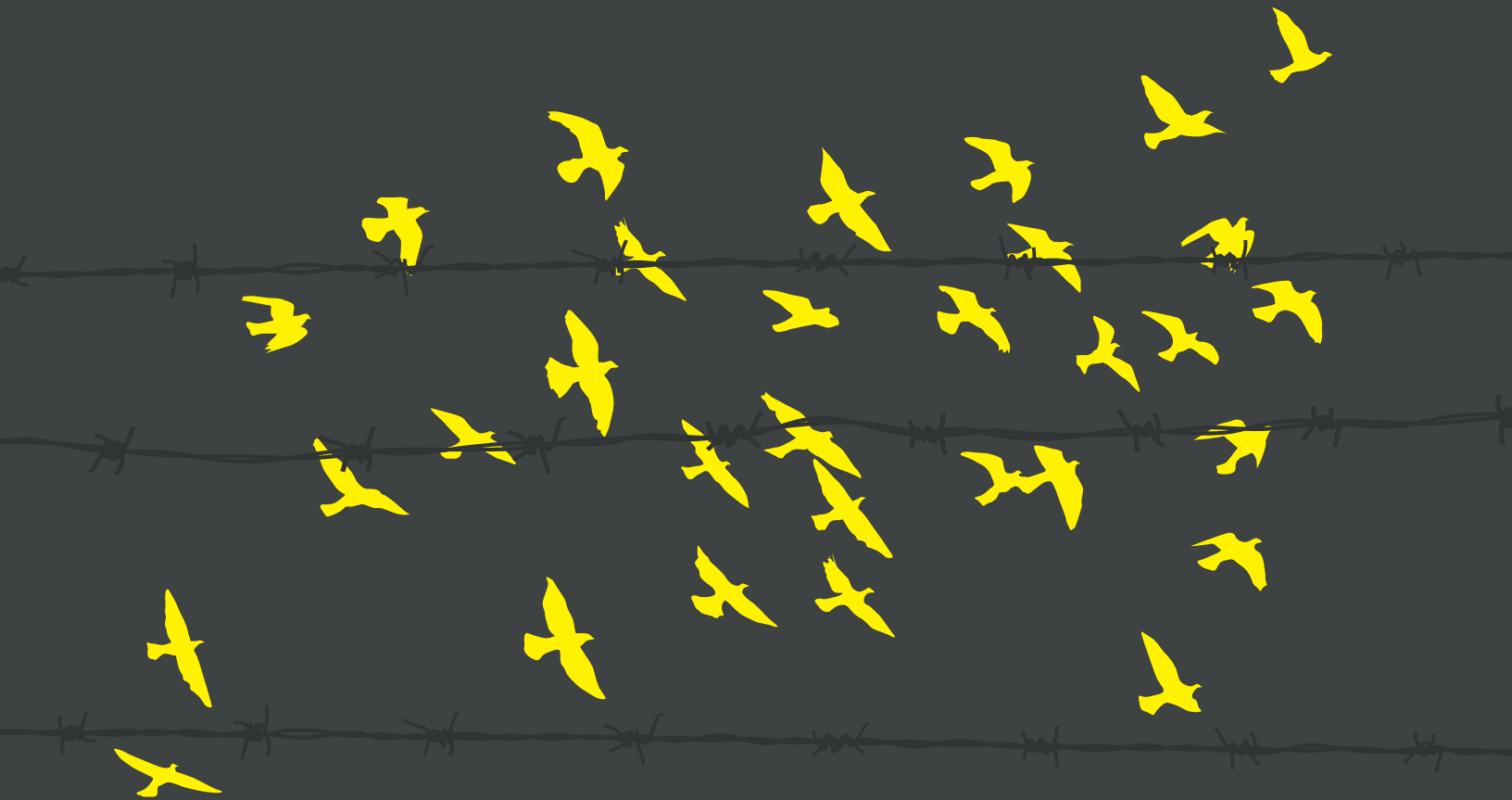


HEALTHCARE AND HARM REDUCTION IN

IMMIGRATION DETENTION

