangement between BC Corrections and Canada Border Service Agency (CBSA) to detain individuals subject to the *Immigration and Refugee Protection Act* (IRPA) and related planned public awareness campaign.

SUMMARY:

- The government of British Columbia (as represented by BC Corrections) has an arrangement with the Government of Canada (as represented by the CBSA) to hold immigration detainees in provincial correctional centres at the request of the CBSA and in accordance with the IRPA.
- Amnesty International and Human Rights Watch has written to Premier Horgan, Minister Farnworth and Minister Eby, requesting a meeting to discuss the findings from their jointly published June 17, 2021, report titled "*I Didn't Feel Like a Human in There: Immigration Detention in Canada and its Impact on Mental Health*" and to urge that the provincial government end its arrangement with CBSA.

BACKGROUND:

- BC Corrections and the CBSA have a long-standing arrangement to hold detainees in provincial correctional centres. The current arrangement between BC Corrections and CBSA came into effect on September 12, 2017. ^{s.13}
s.13
- The daily rate charged in FY2020/21 by British Columbia for holding individuals subject to an immigration hold is \$253.00. Under the terms of the arrangement, the daily rate is adjusted each fiscal year based on the change in the BC Consumer Price Index as set by Statistics Canada.
- BC Corrections billed the Government of Canada for 4,464 total bed days in FY2020/21 and recovered \$1,132,618.00 (net of GST).
- On any given day in 2019, there were approximately 31 individuals subject to an immigration hold being detained in provincial correctional centres. This number has decreased to approximately 19 individuals in 2020, and to eight (8) individuals in 2021 (YTD as of September 15, 2021). This decrease can be attributed to the opening of CBSA's detention facility in Surrey and the COVID-19 pandemic.

- While the opening of CBSA's detention centre has reduced the number of immigration detainees in BC Corrections' custody, individuals with complex needs and/or concurrent criminal court holds are still held by BC Corrections.
- BC Corrections met with representatives of Amnesty International and Human Rights Watch on September 16, 2021 and October 7, 2021, at their request to share details of their report and public campaign. BC Corrections was advised that advocacy to the provinces and territories was going to become a priority, as there has been no result from their advocacy to Canada.
- On October 14, 2021, Amnesty International and Human Rights Watch will launch a public campaign advocating for the cancellation of these arrangements. As part of their campaign, they will be encouraging members of the public to contact the premier and ministers to show support to end immigration detention in provincial correctional centres.
- Amnesty International and Human Rights Watch have advised they will be targeting the Province of BC as their priority for their public campaign as BC is one of three provinces with a dedicated CBSA detention facility (Ontario and Quebec also have detention facilities), BC is in the top three in terms of numbers of detainees, and BC is seen as an influential province.
- s.13

INDIGENOUS PEOPLES CONSIDERATIONS:

- Indigenous peoples are over-represented in BC Corrections. As immigration detainees are held separately from the rest of the custodial population whenever possible, there are little to no direct impacts to the Indigenous peoples in custody.

OTHER MINISTRIES IMPACTED/CONSULTED:

- The Heads of Corrections FPT committee was consulted to see if any jurisdictions were considering cancelling their agreements with the CBSA. s.13; s.16
s.13; s.16

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**MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL
BC CORRECTIONS
DECISION BRIEFING NOTE**

PURPOSE: For **DECISION** by Mike Farnworth,
Minister of Public Safety and Solicitor General.

ISSUE:

Response to a request from Canada Border Services Agency (CBSA) ^{s.13; s.16}
^{s.13; s.16}
^{s.13; s.16}

DECISION REQUIRED / RECOMMENDATION:

Approval to reject CBSA's request ^{s.13; s.16}
^{s.13; s.16}

SUMMARY:

- For decades, the Province of British Columbia (as represented by BC Corrections) has had an arrangement with Canada (as represented by CBSA) to hold immigration detainees in provincial custody (see Appendix A) and receive payment for that service. The most recent agreement was signed in September 2017.
- ^{s.13; s.16} CBSA advised BC Corrections ^{s.13; s.16}
^{s.13; s.16}
- There are ^{s.13} concerns with this proposal, and BC Corrections does not recommend proceeding.

BACKGROUND:

- The existing arrangement between BC Corrections and CBSA outlines the roles and responsibilities of each party including information sharing, transportation, placement, health care and the daily rate for reimbursement. Immigration detainees are normally housed separately from all other individuals in custody, and require additional resources compared to other individuals in custody (such as interpreters).
- BC Corrections only receives payment for 'pure' immigration detainees, meaning those that are held solely on an IRPA Order of Detention (see Appendix B) and not an accompanying criminal remand or sentence order. In fiscal year 20/21, BC Corrections billed the Government of Canada for 4,464 total bed days and received \$1,132,618.00.

- On any given day in 2019, there were approximately 31 individuals subject to immigration detention in BC provincial correctional centres. This number decreased to approximately 19 individuals in 2020 and to 8 individuals in 2021 (YTD as of September 15, 2021). The decreasing count can be attributed to the opening of CBSA's detention facility in Surrey, which is suitable for lower risk/needs individuals and families, and to the COVID-19 pandemic.

- s.13; s.14

DISCUSSION:

- There are ^{s.13} considerations with the CBSA's request ^{s.13; s.16}
 - ^{s.13; s.14}
 - s.13; s.16
 -

- s.13; s.16
- Human Rights Watch and Amnesty International are publicly advocating for the end of agreements to hold detainees in provincial correctional centres and agreeing to hold detainees for another province would be criticized.

INDIGENOUS PEOPLES CONSIDERATIONS:

- There is no direct impact on Indigenous peoples in custody stemming from accepting or rejecting this proposal.

RECOMMENDATION:

It is recommended that BC Corrections reject CBSA's request ^{s.13; s.16}
s.13; s.16

OTHER MINISTRIES IMPACTED/CONSULTED:

- None.

DECISION:

DECISION IS APPROVED ☐ **NOT APPROVED** ☐

Mike Farnworth
Minister of Public Safety and Solicitor General

Date

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ATTACHMENTS:

Appendix 1: Arrangement - CBSA & BC Corrections - 2017
Appendix 2: Order for Detention



Canada Border
Services Agency

Agence des services
frontaliers du Canada



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ORDER FOR DETENTION ORDONNANCE DE DÉTENTION

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**MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL
BC CORRECTIONS
DECISION BRIEFING NOTE**

PURPOSE: For **DECISION** by Mike Farnworth,
Minister of Public Safety and Solicitor General.

ISSUE:

Response to a request from Canada Border Services Agency (CBSA) ^{s.13; s.16}

s.13; s.16

s.13; s.16

DECISION REQUIRED / RECOMMENDATION:

Approval to reject CBSA's request ^{s.13; s.16}

s.13; s.16

SUMMARY:

- For decades, the Province of British Columbia (as represented by BC Corrections) has had an arrangement with Canada (as represented by CBSA) to hold immigration detainees in provincial custody (see Appendix A) and receive payment for that service. The most recent agreement was signed in September 2017.
- ^{s.13; s.16} CBSA advised BC Corrections that ^{s.13; s.16} and ^{s.13; s.16} requested that ^{s.13; s.16} ^{s.13; s.16}
- There are ^{s.13} concerns with this proposal, and BC Corrections does not recommend proceeding.

BACKGROUND:

- The existing arrangement between BC Corrections and CBSA outlines the roles and responsibilities of each party including information sharing, transportation, placement, health care and the daily rate for reimbursement. Immigration detainees are normally housed separately from all other individuals in custody, and require additional resources compared to other individuals in custody (such as interpreters).
- BC Corrections only receives payment for 'pure' immigration detainees, meaning those that are held solely on an IRPA Order of Detention (see Appendix B) and not an accompanying criminal remand or sentence order. In fiscal year 20/21, BC Corrections billed the Government of Canada for 4,464 total bed days and received \$1,132,618.00.