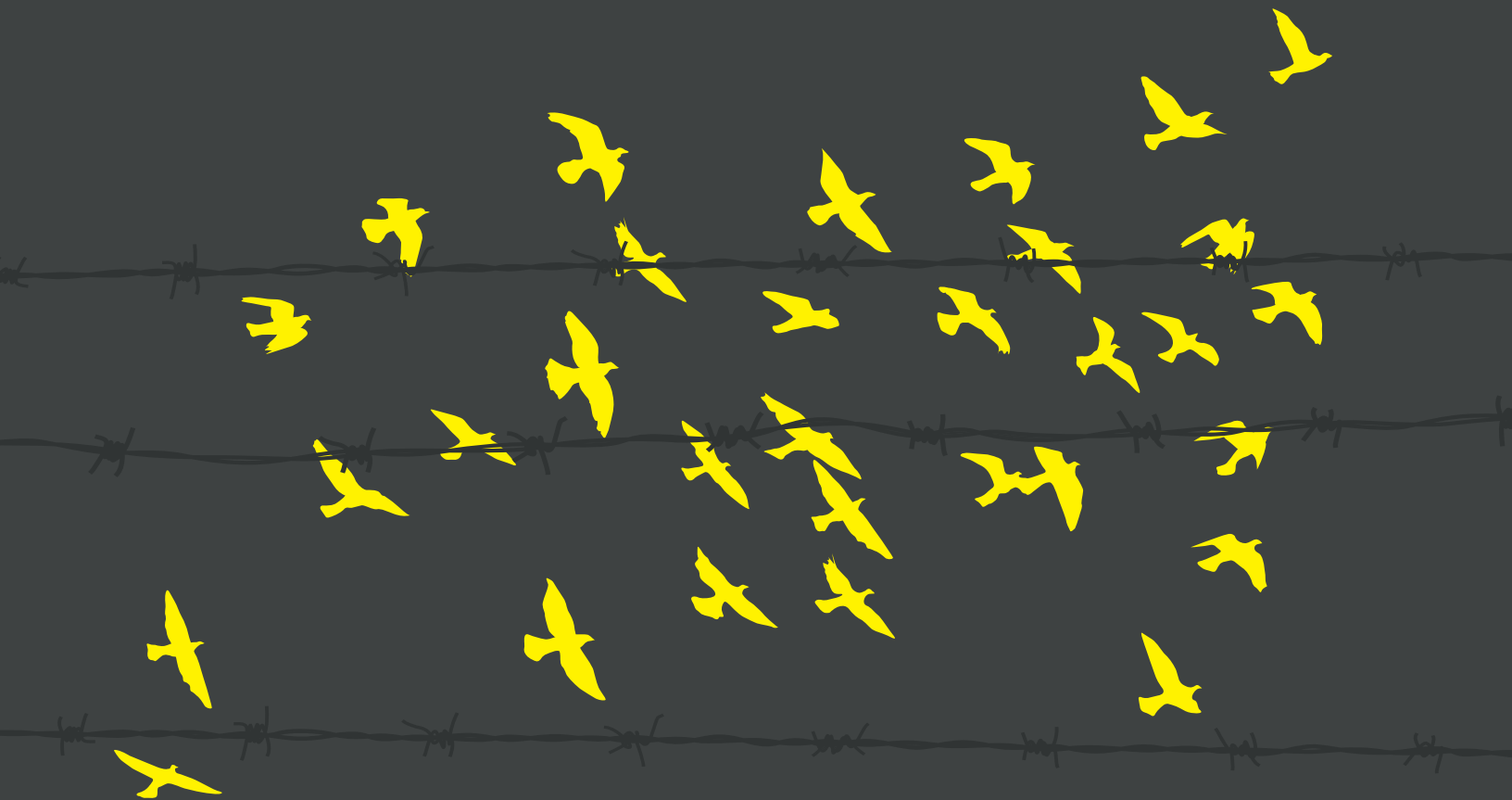


HARD TIME PERSISTS



Canada must **urgently reform** its immigration detention system.

Everyone — including people who have been detained — has a right to the highest attainable standard of health and to healthcare that is at least equivalent to that which is available in the community, whatever their immigration status.¹ The current system — which allows for indefinite and punitive detention without comprehensive oversight — fails to protect and promote the human rights of detained individuals, including their right to health.² Health information is not adequately tracked in immigration detention, leaving no clear picture of the healthcare needs of detained individuals, including those who use drugs or live with HIV or hepatitis C (HCV). Detained individuals are restricted in their ability to access critical healthcare services that are available in the community, which needlessly exposes them to harm, including increased risks of acquiring or transmitting HIV, HCV, and other sexually transmitted and blood-borne infections (STBBIs).³





Understanding Immigration Detention

The *Immigration and Refugee Protection Act* (IRPA) gives the federal government the authority to detain individuals for immigration purposes.⁴ The government can detain people, not because those people have been charged with (or even accused of) a crime, but in an apparent effort to further the country's immigration goals (for instance, to maintain the ability to deport someone or verify their identity). The **Canada Border Services Agency (CBSA)** is responsible for determining who to detain, where to detain, and for how long:

- **Who can be detained?** The CBSA has authority to detain foreign nationals and permanent residents whom they deem to meet certain conditions. Most often, individuals are detained because they are deemed to be “flight risks,” meaning that the CBSA does not believe they will voluntarily appear for their removal from Canada.⁵ Individuals can also be detained when the CBSA finds that they have “failed to establish their identity” or “present a danger to the public.”⁶
- **Where are people detained?** The CBSA can hold people in one of three CBSA-operated **Immigration Holding Centers (IHCs)**.⁷ Until August 2023, the CBSA could also detain individuals in provincial prisons, designed to detain people charged or convicted of crimes. Each of Canada's provinces have recently committed to ending their immigration detention agreements with the CBSA, with the last of the agreements expiring by March 2025.⁸ The federal government now plans to use federal prisons to detain people on immigration grounds.⁹
- **How long can people be detained?** The CBSA can hold people for as long as they deem necessary, without any maximum time limit.¹⁰ The potential for indefinite detention has been found to comply with the *Canadian Charter of Rights and Freedoms* thanks to a system of periodic reviews.¹¹ Within 48 hours of a person's arrest, the CBSA must justify the grounds for their detention before the Immigration and Refugee Board, who can order continued detention or release. A review occurs again after seven days, and then every 30 days thereafter.

The CBSA is not subject to an independent oversight mechanism and advocates have revealed “profoundly disturbing” conditions of detention.¹² Periodic reviews do not systematically protect individuals from arbitrary detention, with people held in prison for months or years without justification.¹³ The psychological impacts of indefinite detention are severe, and include anxiety, depression, psychosis, catatonic withdrawal, self-harm, and suicidal ideation; even a relatively short hold in detention can be devastating and cause long-term — and sometimes permanent — harm.¹⁴ Racialized individuals, and people with disabilities, are subject to some of the harshest treatment and widespread discrimination.¹⁵

There are significant gaps in the provision of healthcare and harm reduction in immigration detention.¹⁶

The CBSA has few policies and practices, and little insight, on the provision of healthcare and harm reduction services. Instead, the CBSA has contracted out most of its responsibility for the health of those whom it detains. To the extent that the CBSA has policies in place, many of those policies are incomplete — and in some cases, contradictory. The extent to which those policies are followed is unknown, as the CBSA appears not to track health information in detention.