- On any given day in 2019, there were approximately 31 individuals subject to immigration detention in BC provincial correctional centres. This number decreased to approximately 19 individuals in 2020 and to 8 individuals in 2021 (YTD as of September 15, 2021). The decreasing count can be attributed to the opening of CBSA's detention facility in Surrey, which is suitable for lower risk/needs individuals and families, and to the COVID-19 pandemic.
- s.13; s.14

DISCUSSION:

- There are ^{s.13} considerations with the CBSA's request ^{s.13; s.16}
 - s.13; s.14
 - s.13; s.16
 -
 -

- s.13; s.16
- Human Rights Watch and Amnesty International are publicly advocating for the end of agreements to hold detainees in provincial correctional centres and agreeing to hold detainees for another province would be criticized.

INDIGENOUS PEOPLES CONSIDERATIONS:

- There is no direct impact on Indigenous peoples in custody stemming from accepting or rejecting this proposal.

RECOMMENDATION:

It is recommended that BC Corrections reject CBSA's request ^{s.13; s.16}
s.13; s.16

OTHER MINISTRIES IMPACTED/CONSULTED:

- None.

DECISION:

DECISION IS APPROVED ☒ **NOT APPROVED** ☐



Mike Farnworth
Minister of Public Safety and Solicitor General

October 19, 2021

Date

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Appendix 1: Arrangement - CBSA & BC Corrections - 2017
Appendix 2: Order for Detention

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**MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL
BC CORRECTIONS
INFORMATION BRIEFING NOTE**

PURPOSE: For **INFORMATION** for Mike Farnworth,
Minister of Public Safety and Solicitor General and Deputy Premier.

ISSUE:

Status update on the review of the arrangement between Canada Border Services Agency (CBSA) and the Ministry of Public Safety and Solicitor General (PSSG), BC Corrections (the arrangement), respecting the management of individuals subject to lawful detention under the *Immigration and Refugee Protection Act* (IRPA).

SUMMARY:

- In February 2022, BC Corrections began a review of its arrangement with CBSA regarding the management of individuals subject to lawful detention under the IRPA.
- Work completed on the review to-date includes:
 - A jurisdictional scan of provincial and territorial partners and their immigration detention practices;
 - Quantitative data analysis of BC Corrections' provincial immigration detention over the last five years;
 - Qualitative data analysis of the experiences of immigration detainees and their impact on centre resources at Fraser Regional Correctional Centre; and
 - Analysis of stakeholder submissions.
- Key findings will be summarized in a report with completion expected in June 2022.

BACKGROUND:

- BC Corrections and the CBSA have a long-standing arrangement to hold immigration detainees in provincial correctional centres. The most current arrangement between BC Corrections and CBSA was signed in September 2017.
- In early 2022, BC Corrections commenced a review of the arrangement following a meeting with representatives from Amnesty International and Human Rights Watch to discuss their jointly published report entitled, *"I Didn't Feel Like a Human in There": Immigration Detention in Canada and its Impact on Mental Health*. The report illustrates several concerns with immigration detention in Canada, including alleged human rights violations and serious impacts on individuals' mental health.
- BC Corrections has received 16 stakeholder submissions from advocates, experts, lawyers, academic scholars, health care practitioners, justice partners, and individuals who have been detained in correctional centres for immigration purposes.
- Specifically, submissions were received from Amnesty International Canada, Human Rights Watch, Association of World Citizens, BC Civil Liberties Association, BC's

Office of the Human Rights Commissioner, Canada Border Services Agency, Connective, Canadian Red Cross' Immigration Detention Monitoring Program, Ministry of Attorney General and Minister Responsible for Housing's Investigation and Standards Office, John Howard Society of Victoria, Migrant Rights Network, Migrant Workers Centre, Mosaic BC, Office of the Ombudsperson, Prisoners' Legal Services, Sanctuary City Vancouver, and SWAN Vancouver.

- Preliminary analysis of stakeholder submissions identified a number of themes, including concerns that the practice is:
 - Contrary to law and human rights standards;
 - Traumatic to detained individuals with negative impacts to physical, psychological, social, and spiritual health;
 - Discriminatory against women, transgender, non-binary, LGBTQI+ individuals;
 - Disproportionately harmful to individuals with pre-existing mental health concerns and disabilities; and
 - Lacking independent oversight, accountability and transparency.

Next Steps

- BC Corrections representatives are scheduled to visit the CBSA Immigration Holding Centre in Surrey, B.C. at the end of April 2022.
- Information gathering and analysis is ongoing to inform decision making with respect to the future of the arrangement. A briefing will be arranged when this work is concluded.

INDIGENOUS PEOPLES CONSIDERATIONS:

- Indigenous peoples are over-represented in BC Corrections; however, Indigenous peoples in custody are out of the scope for this review.

OTHER MINISTRIES IMPACTED/CONSULTED:

- The Heads of Corrections FPT committee has been consulted.

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**MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL
BC CORRECTIONS
INFORMATION BRIEFING NOTE**

PURPOSE: For **INFORMATION** for Mike Farnworth,
Minister of Public Safety and Solicitor General and Deputy Premier.

ISSUE:

Review of the Arrangement between Canada Border Services Agency (CBSA) and the Ministry of Public Safety and Solicitor General (PSSG), BC Corrections (the Arrangement), respecting the management of individuals subject to lawful detention under the *Immigration and Refugee Protection Act* (IRPA).

SUMMARY:

- BC Corrections has completed a review of its Arrangement with CBSA regarding the management of individuals subject to lawful detention under the IRPA.
- The review examined all aspects of the Arrangement, including impacts to public safety and whether it aligns with BC Corrections' mandate and with international and national legal frameworks.
- A report summarizing the key findings of the review has been completed (Appendix A: *Review of the Arrangement Between Canada Border Services Agency and BC Corrections, Adult Custody Division*).
- This report is intended to inform decision-making with respect to future of the Arrangement. The review demonstrates, on balance, that there is no quantifiable benefit to the Province of BC to continue with the Arrangement, however, consideration must be given to the Province's relationship with Public Safety Canada in the broader context of public safety when making a final decision on this matter.

BACKGROUND:

- BC Corrections and CBSA have a long-standing arrangement to hold immigration detainees in provincial correctional centres. The most current arrangement between BC Corrections and CBSA was signed in September 2017.
- The review began in February 2022, and included:
 - A jurisdictional scan of provincial and territorial partners and their immigration detention practices;
 - Data analysis of BC Corrections' provincial immigration detention over the last five years;
 - Examination of the current status of immigration detention in provincial custody and the impact on resources at Fraser Regional Correctional Centre (FRCC);
 - An analysis of the cost of holding detainees in provincial custody;
 - A tour of the CBSA Immigration Holding Centre in Surrey, B.C.; and

- Analysis of stakeholder submissions, including advocate concerns about holding immigration detainees in provincial custody and CBSA's perspective on the Arrangement.

INDIGENOUS PEOPLES CONSIDERATIONS:

- Indigenous peoples are over-represented in BC Corrections; however, Indigenous peoples in custody are out of the scope for this review.

OTHER MINISTRIES IMPACTED/CONSULTED:

- The Heads of Corrections FPT committee has been consulted.

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ATTACHMENT:

Appendix A: A Review of the Arrangement Between Canada Border Services Agency and BC Corrections



REVIEW OF THE ARRANGEMENT BETWEEN CANADA BORDER SERVICES AGENCY AND BC CORRECTIONS, ADULT CUSTODY DIVISION

DRAFT

Prepared by:
Policy and Programs Team, Strategic Operations Division
BC Corrections | Ministry of Public Safety and Solicitor General
June 2022



Ministry of
Public Safety and
Solicitor General

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ACRONYMS

Abbreviation	Definition
ACCW	Alouette Correctional Centre for Women
ATD	Alternative to Detention
CBSA	Canada Border Services Agency
CA	Correction Act (British Columbia)
CAR	Correction Act Regulation (British Columbia)
FRCC	Fraser Regional Correctional Centre
IHC	Immigration Holding Centre
IRB	Immigration Refugee Board
IRPA	Immigration and Refugee Protection Act
NIDS	National Immigration Detention Standards
NRAD	National Risk Assessment for Detention

INTRODUCTION

The Canada Border Services Agency (CBSA) is responsible for managing the immigration detention process for individuals subject to detention under the *Immigration and Refugee Protection Act* (IRPA).