Between April 1, 2023, and March 31, 2024:

- **4,929 individuals** were detained for immigration purposes;
- Of those, **3,928 individuals** were detained as “unlikely to appear”;
- **70% of those detained** were held in IHCs and 17% were held in provincial prisons;
- The average length of detention was **19 days** and the **median length was three days**; and
- **1,057 individuals were detained** for 10 to 39 days, **518 individuals were detained** for 40 to 99 days, and **245 individuals were detained** for over 99 days.¹⁷

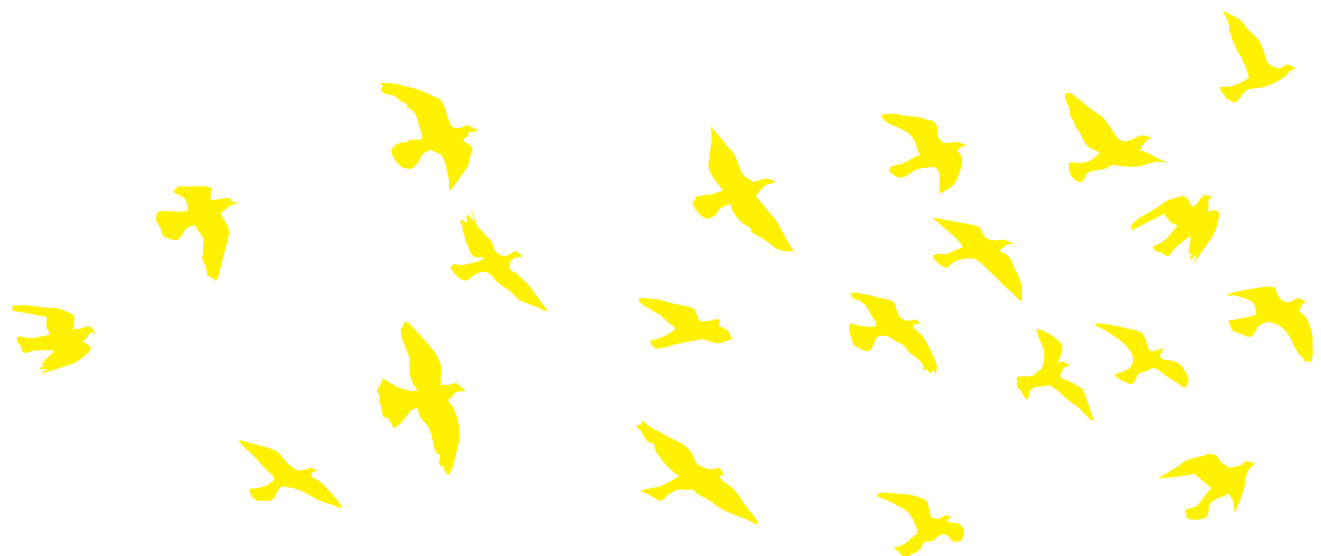


The CBSA’s **National Immigration Detention Standards (Standards)** promise “national direction on the delivery of health services to detainees to ensure their physical and mental health needs are met in a timely and efficient manner.”¹⁸ However, these *Standards* only apply to IHCs, leaving the provision of healthcare at provincial prisons (and soon, federal prisons) in the hands of those prison authorities.¹⁹ Notably, healthcare and harm reduction services in provincial and federal prisons contain significant gaps and vary vastly from one jurisdiction to the next.²⁰ The *Standards* outline measures by which the CBSA is meant to monitor individuals held in non-CBSA facilities — yet the CBSA has not made any of this documentation publicly accessible.²¹

With respect to IHCs, the CBSA offers little more promise. Pursuant to the *Standards*, the CBSA must ensure that individuals receive continuous and confidential healthcare services covered by the **Interim Federal Health Program (IFHP)**; information about the services available and how to access them; and information about how to complain about healthcare services.²² What services must be provided are, however, largely left to the discretion of contracted **“Medical Services,”** which “normally includes physician(s), nurses, psychologist(s), and psychiatrist(s)”²³ and the CBSA has confirmed that they do not provide specific direction to Medical Services.²⁴ For the most part, Medical Services are required to deliver healthcare in accordance with the “medical services contract” they have with the CBSA, the contents of which are unknown.²⁵

To the extent that the CBSA details healthcare that must be provided, this information is limited and, in some cases, concerning:

- With respect to **STBBIs**, the *Standards* confirm that there must be measures to prevent and manage STBBI transmission²⁶ and the CBSA has confirmed that they provide safer sex materials on request.²⁷ However, the fact that those materials must be requested is contrary to best practice in public health and poses a needless barrier to essential tools of STBBI prevention. Additionally, contrary to a broader trend of increasing access to STBBI testing and treatment in detention settings, the CBSA states that STBBI testing need not be systematically offered upon admission or throughout detention, and that healthcare staff have the discretion to deny testing requests.²⁸
- With respect to **overdose prevention**, the *Standards* confirm that the CBSA must ensure that naloxone kits are available and replenished at least once a month in IHCs. Yet the *Standards* do not confirm how naloxone is to be distributed, including whether detained people (versus only IHC staff) have direct access, which the World Health Organization considers highly effective in protecting against fatal opioid poisoning in detention.²⁹ The CBSA has developed an *Opioid Withdrawal Awareness Handout*, which includes information on how to identify a person in withdrawal. However, the only response to withdrawal noted on the handout is to refer the person to a physician.³⁰





There has been an increase at the Toronto Immigration Holding Centre with detained clients experiencing withdrawal upon admission.

The purpose of this memo is to ensure that CBSA and GARDA contracted security staff are able to provide the appropriate care and control for our detained clients at the TIHC.”³¹

– Email from CBSA IHC Staff to Contracted Calian Medical Staff, June 29, 2023



- With respect to **HIV and HCV prevention for people who use drugs**, illicit drugs and drug injection equipment (including via a sterile needle and syringe distribution program) are strictly prohibited, bleach is not provided, and the provision of Opioid Agonist Therapy, safer supply, and other harm reduction measures are left to the discretion of Medical Services.³² Alarming, individuals who are living with HIV and HCV can be sent to medical isolation units in the name of security and safety. There is no current information on how often medical isolation is used and in what manner, which raises concerns about how broadly isolation is used and whether it is appropriately justified.³³
- With respect to **programs for specific populations**, the *Standards* state that “vulnerable individuals,” including pregnant and nursing people, should be placed in detention as a last resort — and if detention is necessary, it should only be for the shortest time possible. Information on the number of people detained, and their length of detention, is not available.³⁴ The *Standards* specify that vulnerable individuals should be treated “in a sensitive manner that ensures physical and emotional well-being.”³⁵ However, no detailed information describing the specialized services they may receive is available³⁶ nor does the CBSA collect health information.³⁷ The *Standards* also clarify that trans individuals are to be placed according to their expressed gender identity.³⁸ Yet placement is determined on a case-by-case basis, taking into consideration where an immigration officer thinks people would be safest. In federal and provincial prisons, perceived safety considerations are known to arbitrarily override individual preferences.³⁹ Alarming, a policy at the IHC in Quebec states that “homosexual people” are not to be housed with individuals of the same sex,⁴⁰ and trans people are to be housed alone and only allowed access to recreational areas designated for their sex assigned at birth if their appearance sufficiently conforms to that sex’s norms. These provisions are premised on harmful stereotypes, rather than on the actual safety and well-being of individuals detained.



Since 2000, at least 17 people have died in immigration detention, with inquests revealing shocking conditions around many of the deaths.⁴¹ The most recent death occurred in the IHC in Laval, Quebec, in February 2023. The CBSA has not released information about the circumstances of the death.





The plight of detained migrants, who have not been charged or convicted of any crime, is seriously concerning...

Independent oversight of the Canada Border Services Agency, which manages migration detention, is lacking and the absence of any maximum term of migration detention also heightens the risk of arbitrary detention. Many migrants are deprived of liberty for months and in some cases years. While the experts welcomed the ending of migration detention in provincial jails, they were alarmed by reports to use federal correctional facility to imprison persons detained purely on the basis of their migration status.”⁴²

– Press Release by the Working Group on Arbitrary Detention, May 24, 2024



Moving forward, **Canada must abolish immigration detention** and ensure that migrants have meaningful access to comprehensive healthcare and harm reduction services.

Cloaked in secrecy, the CBSA has shirked many of its responsibilities to uphold immigration detainees' right to health. By subjecting people to conditions detrimental to their health, Canada is failing to meet its obligations. To rectify these human rights violations, Canada must:

1. Abolish immigration detention

For decades, Canada has faced calls to abolish immigration detention, with regular findings that the system is contrary to Canada's domestic and international human rights obligations.⁴³ While the criticism to date has focused on the often arbitrary grounds and prolonged length of detention and concerning conditions of detention, the lack of comprehensive and transparent healthcare and harm reduction services lends further evidence for the need to move away from immigration detention.

Detention must be replaced with community-based alternatives that prioritize access to comprehensive services, including an emphasis on healthcare and harm reduction services.⁴⁴ Alternatives, such as case management services, have been found to effectively address government concern for immigration enforcement, while also protecting the rights of those who would otherwise be at risk of detention.⁴⁵

2. Ensure comprehensive healthcare and harm reduction services

In moving away from immigration detention, the federal government must amend the IFHP so that all migrants in Canada can access publicly funded healthcare, regardless of their immigration status.

Additionally, the federal government must continue to work towards establishing mechanisms to ensure CBSA transparency and accountability, without which the rights of migrants cannot be protected. Canada must institute practices that hold the CBSA accountable, including regarding the health of the individuals for whom it is responsible. An independent civilian oversight body is crucial to systematically review CBSA policy and practice.

The CBSA must be held to standards for the provision of healthcare and harm reduction services and provide specific services, regardless of whether those services are contracted out to other agencies or organizations. Concurrently, the CBSA must track the healthcare and harm reduction services that fall under its scope, to finally ensure transparency and accountability in its practices.