CBSA officers exercise their authority to arrest and detain permanent residents or foreign nationals who are deemed to be inadmissible to Canada as governed by the IRPA and its regulations. Individuals can be detained pursuant to the IRPA if they are a danger to the public, a flight risk, or if their identity cannot be established.

A decision to detain a person is subject to a review by the Immigration and Refugee Board (IRB), an independent quasi-judicial tribunal. Detainees must appear before the IRB within the first 48 hours of being detained. At a detention review, the IRB may release the person, identify conditions for release, or determine that detention should continue. If the IRB determines that detention is appropriate, the individual must appear before the board within the next seven days, and every 30 days thereafter, to review if the reasons for detention continue to exist.

The CBSA's immigration holding centres (IHC) are the default place of detention where they are available (Laval, Quebec; Toronto, Ontario; and Surrey, British Columbia). When the risk a person poses cannot be mitigated through an alternative to detention (ATD), or within an IHC, or where there is no IHC available, the immigration detainee is placed in a provincial correctional centre, subject to arrangements the CBSA has with each province or territory.

In March 2020, the CBSA opened an IHC in Surrey, B.C., replacing the former IHC at the Vancouver International Airport. The new facility provides separate living units for men, women and families and can accommodate up to 70 individuals subject to immigration detention.

As outlined by the CBSA¹, their officers complete a National Risk Assessment for Detention (NRAD) for all detainees to identify risk and vulnerability factors related to their detention. This process is characterized by two central considerations: risk to public safety and risk to the integrity of the immigration system. Based on the results of the NRAD, officers may refer detainees to placement in an IHC or a provincial correctional centre.

The assessed level of risk is based on factors, including:

- Participation in organized crime;
- Number of years since the last known offence or conviction;
- Number of known convictions involving violent crime;
- Existence of outstanding charges or a serious incident during arrest;
- Involvement in a major breach of the detention facility rules;

¹ Canada Border Services Agency Stakeholder submission to review (p. 4, 5).

- Previous escape or attempted escape;
- An unexecuted criminal warrant for arrest; and
- Whether the individual is considered vulnerable (pregnant, nursing, under the age of 18, medical condition, restricted mobility, mental illness, and/or victim of human trafficking)

According to the CBSA, they are exploring options for developing a more robust IHC capacity in all regions of Canada. Even once these facilities have been completed, the CBSA indicates they will rely on provinces and territories to detain immigration detainees with serious risk of criminality who can neither be safely detained in an IHC nor released on ATDs.

As part of the provincial justice and public safety sector, BC Corrections plays an important role in advancing a shared vision of a safe, secure, and just British Columbia. Similar to other provincial and territorial jurisdictions in Canada, there is an arrangement between the CBSA and the Ministry of Public Safety and Solicitor General (PSSG), BC Corrections, Adult Custody Division (ACD) (the Arrangement) to hold immigration detainees in provincial correctional centres. The Arrangement identifies the roles and responsibilities of each party, including information sharing, transportation, placement, health care and the daily rate of reimbursement for holding immigration detainees in provincial correctional centres.

Stakeholders have been critical of the Arrangement, including Amnesty International and Human Rights Watch², citing concerns that placing immigration detainees in provincial custody across Canada results in:

- Placements with individuals in custody who have been sentenced or awaiting trial on criminal matters;
- Likelihood of being placed in segregation or separate confinement;
- Exposure to violent incidents;
- Lack of health care and/or mental health supports; and
- Use of security protocols such as searches, handcuffs, etc.

This document summarizes the review of the Arrangement respecting the management of individuals subject to lawful detention under the IRPA. All aspects of the Arrangement were reviewed, including whether it aligns with BC Corrections' mandate and with international and national legal frameworks. Additionally, the following areas were examined:

- The profile of immigration detainees in provincial correctional centres including demographics, length of stay, placement, time spent in segregation, access to health services and impact on centre resources;

² In June 2021, Amnesty International and Human Rights Watch detailed their concerns in a joint report: *"I Didn't Feel Like a Human in There": Immigration Detention in Canada and its Impact on Mental Health*.

- Provincial and territorial partners' experiences with immigration detention and related arrangements with the CBSA;
- The cost of holding detainees in provincial custody, including a net recovery/loss analysis; and
- Stakeholder input through written submissions specific to the experiences of individuals detained for immigration reasons in provincial correctional centres in B.C.

The scope of the review was limited to adults (18+) who are held on an order of detention issued by the CBSA under the authority of the IRPA and includes foreign nationals and permanent residents who may be inadmissible to Canada (collectively referred to as "immigration detainees" in this report).

The following were not in scope of the review: individuals who are held with dual status (i.e., those subject to both court-ordered detention and immigration detention), individuals under the age of 18 who are held on an order of detention for immigration purposes, and family units held on an order of detention for immigration purposes.

RESEARCH METHODOLOGY

Both a quantitative and qualitative approach to data collection provided a comprehensive evaluation of the current Arrangement. All data is primary (i.e., collected by BC Corrections) and descriptive.

The quantitative data reflects immigration detention from 2016-2021 to examine the following:

- The total number of unique individuals and average daily counts of individuals in custody each year, for both the overall population and immigration population; and
- Demographics of immigration detainees, including age, gender, ethnicity, length of stay, mental health needs, involvement in violent incidents, and placement in specific units.

In addition, a snapshot for all immigration detainees held at Fraser Regional Correctional Centre (FRCC) from March 1 to March 31, 2022, was examined to provide a summary of the current status of immigration detention in provincial custody and its impact on correctional centre resources. Individuals represented in the snapshot were not captured in the 2016-2021 data set because their term of detention with BC Corrections has not yet ended. It should be noted that FRCC is the primary centre for holding immigration detainees in provincial custody, and Alouette Correctional Centre for Women (ACCW) is the primary centre for holding female immigration detainees. This data also informed an examination of the impact of immigration detention on centre resources through a net cost/recovery analysis.

The qualitative data supplements the evaluation by describing individual experiences and systemic concerns associated with the practice of holding immigration detainees in provincial

correctional centres. It includes written submissions from stakeholder organizations regarding the practice of holding immigration detainees in provincial correctional centres.

Quantitative data specific to the provision of health care across provincial correctional centres was not included in the review. It is currently not possible to disaggregate data related to the use of medication and other healthcare services for individuals detained for immigration reasons. Information regarding use of health care services is included in the section outlining immigration detention at FRCC.

DISCUSSION

Profile of Immigration Detainees in Provincial Correctional Centres, 2016-2021

Number of immigration detainees

Since 2016, the total number of immigration detainees has steadily declined from 481 individuals to 71 in 2021. Although the total number of individuals in custody has also declined during this time, the proportion of detainees to the total number of individuals in custody has significantly declined since 2019, from 4.5% of the overall custody population to 1.0%.

The decline can be attributed, at least in part, to the COVID-19 pandemic and to the opening of the CBSA's IHC in Surrey, which is suitable for lower risk individuals. Since the onset of the COVID-19 pandemic in March 2020, the CBSA has taken measures to find ATDs so individuals can safely remain in the community, as appropriate.

Table 1: Proportion of immigration detainees to individuals in custody, 2016-2021

	2016	2017	2018	2019	2020	2021
Total individuals in custody³	12,718	12,453	11,647	11,003	7,747	7,098
Immigration Detainees in custody ⁴ (represented as a proportion of total custody population)	481 (3.8%)	503 (4.0%)	409 (3.5%)	499 (4.5%)	159 (2.1%)	71 (1.0%)

³ Represents the number of unique individuals who spent at least one day in custody in a given year.