- 1 See, e.g., *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2348/2014*, United Nations Human Rights Committee, CCPR/C/123/D/2348/2014, 30 August 2018; see also, *UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules)*, United Nations General Assembly, A/RES/70/175, 8 January 2016.
- 2 A. Boulanger, “Hard Time Persists: Healthcare and Harm Reduction in Canada’s Prison System,” HIV Legal Network, forthcoming.
- 3 *Ibid.*
- 4 *Immigration and Refugee Protection Act*, SC 2001, c 27, s. 58; *Immigration and Refugee Protection Regulations*, SOR/2003-227, ss. 244-248.
- 5 Government of Canada, *Annual Detention Statistics: 2012 to 2024*, 21 June 2024. Available at www.cbsa-asfc.gc.ca/security-securite/detent/stat-2012-2024-eng.html.
- 6 *IRPR*, *supra* note 4, ss. 244-248.
- 7 Canada Border Services Agency, *Detentions and alternatives to detention*, 30 May 2024. Available at www.cbsa-asfc.gc.ca/security-securite/detent/menu-eng.html.
- 8 Human Rights Watch, *Canada: All 10 Provinces to End Immigration Detention in Jails*, 21 March 2024. Available at www.hrw.org/news/2024/03/21/canada-all-10-provinces-end-immigration-detention-jails.
- 9 See, e.g., Amnesty International, *Open Letter: Canadian government must cancel plans to use federal prisons for immigration detention*, 13 May 2024. Available at <https://amnesty.ca/human-rights-news/open-letter-immigration-detention-federal-prisons>.
- 10 See, e.g., Brendan Kennedy, “Caged by Canada,” *Toronto Star*, 17 March 2017. Available at thestar.com/projects/caged-by-canada/article_d2c58c9e-393f-5cd4-96eb-30da5723e117.html.
- 11 *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9; *Brown v Canada (Citizenship and Immigration)*, 2020 FCA 130.
- 12 Amnesty International, *supra* note 9; see also, Bill C-20: *An Act establishing the Public Complaints and Refugee Commission*, which is not yet enacted; Human Rights Watch, “*I Didn’t Feel Like a Human in There*” – *Immigration Detention in Canada and its Impact on Mental Health*, June 2021, available at www.hrw.org/report/2021/06/17/i-didnt-feel-human-there/immigration-detention-canada-and-its-impact-mental; B. Bureau, “Locked Away,” *CBC News*, 31 January 2023, available at www.cbc.ca/newsinteractives/features/detained-story; I. Austen, “For Most Refugees in Canada, a Warm Embrace. For Others, Jail,” *New York Times*, 15 June 2024, www.nytimes.com/2024/06/15/canada-refugees-immigration-prison.html; Working Group on Arbitrary Detention, *Preliminary Findings from its visit to Canada (13 to 24 May 2024)*, 24 May 2024, available at www.ohchr.org/sites/default/files/documents/issues/detention-wg/statements/20240524-wgad-eom-ca-pf.pdf.
- 13 See, e.g., L. Century & K. Roach, “Miscarriages of Justice in Immigration Detention,” *University of British Columbia Law Review* (2024):42; Immigration and Refugee Board, *Report of the 2017/2018 External Audit (Detention Review)*, 20 July 2018. Available at www.irb-cisr.gc.ca/en/transparency/reviews-audit-evaluations/Pages/ID-external-audit-1718.aspx#intro.
- 14 Amnesty International, *supra* note 9.
- 15 Human Rights Watch, *supra* note 12; Canadian Red Cross, *Immigration detention monitoring program annual report 2020 to 2021*, available at www.cbsa-asfc.gc.ca/security-securite/detent/idmp-pscd-20-21-eng.pdf.
- 16 Through 2023-2024, the HIV Legal Network analyzed CBSA’s provision of healthcare and harm reduction in immigration detention, through desk research, access to information requests, and direct communication with CBSA (a copy of the questionnaire can be found online at www.hivlegalnetwork.ca/site/wp-content/uploads/2024/10/Hard-Times-Persist-Interview-Questionnaire.pdf). Topics reviewed included the provision of opioid agonist therapy (OAT); safer supply; naloxone; drug checking; supervised consumption; sterile needles and syringes; safer tattooing programs; bleach; safer sex supplies; STBBI testing, counselling, and treatment; harm reduction and sexual health education for detained individuals and for staff; and programs designed for specific populations (such as women, gender-diverse individuals, and racialized individuals).
- 17 Government of Canada, *supra* note 5. Note that other places of detention include RCMP offices, local or provincial police cells, and CBSA ports of entry or inland enforcement cells.
- 18 Government of Canada, *National Immigration Detention Standards*, 20 June 2024, s. 4.3.1. Available at www.cbsa-asfc.gc.ca/security-securite/detent/standards-normes/menu-eng.html.
- 19 *Ibid.*
- 20 A. Boulanger, *supra* note 2.
- 21 Government of Canada, *supra* note 18, s. 6.5.
- 22 Government of Canada, *supra* note 18, s. 4.3.5.
- 23 Government of Canada, *supra* note 18, s. 4.3.4.