⁴ Represents the number of unique immigration detainees each year. Note that individuals are only counted once in each year (the year they were admitted), even if they have multiple stays in custody as an immigration detainee in a given year.

Ethnicity

Although data regarding an individual's country of origin is not collected by BC Corrections, ethnicity information is collected during the intake process and is based on self-identification. From 2016-2021, the average annual number of immigration detainees broken down by ethnicity is as follows:

Table 2: Immigration detainees by ethnicity, yearly average, 2016-2021

Ethnicity	Average annual number of detainees, 2016-2021	Average annual proportion of all detainees, 2016-2021
Asian	50	14%
Black	38	11%
Caucasian	61	17%
South Asian	65	18%
Hispanic	73	21%
s.13		
Other/Unknown*	62	18%

*Note: Includes groups not tracked by BC Corrections and individuals who do not self-identify/disclose ethnicity.

Mental health needs

The total number of immigration detainees with mental health needs⁵ has varied throughout the past five years. While the majority of immigration detainees do not have an identified mental health need, the proportion of detainees with mental health needs has steadily increased since 2016 (from 8.1% to 29.6%).

The increase in proportion of immigration detainees with mental health needs may be attributed to the opening of the IHC in Surrey to hold lower risk individuals in the region, as well as the CBSA's focus on ATDs, and lower overall counts due to the COVID-19 pandemic. Specifically, a lower overall number of detainees, in combination with higher risk and complex needs individuals continuing to be placed in provincial correctional centres, helps to explain this proportional growth.

⁵ Mental health need is identified and designated by correctional staff based on client history and current behaviour and is not indicative of a medical mental health diagnosis.

Table 3: Total immigration detainees with mental health needs, 2016-2021

	2016	2017	2018	2019	2020	2021
Immigration detainees with mental health needs	39	29	35	41	22	21
Proportion of all immigration detainees	8.1%	5.8%	8.6%	8.2%	13.8%	29.6%

s.13

Gender

Of the immigration detainees held in 2021, 65 were male and six were female. The proportion of female detainees has steadily declined from representing 14.8% of the detainee population in 2016 to 8.5% in 2021.

Table 4: Gender of immigration detainees, 2016-2021

	2016	2017	2018	2019	2020	2021
Male	410	440	358	447	146	65
Female	71	63	50	52	13	6
Unknown	0	0	1	0	0	0
Female proportion of all detainees	14.8%	12.5%	12.2%	10.4%	8.2%	8.5%
Total immigration detainees	481	503	409	499	159	71

Female immigration detainees have a different experience from their male counterparts while in provincial custody. The larger number of male detainees means a greater likelihood they may be placed together at FRCC in a living unit dedicated to immigration detainees, separate from the rest of the correctional centre population.

Female detainees are primarily held at ACCW, a centre with unique design, staffing models and programs dedicated to women. However, due to the smaller number of females in custody, there may be only one or two immigration detainees at any given time at ACCW. This necessitates housing immigration detainees with the general correctional population while in

provincial custody, which results in female immigration detainees being placed on living units with other females who are sentenced or awaiting trial for criminal matters.

Age

Between 2016-2021, on average, 87% of immigration detainees were between 21-50 years old.

Table 5: Age⁶ of immigration detainees, 2016-2021

	2016	2017	2018	2019	2020	2021
20 and younger	5	10	14	13	8	1
21-30	153	160	129	207	69	26
31-40	152	176	126	133	43	19
41-50	114	106	94	98	30	14
51-60	42	34	36	42	7	10
61 and older	15	17	10	6	2	1
Total	481	503	409	499	159	71

Management of Immigration Detainees in Provincial Correctional Centres

Length of stay

In 2021, there were 71 immigration detainees who accounted for 84 stays in provincial correctional centres on an order for detention (10 immigration detainees had ≥2 stays in 2021). All of these stays were less than 180 days. Comparably, in 2016, 97.8% of stays were for less than 180 days. From 2016-2019, the number of days detained remained relatively stable but between 2019 and 2021 the proportion of individuals who were held for 31-180 days increased from 15% to 32%.

This is noteworthy because although fewer immigration detainees were held in provincial correctional centres during this time, the ones who were held were detained for longer periods of time. This may be explained by the COVID 19 pandemic and its impact on detention and that more low risk people stayed at the new IHC in Surrey.

⁶ Age was calculated based on the individuals' date of birth and the effective date of the Warrant of Immigration.

Table 6: Number of stays for detainees by length of stay (in days) and year of admission

	2016	2017	2018	2019	2020	2021
1-3 days	180	164	115	164	48	19
4-7 days	168	150	109	152	55	17
8-30 days	121	140	128	152	40	21
31-180 days	56	87	104	84	46	27
181-365 days	10	7	4	14	2	0
1 year or longer	2	5	1	5	1	0
Total Stays	537	553	461	571	192	84

Placement

The *United Nations Standard Minimum Rules for the Treatment of Prisoners*, commonly referred to as the “Mandela Rules” outline that “different categories of prisoners shall be kept in separate institutions or part of institutions, taking in account their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment” (Rule 11). Guided by the Mandela Rules, BC Corrections prevents the mingling and placement of immigration detainees with the regular custody population to the greatest extent possible and where operationally feasible. This is primarily accomplished by holding immigration detainees together in a dedicated living unit at FRCC.

While statistics related to the prevalence of placing detainees on units with the correctional population are not readily available, BC Corrections acknowledges that this practice does occur in some cases due to a number of considerations that determine placement. For example, if there is a small number of immigration detainees in provincial custody at any given point in time, operational, physical, geographic and fiscal constraints may limit the ability to dedicate living spaces to one or two immigration detainees. In such circumstances, detainees are placed in general living units with other individuals who are in custody for criminal matters.

Specialized placements and/or protective custody

Additionally, the unique circumstances of each immigration detainee may result in the need for placement on a specialized unit with others from the broader correctional population. In addition to enhanced access to health and mental health services, detainees who have been identified by BC Corrections and Correctional Health Services as having complex mental health needs may be placed in mental health units with other individuals in custody who have similar needs. Detainees who have been identified as being vulnerable and at risk from others in custody may be placed in protective custody to ensure their safety while in the correctional centre. Protective custody is used to support the safety of individuals who may have a history of sexually motivated offences, are past or present employees in the criminal justice system, have peer-related issues, are known informants, or who may be at risk in the general

population due to unique physical or mental health needs.

From 2016 to 2021, 103 immigration detainees were placed in protective custody at least once, which represents 4.9% of the total immigration detainees held during that time (or 4.3% of all stays).

Table 7: Number of immigration detainees with a protective custody population designation, 2016-2021

	2016	2017	2018	2019	2020	2021
Protective custody placement	15	20	22	29	6	11
Total immigration detainees	481	503	409	499	159	71

Quarantine Unit

To reduce the risk of transmission of COVID-19, individuals must enter a quarantine unit for a period of time⁷ before being placed in their designated unit. A quarantine unit is a living unit that has been designated by the warden to mitigate the spread of communicable diseases while maintaining meaningful human contact. In 2021, 21 immigration detainees spent an average of 6.5 days on a quarantine unit prior to being placed elsewhere in the correctional centre.

Table 8: Number of immigrant detainees held in quarantine units and average length of stay (in days), 2019-2021

	2019	2020	2021
Number of detainees placed on quarantine unit	0	32	21
Length of stay on quarantine unit	N/A* ⁸	7.3	6.5

Segregation

Segregation units are used to temporarily place individuals in custody away from others for security, safety, or disciplinary reasons. Separate confinement in a segregation unit for safety or security reasons is not punitive and is only used to provide the correctional centre or individual an opportunity to address their behaviour, risks, or circumstances that led to separate confinement. Placement in a segregation unit for disciplinary reasons may occur following a

⁷ Quarantine units were established in March 2020 in response to the COVID-19 pandemic. From March 2020 – February 27, 2022, individuals were required to spend 14 days in the quarantine unit. On February 28, 2022, time in quarantine was reduced to 10 days and effective April 4, 2022, quarantine time was further reduced to 7 days.

⁸ Quarantine units not utilized until COVID-19 pandemic in 2020.

hearing conducted by a correctional adjudicator if it is found that an individual in custody breached a rule and is given a penalty of a term in segregation.

BC Corrections has been working to change its segregation practices to better safeguard the well-being of people in its custody while supporting the safety of correctional centre staff and using segregation only as a last resort. Many of the individuals placed in segregation are dealing with complex issues that require extra supports and supervision.

In 2021, nine immigration detainees (13% of total detainees) were placed in a segregation unit for an average of 9.9 days. Comparatively, in 2020, 26 immigration detainees (16% of the total) were held in a segregation unit at some point during their time in BC Corrections' custody for an average of 9.8 days. In 2019, 10% of immigration detainees spent some time in a segregation unit for an average of 3.8 days. This increase in average time in the segregation unit reflects the increased proportion of individuals with complex needs who continue to be placed in provincial custody since the opening of the IHC.

Table 9: Number of immigrant detainees held in a segregation unit and average length of stay (in days), 2019-2021

	2019	2020	2021
Number of detainees placed on segregation unit	48	26	9
Length of stay on segregation unit	3.8	9.8	9.9

*Note: Segregation data was only available from 2019-2021.

Incidents of Violence

Since 2016, immigration detainees have rarely been involved in incidents of violence within correctional centres, and there have been no deaths of immigration detainees in provincial custody. The table below illustrates the number of immigration detainees involved in violent custody incidents as a proportion of total immigration detainees, and also, as a proportion of their number of stays (as mentioned above, some immigration detainees had multiple stays in provincial custody in a given year).

Table 10: Number of immigrant detainees Involved in violent incidents, 2016-2021

	2016	2017	2018	2019	2020	2021
Violent incidents involvement during immigration hold	18	22	17	22	4	8
Total immigration detainees	481	503	409	499	159	71
Total immigration stays	537	553	461	571	192	84

Standards of Detention

The conditions of detention and the treatment of all people in custody, including immigration detainees while they are in provincial custody, are governed by the *Correction Act* (CA) and Correction Act Regulation (CAR) and the policies and procedures of the ACD. Although immigration detainees are in provincial custody due to administrative matters related to the IRPA, detainees are subject to the same security procedures and policies as all other individuals who are in custody due to criminal matters. These security procedures and policies are required for the safe and effective operation of a correctional centre and may include searches, special handling protocols if needed (handcuffs, restraints etc.), and restricted routines and/or movements.

Access to Health Care Services

Effective October 1, 2017, the responsibility for health care services for individuals in provincial correctional centres transitioned from BC Corrections to the Ministry of Health, with services delivered by Correctional Health Services, Provincial Health Services Authority. This transition supports the delivery of health and mental health care in custody as well as continuity of care when individuals enter custody and upon release.

All individuals in custody, including immigration detainees, have equitable access to health care services. Every individual who enters a provincial correctional centre, regardless of reason for detention, is assessed by a nurse and screened by a mental health screener within 24 hours of admission.

Individuals in custody are then assigned to living units, taking into consideration the results of the assessment, and referred to mental health professionals, such as a psychiatrist or psychologist, as required. Each correctional centre also has mental health liaison officers, who are correctional officers with specialized training in managing and supporting individuals with mental health needs.

Immigration Detention in Fraser Regional Correctional Centre, March 1 – March 31, 2022
FRCC is the primary correctional centre used for holding immigration detainees in the province. As such, a snapshot of immigration detainees at FRCC during the period March 1 – March 31, 2022, was examined to provide a summary of the current status of immigration detention and its impact on centre resources. There were no female immigration detainees in the province during this time frame.

FRCC is located in Maple Ridge, B.C. and has a total of 304 cells for all types of security levels: secure, medium and open custody. Although FRCC has a unit dedicated for immigration detainees, there may be circumstances where detainees interact with other individuals in custody during attendance at programming, work programs or if detainees are placed on

specialized units such as in segregation, in protective custody, or on a quarantine unit, as described above.

There were 14 immigration detainees at FRCC during the data collection period (March 2022). Ten (71%) were detained for public safety reasons and four (29%) were considered a flight risk or requiring deportation. Twelve (86%) were assessed by the CBSA's NRAD as being high risk for violence and one as unpredictable due to mental health needs. The other risk assessment score is unknown. The median length of stay for these individuals, as of March 31, 2022, was 52 days (ranging from 6 days to 862 days). It should be noted that 6 detainees had yet to be released at the time of this analysis (as of March 31, 2022), as such, their information is not included in the aggregate statistics contained within this document.

To measure impact on centre resources, information was examined related to the use of health care services as well as requirements for correctional officer supervision during March 2022. During this time, the 14 immigration detainees made 116 health practitioner visits, including appointments with nurses, general practitioners, dentists, psychologists, psychiatrists, addictions counsellors, lab technicians, and mental health clinicians. One individual attended 29 personal healthcare visits, representing 25% of all immigration detainee medical visits for the month.

To supervise the 14 detainees during March 2022 FRCC staff spent, on average, four hours per day completing administrative tasks related to their care and detention. This administrative work included telephone calls with CBSA, managing electronic and written correspondence, photocopying and scanning documents, arranging interviews, and assisting the IRB with scheduling hearings. This is in addition to the staffing resources required to operate the immigration living unit. It is estimated that currently FRCC dedicates a total of 8 FTEs to operate the immigration living unit, perform administrative functions, and provide additional correctional supports to detainees for mental health needs, escorts and supervisory duties.

Cost to hold immigration detainees in BC Corrections' custody

Under the terms of the Arrangement, the CBSA pays BC Corrections a daily rate to cover the costs of holding immigration detainees in provincial correctional centres. The rate charged in 2021 to the CBSA was \$253.00 per detainee per day. As detailed in the Arrangement, the daily rate is adjusted each fiscal year based on the change in the B.C. Consumer Price Index as set by Statistics Canada. The following table outlines the daily rates charged since 2016:

Table 11: Daily rate charged to CBSA per immigrant detainee, 2016-2021

	2016	2017	2018	2019	2020	2021
Daily rate charged	\$228	\$231	\$235	\$240	\$247	\$253

BC Corrections only receives payment for individuals held solely on an IRPA Order of Detention issued by the CBSA, and not for those who are held on an accompanying criminal remand or sentence order. The total amount owing to BC Corrections by the CBSA is calculated by tallying “bed days” (i.e., the total number of immigration detainees multiplied by the total number of days spent in custody each fiscal year).

A net recovery/loss analysis was conducted to determine if the amount recovered by BC Corrections meets, exceeds, or is below the actual cost to house immigration detainees over the past three fiscal years.

The analysis was based on the daily rate charged as per the Arrangement by year (Table 10), an estimated daily cost rate of \$14.66 for food, clothing and other supplies, and a staffing complement of 8 FTEs in FY2021/22 and FY 2020/21 (lower immigration detainee counts) and 10.5 FTEs in FY 2019/20 (higher immigration detainee counts). It should be noted that despite the significant reduction in the number of detainees held by BC Corrections in recent years, the FTEs complement does not drop in direct proportion because a set number of FTEs (5.5) are required to operate a living unit regardless of the number of people held there. This cost estimate does not include health care costs, as such costs are difficult to determine at an aggregate level.