- 24 The CBSA has indicated that it is satisfied that “contracted medical teams will provide a duty of care for all detainees” and that “all detainees are respected and met as required.” CBSA response to HIV Legal Network questionnaire, received 22 March 2024.
- 25 Government of Canada, *supra* note 18, s.4.3.5; CBSA response to HIV Legal Network questionnaire, *ibid*.
- 26 Government of Canada, *supra* note 18, s.4.3.5.
- 27 CBSA response to HIV Legal Network questionnaire, *supra* note 24.
- 28 Response to the HIV Legal Network’s Access to Information request from CBSA, received 22 May 2024.
- 29 See, e.g., World Health Organization (WHO), *Recommended package of interventions for HIV, viral hepatitis, and STI prevention, diagnosis, treatment, and care for people who inject drugs – Policy brief*, April 2023. Available at www.who.int/publications/i/item/9789240071858.
- 30 Response to the HIV Legal Network’s Access to Information request from CBSA, *supra* note 28.
- 31 *Ibid*.
- 32 Government of Canada, *supra* note 18, s. 2.2; CBSA response to HIV Legal Network questionnaire, *supra* note 24. **Opioid Agonist Therapy** is a medication-based treatment for individuals who are dependent on opioids, which reduces opioid withdrawal symptoms; see, e.g., BC Mental Health & Substance Use Services, *Opioid Agonist Treatment*, available at www.bcmhsus.ca/health-professionals/clinical-professional-resources/opioid-agonist-treatment. **Safer supply** refers to the provision of pharmaceutical-grade alternatives to the unregulated, illegal drug supply to prevent drug poisoning death; see, e.g., Government of Canada, *Safer supply*, 25 May 2023, available at www.canada.ca/en/health-canada/services/opioids/responding-canada-opioid-crisis/safer-supply.html.
- 33 Although the Canadian Red Cross has an agreement with CBSA to review detention conditions, the latest published report is from 2020–2021, during which COVID-19 conditions appeared to have significantly altered the CBSA’s standard practice (see, *supra* note 15).
- 34 Government of Canada, *supra* note 18, s. 4.8.
- 35 *Ibid*.
- 36 See, e.g., H. Gros & S. Muscati, “Inquest Highlights Abuses in Canada’s Immigration Detention,” *Human Rights Watch*, 6 March 2023. Available at www.hrw.org/news/2023/03/06/inquest-highlights-abuses-canadas-immigration-detention#:~:text=A%20coroner’s%20inquest%20into%20the,abusive%20conditions%20in%20provincial%20jails.
- 37 CBSA response to HIV Legal Network questionnaire, *supra* note 24.
- 38 Government of Canada, *supra* note 18, s. 4.8.
- 39 See, e.g., Office of the Correctional Investigator, *Challenges Faced by Gender Diverse Persons in Federal Corrections: An Ombudsman’s Perspective*, 16 November 2021. Available at <https://oci-bec.gc.ca/en/content/challenges-faced-gender-diverse-persons-federal-corrections-ombudsman-s-perspective>.
- 40 Response to the HIV Legal Network’s Access to Information request from CBSA, *supra* note 28.
- 41 See, e.g., Amnesty International, *Canada: Jail deaths underscore lethal nature of immigration detention*, 6 March 2024. Available at <https://amnesty.ca/human-rights-news/canada-deaths-immigration-detention/#:~:text=17%20deaths%20in%20immigration%20detention,December%2025%2C%202022%20in%20B.C>.
- 42 United Nations Office of the High Commissioner for Human Rights, *Canada: Positive practices but serious concerns regarding detention of marginalized groups persist, say UN experts*, 24 May 2024. Available at www.ohchr.org/en/press-releases/2024/05/canada-positive-practices-serious-concerns-regarding-detention-marginalized.
- 43 See, e.g., Working Group on Arbitrary Detention, *supra* note 12; Human Rights Watch, *supra* note 12; Government of Ontario, *2023 coroner’s inquests’ verdicts and recommendations – Hassan, Abdurahman*, 10 February 2023, available at www.ontario.ca/page/2023-coroners-inquests-verdicts-and-recommendations; British Columbia’s Office of the Human Rights Commissioner, *Submission regarding immigration detention in provincial correctional centers*, March 2022, available at <https://bchumanrights.ca/resources/publications/publication/immigration-detention>.
- 44 See, e.g., Human Rights Watch, *Alternatives to Immigration Detention*, 3 November 2021, available at www.hrw.org/news/2021/11/03/alternatives-immigration-detention#:~:text=Based%20on%20the%20findings%2C%20governments,employment%2C%20Human%20Rights%20Watch%20said; see also recommendations from Ontario, *supra* note 43, British Columbia’s Office of the Human Rights Commissioner, *supra* note 43, and Working Group on Arbitrary Detention, *supra* note 12.
- 45 Human Rights Watch, *ibid*.



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