Table 12: Net recovery/loss of costs to house immigration detainees by fiscal year

Fiscal Year (FY)	Bed days	Total recoveries	Daily cost (Food, clothing, supplies, etc.)	Staffing cost	Total cost
FY 2019/20	12,306	\$3,101,579	\$180,406	\$941,112	\$1,121,518
Net Recovery or Loss (Total costs less total recovery)	\$1,980,061 (FY 2019/20 Net Recovery)				
FY 2020/21	4,464	\$1,129,392	\$65,442	\$717,038	\$782,480
Net Recovery or Loss (Total costs less total recovery)	\$346,912 (FY 2020/21 Net Recovery)				
FY 2021/22	2,418	\$616,590	\$35,448	\$717,038	\$752,486
Net Recovery or Loss (Total costs less total recovery)	-\$135,896 (FY 2021/22 Net Loss)				

The net recovery/loss analysis shows that the reduction in the number of immigration detainees in provincial custody has significantly changed the financial implications of the Arrangement and has resulted in a net loss for BC Corrections to fulfill the Arrangement. Over the past three fiscal years, this has had increasingly significant budget implications for the

organization, and in the most recent fiscal year results in a loss of resources that could otherwise be used to support other individuals in custody. Given the CBSA's commitment to continue to reduce the number of immigration detainees held in provincial custody, it is reasonable to assume that the net loss per fiscal year will continue for the foreseeable future if the current financial terms of this Arrangement continues.

JURISDICTIONAL SCAN

Eleven jurisdictions reported that they admit and maintain custody of immigration detainees, within their provincial correctional centres. Of these jurisdictions, all but one has an agreement with the CBSA related to immigration detention.

In four jurisdictions, immigration detainees are held separately from other categories of individuals in custody, whenever feasible based on operational requirements. In the remaining jurisdictions, immigration detainees are held with other individuals in custody.

s.13; s.16

STAKEHOLDER ENGAGEMENT

Stakeholders were asked to provide written submissions specific to the experiences of individuals detained for immigration reasons in provincial correctional centres in B.C., detailing their role or interest in this subject and any relevant information relating to human rights, public safety or any other factors considered important to include.

Through this call for information, BC Corrections received 16 submissions from various stakeholder groups including advocates, experts, lawyers, academic scholars, health care practitioners, faith leaders, and individuals detained in provincial correctional centres for immigration purposes. Specifically, submissions were received from the following organizations:

- BC Civil Liberties Association;
- BC's Office of the Human Rights Commissioner;
- Canada Border Services Agency;
- Faith Leaders, Individuals, and Religious Organizations;
- Healthcare Providers;
- Investigation and Standards Office, Ministry of the Attorney General (BC);
- John Howard Society of BC;
- Joint Submission—Human Rights Watch and Amnesty International;

- Joint Submission—BC Poverty Reduction Coalition, Centre for Gender & Sexual Health Equity, Community Legal Assistance Society, Immigration and Refugee Legal Clinic, Migrant Workers BC, and West Coast LEAF;
- Office of the Ombudsperson BC;
- Rainbow Refugee
- SWAN Vancouver; and
- West Coast Prison Justice Society.

Stakeholder Concerns

There were consistent themes identified in the submissions from stakeholders, including that the practice is:

- Contrary to law and human rights standards;
- Traumatic to detained individuals with negative impacts to physical, psychological, social, and spiritual health;
- Discriminatory against women, transgender, non-binary, LGBTQI+ immigrants;
- Disproportionately harmful to individuals with pre-existing mental health needs and disabilities due to lack of access to services and treatment within provincial correctional centres;
- Lacking independent oversight, accountability and transparency; and
- Built on and perpetuating systemic racism.

Stakeholders question the practice of detaining people for immigration-related reasons in facilities used for criminal law enforcement. Stakeholders cite international law and human rights frameworks that protect individuals held for immigration reasons from being treated in a punitive manner and being held with those accused and/or convicted of criminal acts.

According to BC's Office of the Human Rights Commissioner's (BCOHRC) submission, the Arrangement's current practices "contravene B.C.'s Human Rights Code and international human rights conventions including the Convention on the Rights of Persons with Disabilities, the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, as well as guidelines set out by the UN Working Group on Arbitrary Detention, the UN Committee on Economic, Social, and Cultural Rights and the Mandela Rules".

Amnesty International's submission notes there are implications when immigration detainees are held with those in provincial correctional centres related to criminal matters. Specifically, they say detainees in correctional centres are:

"Routinely handcuffed, searched, and restricted to small spaces with rigid routines and under constant surveillance, with severely limited access to

the outside world. Many immigration detainees are confined in tense and dangerous environments where they may be subjected to violence, and they are also subjected to solitary confinement.”

Stakeholders pointed to the lack of independent oversight of the CBSA and the Province’s responsibility in ensuring that the people under its care and supervision are treated humanely.

In a joint submission by lawyers, legal representatives and academic scholars with expertise in migration law and policy, refugee protection, human rights and prison law, signed by Dr. Efrat Arbel, Associate Professor, University of British Columbia Peter A. Allard School of Law, they cite that:

“We are gravely concerned that there are no laws or regulations governing when and under what circumstances an immigration detainee can be transferred to, and incarcerated in, a provincial jail. Instead, these vital decisions regarding immigration detainees’ residual liberty rights are within the discretion of CBSA, which remains the only major law enforcement agency in Canada without independent civilian oversight.”

In addition, BCOHRC’s submission to this review advises that although the detention of immigration detainees is guided by federal legislation, the province takes on responsibility through the Arrangement. Specifically, BCOHRC states that:

“Although immigration detainees are held under the authority of CBSA, the Government of British Columbia is facilitating the detention process through its Arrangement with the federal government. The provincial government de facto assumes responsibility for the conditions under which immigration detainees in B.C. correctional centres are being detained, including ensuring compliance with statutory and international human rights standards”.

Other submissions document the harm and trauma caused by the CBSA’s policies and practices, especially related to mental health impacts of individuals detained in provincial correctional centres. A joint submission signed by mental health experts, doctors, nurses, social workers, healthcare providers and researchers cited concerns about placing people with mental health needs in provincial centres. The letter, signed by Mei-ling Wiedmeyer, MD, Clinical Assistant Professor, UBC Department of Family Practice and Family Physician at the Umbrella Multicultural Health Cooperative and Clinician Scientist, IRIS project, at the Centre for Gender and Sexual Health Equity, stated that:

“Immigration detainees with conditions such as schizophrenia and bipolar disorder, or those who are perceived to be suicidal, may be incarcerated in

provincial jails because of their health symptoms or condition. CBSA's policy and practice of incarcerating immigration detainees in provincial jails is egregiously discriminatory and profoundly inhumane. Simply put, jails are not healthcare facilities, and they are harmful for individuals undergoing immigration and refugee proceedings."

Advocates shared stories about the treatment and discriminatory practices related to detaining female immigrants engaged in sex work. An impactful letter was received from an individual seeking refugee status, detained in provincial custody, living with a disability that affected their ability to communicate and therefore understand what was happening to them and around them.

The Office of the Ombudsperson (the Office) investigates complaints about administrative actions and decisions of provincial public authorities. When it is found that a public body has acted unfairly, the Office seeks resolutions and issues reports and recommendations where necessary.

The Office provided a submission noting that the Office has received and investigated complaints from individuals held in provincial correctional centres pursuant to the IRPA. Most of the complaints came from individuals held at FRCC and some of the issues raised include access to health care, visits with family members, access to services needed to prepare their immigration case, and concerns about treatment by correctional centre staff.

In the submission, signed by Ombudsperson Jay Chalke, he states that he is "not in a position to advise whether or not the province should continue holding people detained under IRPA in provincial correctional centres". However, he notes that if BC Corrections continues to hold immigration detainees, the Office may initiate an investigation of current practices to examine in detail the conditions of their detention.

CBSA Context

The CBSA provided a submission that outlined their authority to arrest and detain individuals as well as the established review processes to ensure transparency and objectivity in detention decisions. The CBSA pointed to their increasing efforts to reduce the reliance on provincial correctional centres through investments in enhancing IHCs and an expansion of the ATD program.

The CBSA stated that "Canada's immigration detention program is based on the principle that detention shall be used only as a last resort". They also included the newly revised National Immigration Detention Standards (NIDS) that establish guidelines for the treatment of detainees in IHCs and non-CBSA detention facilities.

Section 6.5.3 documents the NIDS, which include:

1. Federal-provincial memoranda of understanding (MOU) respecting the detention of persons detained under the IRPA are established and mutually respected.
2. Regular interaction with provincial partners is maintained and the terms of MOUs revisited as required.
3. Detainees held in non-CBSA facilities are regularly monitored to ensure their health and well-being.
4. Issues, concerns and complaints raised with the CBSA or other monitoring bodies (in other words, Canadian Red Cross Society, UNHCR) by detainees are promptly broached with facility authorities and resolved where possible.
5. Detainees are classified and placed in the appropriate facility and reassessed regularly according to the standard on Classification and Placement of Detainees in Detention Facilities.

It should be noted that an Arrangement has been established and is reviewed and updated by both BC Corrections and the CBSA. As noted earlier, BC Corrections staff are in contact with the CBSA regarding the specific management of immigration detainees in custody, including monitoring of their health and well-being and regularly addressing issues and concerns as needed. BC Corrections also provides information to support the CBSA in their regular placement and classification reviews of detainees, as per the CBSA's guidelines. The CBSA is responsible for ensuring non-CBSA facilities adhere to these standards and to date, BC Corrections has not been made aware of concerns related to compliance.

The Canadian Red Cross (CRC) is contracted by the CBSA to operate the immigration detention monitoring services. The CRC visits detention facilities across Canada (CBSA-managed IHCs and provincial correctional facilities) and interviews immigration detainees. Under the terms of the current contract, the CRC plans and conducts formalized planned quarterly visits as well as ad hoc visits at the IHCs and provincial correctional centres based on detention statistics. The CRC completes a summary of its monitoring activities through a national annual report outlining its findings and recommendations. The latest reports can be found on the CBSA website: [Canadian Red Cross - 2019-2020 IDMP Annual Monitoring Activity Report](#).

According to the CBSA, their efforts to change their detention programs and focus on ATDs have resulted in "reducing the reliance on provincial correctional centres". This is evidenced in their statistics, which show an 83% reduction in the number of immigration detainees held each year in BC's provincial correctional centres from 2017 to 2021 (503 individuals in 2017 to 86 in

2021⁹). The CBSA indicates they expect that number to continue to drop over the coming years. That said, the CBSA believes that even with the expansion of their IHCs, focus on ATDs, and the resulting reduction in number of immigration detainees held by BC Corrections, there continues to be a need to use provincial centres in some cases:

“The CBSA is exploring options for developing a more robust IHC capacity in all regions of Canada. Even once these facilities have been completed, the CBSA will still need to rely on the provinces to detain a small number of immigration detainees with serious criminality who can neither be detained in an IHC nor released on alternatives to detention.”

ADDITIONAL CONSIDERATIONS REGARDING THE ARRANGEMENT

Legal authority

The CBSA has the sole federal authority to detain persons under section 55 of the IRPA and, as such, is responsible for the care and control of immigration detainees. Although section 8 of the IRPA allows the Minister of Public Safety and Emergency Preparedness to enter into agreements with provincial governments for the purposes of the Act, there is no such provision in applicable provincial legislation (*Correction Act*) enabling the province to enter into these agreements.

BC Corrections’ mandate

BC Corrections has a mandate to safely hold people 18 years or older in provincial custody who are serving sentences of two years (less a day) and/or awaiting trial as well as to supervise individuals in the community on probation and/or bail. BC Corrections achieves its mandate by working with individuals to address their needs with the goal of reducing reoffending in the community. A significant component of correctional practice in B.C. is providing programming and working with individuals to promote change, and in doing that, communities are strengthened and protected.

The organization’s mandate is an important consideration when examining the future of the Arrangement. Holding immigration detainees is not in alignment with BC Corrections’ mandate and that in fact, may use resources that could otherwise be used to better address the criminal behaviours of people in custody serving sentences or awaiting trial.

Public safety considerations

If changes are made to the Arrangement between BC Corrections and the CBSA, public safety implications must be contemplated. The CBSA has indicated their IHC does not have the

⁹ Discrepancies between CBSA and BC Corrections’ number of immigration detainees in BC Corrections correctional centres exist due to data being captured at different points of detention and because data is aggregated differently.

suitable security and infrastructure features required to safely hold high-risk detainees. As noted earlier, the CBSA stated that despite their new IHC and expansion of ATDs, they continue to see an ongoing need for the use of BC Corrections' correctional centres for an increasingly small number of detainees who present high-risk behaviours that cannot safely be managed in their facility.

An additional consideration is that the CBSA's IHC is staffed by contracted security guards. BC Corrections did not review their training program but note that BC Corrections' officers receive extensive training to address problematic behaviours, violence and self-harm through de-escalation, case management and other interventions to promote safety for staff, contractors and individuals in custody.

Given BC Corrections' larger role in supporting public safety in British Columbia, the organization understands that if immigration detainees are no longer held in provincial correctional centres, the CBSA needs to identify alternatives to safely detain this population. It would be anticipated that the CBSA would require time to plan and implement additional facilities or alternatives that are safe and secure so as to not compromise public safety in B.C. or put those in their care—staff, contractors and detainees—at risk in any way.

CONCLUSION

The review of BC Corrections' Arrangement with the CBSA shows that while the number of immigration detainees in provincial custody is declining, the CBSA continues to rely on the use of provincial correctional centres to hold high-risk detainees. This practice includes holding some female detainees in correctional centres; this group is more likely to be held with individuals in custody for criminal matters due to their small numbers. Despite the use of a dedicated immigration unit at FRCC, some male detainees are also placed with the general correctional population on specialized units or in protective custody.

In addition, an increasing proportion of immigration detainees have mental health needs, typically requiring more health care, mental health supports and staffing support. The review showed that immigration detainees have regular and readily available access to healthcare and mental health supports in provincial custody.

Immigration detainees in provincial custody are placed at times in segregation for safety, security or disciplinary reasons and are subject to the same security protocols as all other individuals in custody. This includes being subject to procedures such as searches, handcuffing, wearing of institutional clothing, and restricted movements or routines in the correctional centre. The review demonstrated that immigration detainees are not frequently involved in violent incidents and have not been involved in any critical incidents in the past five years.

Stakeholders identified that by holding immigration detainees, BC Corrections takes on de facto legal responsibility for a federal legislative framework, international guidelines and human

rights standards. There is a lack of explicit authority for BC Corrections to hold immigration detainees in provincial correctional centres. Meanwhile, BC Corrections manages immigration detainees under the authority of the CA and CAR, provincial legislation drafted for the purposes of holding individuals who are sentenced for two years less a day or are awaiting trial for criminal matters.

While BC Corrections is compensated by the CBSA to hold detainees, the review shows that significant staffing resources are used to supervise these individuals. The net recovery/loss analysis showed that as of the most recent fiscal year, recoveries from the CBSA do not cover BC Corrections' costs, resulting in a net loss. This is a trend that is likely to continue given the overall reduction in the number of detainees in provincial custody. If the Arrangement ended, these are resources that could be used to support BC Corrections' clients, including individuals in custody with complex needs and behaviours.

As demonstrated in this review, holding immigration detainees does not align with BC Corrections' mandate. That said, BC Corrections is committed to contributing to public safety in the province and has had a long-standing partnership with the CBSA. BC Corrections acknowledges the CBSA's efforts to increase ATDs and expand their detention facilities. Next steps regarding the future of the Arrangement must be considerate of this partnership and any implications for public safety in the province.

**MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL
BC CORRECTIONS
DECISION BRIEFING NOTE**

PURPOSE: For **DECISION** of Mike Farnworth,
Minister of Public Safety and Solicitor General and Deputy Premier.

ISSUE:

Future of the arrangement between the Canada Border Services Agency (CBSA) and the Ministry of Public Safety and Solicitor General (MPSSG), BC Corrections (the Arrangement), respecting the management of individuals subject to lawful detention under the *Immigration and Refugee Protection Act* (IRPA)

DECISION REQUIRED / RECOMMENDATION:

The MPSSG provides notice to the CBSA to end the Arrangement respecting the detention of immigration detainees in provincial correctional centres.

SUMMARY:

- In place for decades, the Arrangement between the Province of British Columbia (as represented by BC Corrections) and Canada (as represented by the CBSA) outlines the process to hold immigration detainees in provincial custody (see Appendix A) and receive payment for that service. The most recent Arrangement was signed in September 2017.
- BC Corrections recently reviewed immigration detention in provincial correctional centres to better understand the implications of the current Arrangement on immigration detainees and BC Corrections (see Appendix B).
- The review demonstrated that the practice of holding immigration detainees is contrary to national and international human rights standards. Furthermore, holding immigration detainees in provincial correctional centres does not align with BC Corrections' mandate and results in an annual net financial loss for BC Corrections.
- It is recommended that BC Corrections provide notice to the CBSA to end the Arrangement.

BACKGROUND:

- The CBSA is responsible for managing the immigration detention process for individuals subject to detention under the IRPA.
- The CBSA can detain permanent residents or foreign nationals who are deemed inadmissible to Canada if they are considered a danger to the public, a flight risk, or if their identity cannot be established.
- The CBSA's immigration holding centres (IHC) are the default places of detention where they are available (Laval, Quebec; Toronto, Ontario; and Surrey, British Columbia).

- When the risk a person poses cannot be mitigated through an alternative to detention (ATD), or within an IHC, or where there is no IHC available, the immigration detainee is placed in a provincial correctional centre, subject to arrangements the CBSA has with each province or territory.
- The existing Arrangement outlines the roles and responsibilities of BC Corrections and the CBSA including information sharing, transportation, placement, health care and the daily rate for reimbursement.
- The Arrangement may be terminated by either party upon twelve months written notice to the other party.
- In early 2022, BC Corrections completed a review of the Arrangement following a meeting between the Minister of PSSG and representatives from Amnesty International and Human Rights Watch to discuss their report entitled, *"I Didn't Feel Like a Human in There: Immigration Detention in Canada and its Impact on Mental Health."* The report illustrates several concerns with immigration detention in Canada, including alleged human rights violations and serious impacts on individuals' mental health.
- Stakeholders who participated in the review also raised legal and human rights issues related to the Arrangement, citing concerns that placing immigration detainees in provincial custody across Canada results in:
 - Placements with individuals in custody who have been sentenced or awaiting trial on criminal matters;
 - Likelihood of being placed in segregation or separate confinement;
 - Exposure to violent incidents;
 - Lack of health care and/or mental health supports; and
 - Use of security protocols such as searches, handcuffs, etc.

DISCUSSION:

- The review of the Arrangement was limited to adults (18+) who were held in provincial custody on an order of detention issued by the CBSA and excluded individuals who were held with "dual status" (i.e., those subject to both court-ordered detention and immigration detention), individuals under the age of 18 who are held on an order of detention for immigration purposes, and family units held on an order of detention for immigration purposes.
- The review of the Arrangement shows that although the total number of immigration detainees in provincial custody is declining, the CBSA continues to rely on provincial correctional centres to hold high-risk detainees because their IHC in B.C. does not have suitable security and infrastructure features required to safely hold these individuals.
 - Since 2016, the total number of immigration detainees has steadily declined from 481 individuals to 71 in 2021, and the proportion of immigration detainees to the total number of individuals in custody has significantly declined since 2019, from 4.5% of the overall custody population to 1.0%.

- The CBSA reports that they are committed to increasing the use of ATDs and expanding their IHCs to further reduce the number of immigration detainees held in provincial correctional centres.
- The review also revealed that an increasing proportion of immigration detainees held in provincial correctional centres have mental health needs, typically requiring extensive health care, mental health supports and staffing support.
 - The proportion of detainees with mental health needs has steadily increased since 2016 (from 8.1% to 29.6%).
- Guided by the *United Nations Standard Minimum Rules for the Treatment of Prisoners*, BC Corrections limits the mingling and placement of immigration detainees with the regular custody population to the greatest extent possible and where operationally feasible. This is accomplished by holding male immigration detainees together in a dedicated living unit at Fraser Regional Correctional Centre (FRCC).
 - Although FRCC has a unit dedicated for immigration detainees, there are circumstances where detainees interact with other individuals in custody, for example during attendance at programming, work programs or if detainees are placed on specialized units such as in segregation, in protective custody, or on a quarantine unit.
 - Female detainees are held at Alouette Correctional Centre for Women (ACCW). Due to the smaller number of females in custody, there may be only one or two immigration detainees at any given time at ACCW, which necessitates housing immigration detainees with the general correctional population while in provincial custody. This results in female immigration detainees being more likely to be placed on living units with others who are sentenced or awaiting trial for criminal matters than male detainees.
- Immigration detainees in provincial custody may be placed at times in segregation for safety, security or disciplinary reasons and are subject to the same security protocols as all other individuals in custody who are held on criminal matters. This includes being subject to procedures such as searches, handcuffing, wearing of institutional clothing, and restricted movements or routines in the correctional centre.
- Under the terms of the Arrangement, the CBSA pays BC Corrections a daily rate to cover the costs of holding immigration detainees in provincial correctional centres. The rate charged in 2021 to the CBSA was \$253.00 per detainee per day.
 - The reduction in the number of immigration detainees in provincial custody has significantly changed the financial implications of the Arrangement and has resulted in a net loss of \$135,896 in 2021/22 for BC Corrections to fulfill the Arrangement.

- s.13; s.14

- Additionally, holding immigration detainees is not aligned with BC Corrections' mandate which is to safely hold people 18 years or older in provincial custody who are serving sentences of two years (less a day) and/or awaiting trial as well as to supervise individuals in the community on probation and/or bail with the goal of reducing reoffending in the community.
- Immigration detention in provincial correctional centres requires resources that could otherwise be used to better address the needs and criminal behaviours of people in custody serving sentences or awaiting trial.
- The Office of the Ombudsperson noted that if BC Corrections continues to hold immigration detainees, the Office may initiate an investigation of current practices to examine in detail the conditions of their detention.

- s.13; s.16

- Prior to BC Corrections ending the Arrangement with the CBSA, it is recommended that a transition plan be developed, taking into consideration the following issues:
 - The impacts on public safety associated with no longer holding immigration detainees in provincial correctional centres;
 - The need for dual status individuals held in provincial custody to be safely transferred to the CBSA as soon as operationally feasible when their criminal hold ends.
- A communication plan will also be developed in consultation with Government Communications and Public Engagement, as multiple stakeholders, including the CBSA and Office of the Human Rights Commissioner, have requested advanced notice of the decision, including an embargoed copy of the review, prior to being made public.

INDIGENOUS PEOPLES CONSIDERATIONS:

- Indigenous peoples are over-represented in BC Corrections; however, Indigenous peoples in custody are out of the scope for this review.

OPTIONS:

Option 1: (Recommended)

The MPSSG provides notice to the CBSA to end the Arrangement respecting the detention of immigration detainees in provincial correctional centres.

Pros:

- Consistent with BC Corrections' mandate and priorities.
- s.13; s.14
- Addresses human rights concerns raised by stakeholders related to the practice of holding immigration detainees in correctional centres.
- Resources allocated to immigration detention in correctional centres can be diverted to enhance supports to other individuals in custody within BC Corrections' mandate.

Cons:

- Possible public safety implications due to the CBSA's current lack of facilities for holding high-risk immigration detainees.
- May require time to allow the CBSA to establish suitable detention facilities for high-risk immigration detainees.

Option 2:

s.13; s.16

Pros:

- s.13; s.16

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Cons:

- s.13; s.14

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OTHER MINISTRIES IMPACTED/CONSULTED: None

DECISION:

OPTION NUMBER 1 APPROVED



Mike Farnworth
Minister of Public Safety and Solicitor General
and Deputy Premier

July 4, 2022

Date

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ATTACHMENTS

Appendix A: Arrangement - CBSA & BC Corrections – 2017

Appendix B: Review of the Arrangement Between Canada Border Services Agency and
BC Corrections